

**Introduced by Senator Anderson**February 18, 2016

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An act to add Section 314 to the Code of Civil Procedure, relating to civil law.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1256, as introduced, Anderson. Civil law: litigation: The Civility in Litigation Act.

Existing law states the time and procedure for commencement of civil actions.

This bill would require a person who claims to have been aggrieved by an alleged unlawful act or practice, to send a letter to the person or entity he or she alleges to have caused the harm that sets forth alleged facts in support of the grievance and any other information necessary to inform the person or entity of the alleged harm suffered, prior to filing any legal action or pursuing legally mandated alternative dispute resolution, as specified. The bill would require the person who claims to have been aggrieved to engage with that person or entity in good faith efforts to be made whole, if, during the 30-day period following the date on which the letter was received there is a response from the person or entity that is alleged to have engaged in the unlawful act or practice.

The bill would toll the statute of limitations on a claim arising from the alleged unlawful act or practice for the 30-day period, including the following period of negotiations, if any. If, after that 30-day period there is no response, the bill would authorize the person who claims to have been aggrieved to pursue other efforts to be made whole, including filing a claim in a court of competent jurisdiction or alternative dispute resolution. The bill would require that if the person who claims to have

been aggrieved files a complaint in a court of law, he or she shall describe in the complaint the good faith efforts he or she made to comply with these provisions or attach a copy of the letter sent pursuant to this section and proof of its mailing to the complaint.

The bill would also authorize a court, factfinder, or arbiter, if it determines that these provisions were not complied with in good faith, to dismiss a claim that is otherwise authorized, in which case it would be required to state in writing and with specificity why the case was dismissed, and whether or not the case is dismissed with or without prejudice.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 314 is added to the Code of Civil  
2 Procedure, immediately following Section 313, to read:

3 314. (a) This section shall be known, and may be cited as, the  
4 Civility in Litigation Act.

5 (b) Notwithstanding any law, a person who claims to have been  
6 aggrieved by an alleged unlawful act or practice shall, before filing  
7 any legal action or pursuing legally mandated alternative dispute  
8 resolution, including mandatory arbitration, send a letter to the  
9 person or entity he or she alleges to have caused the harm that sets  
10 forth alleged facts in support of the grievance and any other  
11 information necessary to inform the person or entity of the alleged  
12 harm suffered. The letter shall be signed by the person who claims  
13 to have been aggrieved, or his or her representative.

14 (1) The letter shall be sent by certified mail to the last known  
15 address of the person or entity alleged to have engaged in the  
16 unlawful act or practice.

17 (2) The letter may, alternatively, be sent to an authorized  
18 representative of the person or entity that is alleged to have engaged  
19 in the unlawful act or practice.

20 (c) If the person or entity alleged to have engaged in the  
21 unlawful act or practice responds to the person who claims to have  
22 been aggrieved within 30 days after the letter specified in  
23 subdivision (b) is received, or delivery of the letter is attempted,  
24 the person claiming to have been aggrieved shall engage with the

1 person or entity alleged to have engaged in the unlawful act or  
2 practice in good faith efforts to be made whole.

3 (d) If the person alleged to have engaged in an unlawful act or  
4 practice fails to respond to the letter within 30 days after the letter  
5 is received, or delivering of the letter is attempted, the person who  
6 claims to have been aggrieved may pursue other efforts to be made  
7 whole, including filing a complaint in a court of competent  
8 jurisdiction or alternative dispute resolution, including mandatory  
9 arbitration if applicable.

10 (e) The statute of limitations on a claim arising from the alleged  
11 unlawful act or practice subject to this section shall be tolled for  
12 a period of 30 days following the date of mailing as set forth in  
13 subdivision (a), plus any additional period of time during which  
14 the parties engage in negotiations under this section.

15 (f) If the person who claims to have been aggrieved files a  
16 complaint in a court of law, he or she shall attach to the complaint  
17 a copy of the letter sent pursuant to this section and proof of its  
18 mailing. If the person who claims to have been aggrieved knows  
19 that the letter he or she sent to the person or entity alleged to have  
20 engaged in the unlawful act or practice was not received, he or she  
21 shall disclose that information in the complaint, shall describe the  
22 good faith efforts he or she made to comply with this section, and  
23 shall include any information explaining whether and why the  
24 provisions of this section were not complied with.

25 (g) If a court, factfinder, or arbiter determines that the provisions  
26 of this subdivision were not complied with in good faith, that  
27 determination may be grounds for dismissing a claim that would  
28 otherwise be authorized. Because of the public policy encouraging  
29 resolution of disputes and a full and fair hearing on those disputes,  
30 if the court or other lawfully authorized factfinder dismisses a  
31 claim under this paragraph, he or she shall state in writing and  
32 with specificity why the case was dismissed and whether the case  
33 was dismissed with prejudice. If the alleged claims by an aggrieved  
34 party are not time barred, including the tolling of the limitation  
35 period as set forth in subdivision (e), the claims should be  
36 dismissed without prejudice to allow the aggrieved party to cure  
37 any alleged defects under this section.

38 (h) This section does not apply to a claim arising from matters  
39 related to, or violations of, the Family Code, Chapter 7  
40 (commencing with Section 12960) of Part 2.8 of Division 3 of

1 Title 2 of the Government Code, the Penal Code, or the Probate  
2 Code.

3 (i) This section does not apply in the case of a true emergency  
4 in which court relief is required immediately under the terms and  
5 conditions required for injunctive relief pursuant to Section 526.

6 (j) Attempts to comply with this section by a person receiving  
7 a demand shall be construed to be an offer to compromise and  
8 shall be inadmissible as evidence pursuant to Section 1152 of the  
9 Evidence Code. Further, attempts to comply with a demand shall  
10 not be considered an admission of engaging in an unlawful act or  
11 practice. Evidence of compliance or attempts to comply with this  
12 section may be introduced by a defendant solely for the purpose  
13 of establishing good faith or to show compliance with this section.

14 (k) As used in this section, “authorized representative” means  
15 any person designated in writing by the person or entity alleged  
16 to have engaged in an unlawful act or practice to be his or her  
17 representative, and includes attorneys, representatives of an  
18 insurance company, or any other person who is authorized to  
19 resolve disputes on behalf of the person or entity alleged to have  
20 engaged in an unlawful act or practice with binding authority to  
21 resolve a dispute.