



CIVIL JUSTICE ASSOCIATION  
OF  
CALIFORNIA



PCI's California voice.



Supporting People,  
Health and  
Quality of Life

September 15, 2015

To: Governor Brown

Re: Request to Veto SB 383 (Wieckowski)

The above organizations respectfully request you veto SB 383 (Wieckowski) because it will add time and cost to the already lengthy demurrer process without a corresponding benefit to the litigants. A demurrer is intended to identify baseless claims and allow the court to dispense with them.

In addition to creating bad policy, the bill was created through a bad process. This bill was negotiated between the lawyers for the plaintiffs and the defense without the consideration of us, their clients.

**What is a demurrer?**

A demurrer is a failure to state a legal claim. If the facts are as the plaintiff lays them out, then the plaintiff has failed to present a complaint justifying a lawsuit. Black's law dictionary defines a demurrer in quite a long definition, the substance of which is below:

*An allegation of a defendant, which, admitting the matters of fact alleged by complaint ... to be true, shows that as they are therein set forth they are insufficient for the plaintiff to proceed upon or to oblige the defendant to answer; or that, for some reason apparent on the face of the complaint or bill, or on account of the omission of some matter which ought to be contained herein, or for want of some circumstances which ought to be attendant therein, **the defendant ought not to be compelled to answer...** An assertion that complaint does not set forth a cause of action upon which relief can be granted, and it admits for purpose of testing sufficiency of complaint, all properly pleaded facts but not conclusions of law.” Black’s Law dictionary Abridged Sixth Edition, bolds ours.*

### **Second Chance for Whom?**

Under this bill, if a defendant misses a ground for a possible demurrer the first time, then the defendant can no longer assert it! In other words, this bill gives the plaintiff another chance (actually three chances) and simultaneously takes that second chance away from the defendant! This is a huge change, contrary to long-standing law that failure to state a claim is so fundamental because, like subject matter jurisdiction that may be raised at any time, a demurrer is a claim that cannot be waived.

### **The Lawyers Left the Clients Out of Negotiations**

When the substantive bill language became available in July 2015, this coalition requested the author multiple times to convene a working group whereby all stakeholders using the courts could examine a comprehensive solution to filing of complaints and motion practice. Instead, Senate Bill 383 was written by two groups only- the plaintiff’s attorneys and defense attorneys. We pay those lawyers and do not want a bill that makes more work for lawyers on both sides when current law allows a faulty lawsuit to be dismissed.

### **Sponsors’ Justifications for the Bill Are Not Sufficient**

Sponsors intend to “streamline” court processes by creating a new meet and confer requirement before any demurrer could be filed. As a result, this bill adds, rather than subtracts, a step in the litigation process. Additionally, there are no teeth in the bill – there is no consequence should the parties fail to meet and confer.

Senate Bill 383 singles out one motion out of a larger universe of filings to “fix” system-wide delays in a backlog of the law and motion calendar in some (primarily in Los Angeles County), but not all California superior courts. We recognize the funding shortage affecting the judicial branch of government and support additional resources for the judiciary to help our courts timely resolve disputes. As such, we support efforts to streamline the civil justice system to ensure that legal disputes are fairly resolved. This bill, however, is an inadequate attempt to address the much bigger problem of overcrowded courts.

### **The Meet and Confer in SB 383 Is NOT Like Discovery Meet and Confer**

Senate Bill 383 will lead to additional delays in the civil court system and motion practice. Sponsors and supporters of SB 383 have consistently stated this bill’s process is just like the meet-and-confer required in the discovery process in litigation. That is false. In the discovery process under Code of Civil Procedure 2023.020, if a party fails to meet and confer in good faith, the court may award sanctions, including attorney’s fees. Although our group requested the same enforcement mechanism, the sponsors declined. Without an enforcement mechanism, delays will result in additional costs to our companies by adding billable hours to any pending case.

Moreover, the bill raises the potential for additional satellite disputes about the sufficiency of the meeting and conferring. Businesses in California already spend far too much on legal fees.

**Existing Law Addresses “Nuisance” Demurrers**

Sponsors have claimed that “nuisance” demurrers are clogging the courts and, therefore, SB 383 is needed to reduce these numbers. However, existing law under Code of Civil Procedure Section 128.7 already requires attorneys to sign pleadings, motions and all filings attesting they are being made in good faith and warranted under the law. If a court finds that this provision was violated, it may sanction the parties. The sponsors have been unable to explain why this existing and appropriate tool is not being used to deter the behaviors that allegedly spawned this bill.

**Summary**

This bill unfairly eviscerates one useful tool available to California defendants. We urge your veto.

**FROM:**

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| Civil Justice Association of California                       | California Building Industry Association             |
| American Council of Life Insurers                             | California Chamber of Commerce                       |
| American Insurance Association                                | California Citizens Against Lawsuit Abuse            |
| Association of California Insurance Companies                 | California Credit Union League                       |
| Association of California Life and Health Insurance Companies | California Restaurant Association                    |
| California Apartment Association                              | Cooperative of American Physicians                   |
| California Assisted Living Association                        | LeadingAge California                                |
| California Association of Health Facilities                   | Personal Insurance Federation of California          |
| California Bankers Association                                | Pharmaceutical Research and Manufacturers of America |