

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

SB 1141 (Niello)  
Version: February 14, 2024  
Hearing Date: April 30, 2024  
Fiscal: No  
Urgency: No  
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**SUBJECT**

Mediation: amount in controversy

**DIGEST**

This bill raises the threshold under which a court may order a case into mediation from \$50,000 to \$150,000.

**EXECUTIVE SUMMARY**

“Mediation” means a process in which a neutral person or persons facilitate communication between the disputants to assist them in reaching a mutually acceptable agreement. Generally, mediation is entered into voluntarily by the parties to a dispute. However, the law provides a limited authorization for courts to order the parties to an action into mediation. Courts may not order a case into mediation if the amount in controversy exceeds \$50,000.

This bill raises that threshold to \$150,000. The author and sponsor argue that required mediation will provide benefits both to the parties but also the courts, which are facing increased congestion.

This bill is sponsored by the California Conference of Bar Associations. It is supported by various entities and associations, including the Civil Justice Association of California and the Judicial Council of California. It is opposed by the Consumer Attorneys of California.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Defines “mediation” as a process in which a neutral person or persons facilitate communication between the disputants to assist them in reaching a mutually acceptable agreement. (Code Civ. Proc. § 1775.1.)
- 2) Prohibits the court from ordering a case into mediation where the amount in controversy exceeds \$50,000. The determination of the amount in controversy shall be made in the same manner as provided in Section 1141.16 and, in making this determination, the court shall not consider the merits of questions of liability, defenses, or comparative negligence. (Code Civ. Proc. § 1775.5.)
- 3) Provides that the determination of the amount in controversy shall be made by the court and the case referred to arbitration after all named parties have appeared or defaulted. The determination shall be made at a case management conference or based upon review of the written submissions of the parties, as provided in rules adopted by the Judicial Council. The determination shall be based on the total amount of damages, and the judge may not consider questions of liability or comparative negligence or any other defense. At that time the court shall also make a determination whether any prayer for equitable relief is frivolous or insubstantial. The determination of the amount in controversy and whether any prayer for equitable relief is frivolous or insubstantial may not be appealable. No determination pursuant to this section shall be made if all parties stipulate in writing that the amount in controversy exceeds the amount specified. The determination and any stipulation of the amount in controversy shall be without prejudice to any finding on the value of the case by an arbitrator or in a subsequent trial de novo. (Code Civ. Proc. § 1141.16.)
- 4) Provides that in the courts of the County of Los Angeles and in other courts that elect to apply this section of law, all at-issue civil actions in which arbitration is otherwise required, whether or not the action includes a prayer for equitable relief, may be submitted to mediation by the presiding judge as an alternative to judicial arbitration. Any civil action otherwise within the scope of this title in which a party to the action is a public agency or public entity may be submitted to mediation. (Code Civ. Proc. Code § 1775.3.)
- 5) Requires a mediator to be selected for the action within 30 days of its submission to mediation. The method of selection and qualification of the mediator shall be as the parties determine. If the parties are unable to agree on a mediator within 15 days of the date of submission of the action to mediation, the court may select a mediator pursuant to standards adopted by the Judicial Council. (Code Civ. Proc. Code § 1775.6.)

This bill raises the threshold at which a court may not order a case into mediation to an amount in controversy exceeding \$150,000.

### COMMENTS

#### 1. Stated intent of the bill

According to the author:

Mediation can be a successful tool for both the stakeholders seeking justice in the courts and the courts themselves by reducing court congestion. SB 1141 seeks to promote mediation by allowing courts to require mediation when the amount in controversy does not exceed \$150,000.

#### 2. Mandatory mediation

“Mediation” is the process in which a neutral person or persons facilitate communication between the disputants to assist them in reaching a mutually acceptable agreement. (Code Civ. Proc. § 1775.1.) The law currently provides a narrow authorization for courts to force a case into mediation without the parties consent. The law provides that in the courts of the County of Los Angeles and in other courts that elect to do so, specified civil actions may be submitted to mediation, as provided. (Code Civ. Proc. Code § 1775.3.)

A mediator must be selected for the action within 30 days of its submission to mediation. The method of selection and qualification of the mediator shall be as the parties determine. If the parties are unable to agree on a mediator within 15 days of the date of submission of the action to mediation, the court may select a mediator pursuant to standards adopted by the Judicial Council. (Code Civ. Proc. Code § 1775.6.)

However, currently the law prohibits the court from ordering a case into mediation where the amount in controversy exceeds \$50,000. (Code Civ. Proc. § 1775.5.)

This bill raises the threshold at which a court may not order a case into mediation to an amount in controversy exceeding \$150,000.

#### 3. Stakeholder positions

The California Conference of Bar Associations, the sponsor of this bill, argue:

According to a 1999 report by the California Judicial Council, alternate dispute resolution (ADR), which includes mediation, can provide a greater choice of ways to resolve disputes; has the potential for earlier,

faster resolution than with traditional litigation; has the potential for less costly means for resolving disputes; and has the potential for greater satisfaction with the dispute resolution process and outcome than with traditional litigation

In addition, a 2004 report by the California Judicial Council, about five mediation pilot programs in Fresno, Los Angeles, San Diego, Contra Costa and Sonoma counties, showed that the programs resulted in “substantial benefits to both litigants and the courts.” The report also stated: “These benefits included reductions in trial rates, case disposition time, and the courts’ workload, increases in litigant satisfaction with the court’s services, and decreases in litigant costs in cases that resolved at mediation in some or all of the participating courts.”

SB 1141 is needed because increased mediation use will help alleviate court backlogs and promote timely court adjudication. SB 1141 is also needed because the \$50,000 amount in Code of Civil Procedure Section 1775.5 has not been adjusted for inflation since 1993. Further, the goal to encourage more mediation is consistent with the Trial Court Delay Reduction Act.

Writing in opposition, the Consumer Attorneys of California assert:

Mandated mediation conflicts with the basic premise of mediation – two parties voluntarily coming together seeking to come to a resolution on a case. Further, for mediation to lead to a resolution of a case, both parties must be willing to mediate. Most plaintiff lawyers and their clients voluntarily mediate when it’s suggested by the defense. In most cases an order to mediate comes only after the parties have decided that, in their case, there’s no chance of settlement.

The mediation regime has grown out of control. Mediation can now be mandated by forced arbitration/mediation agreements. Increasing the ability of courts to order mediation pushes the ADR regime in the direction of it becoming a substitute for civil justice. That’s the wrong direction.

Courts can and often do already order mandatory settlement conferences prior to assigning a trial date. These mandatory settlement conferences then often get continued three, four, five times and more, further pushing back the trial date. SB 1141 will exacerbate this current problem by creating another barrier and expense to obtaining justice for injured consumers and workers in California.

Writing in support, the Civil Justice Association of California makes the case:

By tripling the amount in controversy for courts to send cases to mediation, SB 1141 promotes a cost-effective way to resolve disputes. In mediation, parties often share the cost of the mediator, which is generally less expensive than hiring attorneys for a full-blown court case. Legal fees in litigation can quickly accumulate due to various factors like attorney hourly rates, court fees, expert witness fees, and other expenses associated with preparing for trial. Mediation reduces these expenses substantially.

The Judicial Council of California explains their support:

The Judicial Council supported the original legislation Senate Bill 401 [(Lockyer, Ch. 1261, Stats. 1993)] that created the court-ordered mediation provisions to resolve cases in a cost-effective manner. SB 1141 ameliorates the urgent problem of court backlog by updating this 30-year-old statute to a figure slightly above the inflation-adjusted cap and aligns with the increase in the limited civil jurisdictional threshold enacted last year by Senate Bill 71 [(Umberg, Ch. 861, Stats. 2023)]. Under current law, court ordered mediation is only allowed for unlimited civil matters, so the current \$50,000 limit is very narrow and would only allow for this service to be provided when the amount in controversy is between \$35,000 and \$50,000.

#### 4. Amendments

In response to concerns that mandatory mediation will unnecessarily delay trial dates for litigants and impose unreasonable costs for potentially unwilling participants, the author has agreed to the following amendments:

- Trial date must be set and mediation must happen at least 120 days before that date and not cause that date to be delayed.
- At least one party to the mandatory mediation must indicate they are interested in mediation.
- Counsel for each party attending the mediation must have full authority to settle the matter.
- The mandate of mediation cannot be dispositive of the case value (i.e. mandating mediation cannot limit amount in controversy to under \$150,000).
- Parties to the mediation must be given the option to stipulate to their own chosen mediator. However, the court must provide and pay for a mediator should the parties not stipulate otherwise.

This would apply to all mandatory mediation pursuant to Section 1775.5.

**SUPPORT**

California Conference of Bar Associations (sponsor)  
California Chamber of Commerce  
California Conference of Bar Associations  
Civil Justice Association of California  
Judicial Council of California  
Superior Court of Los Angeles County

**OPPOSITION**

Consumer Attorneys of California

**RELATED LEGISLATION**

Pending Legislation:

SB 940 (Umberg, 2024) prohibits an arbitrator from entertaining or accepting, from the time of appointment until the conclusion of the arbitration, either of the following: (1) any offers of employment or new professional relationships as a lawyer, expert witness, or consultant from a party or lawyer for a party in the pending arbitration; or (2) any offers of employment as a dispute resolution neutral in another case involving a party or lawyer for a party in the pending arbitration without the prior written consent of the parties, as specified. SB 940 also prohibits sellers from requiring a consumer, as a condition of entering into a contract, to agree to a provision that would require the consumer to adjudicate outside of California a claim arising in California or deprive the consumer of the substantive protection of California law with respect to a controversy arising in California, as specified. SB 940 allows consumers the option to have a dispute adjudicated pursuant to the Small Claims Act instead of through arbitration, as specified. It authorizes the State Bar to create a program to certify alternative dispute resolutions firms, as provided. SB 940 is currently in this Committee.

AB 924 (Gabriel, 2023) requires a dispute resolution neutral, like a mediator or arbitrator, to provide the State Bar with a copy of a written complaint made against the neutral during an alternative dispute resolution proceeding and to provide information to the complainant about how to submit a complaint directly to the State Bar. AB 924 is currently in this Committee.

Prior Legislation: SB 401 (Lockyer, Ch. 1261, Stats. 1993) required the courts in Los Angeles County and authorized others to implement a prescribed program of mediation of specified civil matters, where the amount in controversy does not exceed \$50,000.

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