

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

SB 66 (Umberg)
Version: January 13, 2025
Hearing Date: April 1, 2025
Fiscal: No
Urgency: No
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SUBJECT

Civil discovery

DIGEST

This bill removes the sunset date on provisions that require certain initial disclosures in specified civil actions upon demand of a party.

EXECUTIVE SUMMARY

Existing law provides for various methods of discovery to obtain evidence in connection with civil litigation, including requests for production of documents. If the party propounding such discovery requests believes that responses are inadequate or objections are without merit or are too general, it may file a motion to compel further responses and involve the court in facilitating the exchange of discovery. Generally, such motions must be preceded by a good faith attempt at an informal resolution of the dispute. Courts can impose sanctions for various misuses of the discovery process.

In response to concerns about discovery delays and abuses, SB 235 (Umberg, Ch. 284, Stats. 2023) *required* certain disclosures of information related to discoverable information to be made by parties in the early stages of civil cases, with exceptions, upon demand of any party. Previously, such disclosures were only required when stipulated to by the parties and ordered by the court. SB 235 included a sunset date on those changes of January 1, 2027. This bill removes that sunset date.

The bill is author sponsored. No timely support or opposition has been received by the Committee.

PROPOSED CHANGES TO THE LAW

- 1) Provides, through the Civil Discovery Act, procedures by which parties to a civil action conduct and obtain “discovery,” including by, among other things, oral depositions. (Code Civ. Proc. § 2016.010 et seq.)
- 2) Provides that generally any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. (Code Civ. Proc. § 2017.010.)
- 3) Provides that within 60 days of a demand by any party to an action, each party that has appeared in the action, including the party that made the demand, shall provide to the other parties an initial disclosure that includes specified information, including:
 - a. The names, addresses, telephone numbers, and email addresses of all persons likely to have discoverable information, along with the subjects of that information, that the disclosing party may use to support its claims or defenses, or that is relevant to the subject matter of the action or the order on any motion made in that action, unless the use would be solely for impeachment.
 - b. A copy, or a description by category and location, of all documents, electronically stored information, and tangible things that the disclosing party has and may use to support its claims or defenses, or that is relevant to the subject matter of the action or the order on any motion made in that action, unless the use would be solely for impeachment.
 - c. Specified contractual agreements and insurance policies. (Code Civ. Proc. § 2016.090(a)(1).)
- 4) Exempts from the above requirements unrepresented parties and the following actions:
 - a. An unlawful detainer action.
 - b. An action in the small claims division of a court.
 - c. An action or proceeding commenced in whole or in part under the Family Code.
 - d. An action or proceeding commenced in whole or in part under the Probate Code.
 - e. An action in which a party has been granted preference pursuant to Section 36 of the Code of Civil Procedure. (Code Civ. Proc. § 2016.090(b), (c).)
- 5) Provides that a party shall make the above initial disclosures based on the information then reasonably available to it subject to a supplemental demand

from parties to elicit any later-acquired information bearing on all previous disclosures, as provided. A party is not excused from making its initial disclosures because it has not fully investigated the case, because it challenges the sufficiency of another party's disclosures, or because another party has not made its disclosures. (Code Civ. Proc. § 2016.090(a).)

- 6) Provides that these obligations may be enforced by a court on its own motion or the motion of a party to compel disclosure. (Code Civ. Proc. § 2016.090(a)(4).)
- 7) Provides that the changes made to this section by SB 235 are effective January 1, 2024 and sunset on January 1, 2027. (Code Civ. Proc. § 2016.090(d), (e).)

This bill removes the above sunset date.

COMMENTS

1. Overview of the discovery process

The Civil Discovery Act ("the Act") applies to every civil action and special proceeding of a civil nature, unless there is a statutory exception. (Code Civ. Proc. § 2016.010 et seq.) Discovery is the formal exchange of evidentiary information and materials between parties to a pending action. Generally, the Act permits any party to a civil action to obtain discovery regarding any matter, not privileged, that is relevant to the subject matter in the pending action or to the determination of any motion made in that action, if the matter either is admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. (Code Civ. Proc. § 2017.010.) Discovery may relate to the claim or defense of the party seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition, and location of any document, electronically stored information, tangible thing, or land or other property.

2. Initial disclosures

Rule 26 of the Federal Rules of Civil Procedure provides for certain required disclosures at the outset of civil litigation in federal courts. Pursuant to Rule 26, a party must provide certain information to the other parties of the action even before a discovery request is propounded. Such required initial disclosures include:

- the name and, if known, the address and telephone number of each individual likely to have discoverable information – along with the subjects of that information – that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

- a copy – or a description by category and location – of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;
- a computation of each category of damages claimed by the disclosing party – who must also make available for inspection and copying the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; and
- any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(Fed. Rules Civ. Proc., rule 26(a)(1)(A).)

Seeking to mirror this procedural rule, SB 17 (Umberg, Ch. 836, Stats. 2019) initially required each party, within 45 days after service of any answer in a civil action and without awaiting a discovery request, to provide to the other parties initial disclosures that include specified information, all of which would be required pursuant to Rule 26. However, the bill eventually only required such disclosures after the parties all stipulated to it and the court ordered it.

SB 235 took the next step and requires these early disclosures upon demand of any party. It exempts unrepresented parties and does not apply to a number of specified actions. The purpose of requiring initial disclosures is to expedite the discovery process, reduce the expense of litigation, and facilitate the early resolution of litigation.

Requiring initial disclosures provides certain efficiencies to the litigation process. It may provide a party a better sense of the case for or against it and thereby expedite the resolution of the dispute. Such disclosures also obviate the need to engage in the lengthy, and often costly, discovery process for each piece of relevant information.

However, the changes made by SB 235 are due to sunset on January 1, 2027, reverting the law back to the discretionary disclosure statute created by SB 17. This bill removes that sunset. According to the author:

Discovery is a very important pretrial stage of a trial. It is the process of collecting information in preparation for trial, when both sides engage to collect facts, identify witnesses, and evaluate a case. Unfortunately, the discovery process is often abused by parties, and especially those with more resources – irrespective of the merits of the matter. These abuses lead to disputes that have become increasingly common, expensive, and time consuming. Currently, California law does not condemn strongly enough that abuse of the discovery process will not be tolerated. In 2023,

SB 235 created a pilot law to reduce this discovery abuse by requiring certain initial disclosures to be mandatory and by changing the current suggested sanction to a mandatory \$1,000 minimum sanction imposed on lawyers that: fail to timely respond to a documents request, intent to cause unnecessary delay, and fail to meet and confer to resolve any dispute regarding the request. SB 66 would make these important reforms permanent.

SUPPORT

None received

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 235 (Umberg, Ch. 284, Stats. 2023) *See* Executive Summary & Comment 2.

SB 17 (Umberg, Ch. 836, Stats. 2019) *See* Comment 2.
