

AMENDED IN ASSEMBLY JULY 9, 2015

AMENDED IN SENATE MAY 19, 2015

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 383

Introduced by Senator Wieckowski

February 24, 2015

An act to amend ~~Section 430.30~~ *Sections 430.40 and 472* of the Code of Civil Procedure, relating to civil procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 383, as amended, Wieckowski. Civil actions: objections to pleadings.

Under existing law, a party in a civil action may object to a complaint, cross-complaint, or answer by demurrer, as specified.

This bill would require a demurring party, before filing the demurrer, to engage in a specified meet and confer process with the party who filed the pleading demurred to for the purpose of determining whether an agreement can be reached as to the filing of an amended pleading that would resolve the objections to be raised in the demurrer.

The bill would require the demurring party, in some circumstances, to file a declaration under penalty of perjury. By expanding the scope of the crime of perjury, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Under existing law, a party in a civil action may object to a complaint, cross-complaint, or answer by demurrer if the ground for the objection appears on the face of the pleading or is from a matter of which the court must or may take judicial notice. If the ground for the objection does not appear on the face of the pleading, existing law permits the objection to be taken by answer. Existing law permits a party objecting to a complaint or cross-complaint to demur and answer at the same time.~~

~~This bill would require a party to meet and confer with an opposing party, as specified, before filing a demurrer. This bill would permit a party who is unable to fulfill this requirement to file a declaration with the court evidencing his or her good faith attempt to meet and confer, and it would require the court, upon receipt of a timely declaration, to grant a 30-day extension to the filing party to file a responsive pleading. This bill would also permit a court to grant an additional extension of time upon a showing of good cause.~~

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

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

1 *SECTION 1. Section 430.40 of the Code of Civil Procedure is*
 2 *amended to read:*
 3 430.40. (a) A person against whom a complaint or
 4 cross-complaint has been filed may, within 30 days after service
 5 of the complaint or cross-complaint, demur to the complaint or
 6 cross-complaint.
 7 (b) A party who has filed a complaint or cross-complaint may,
 8 within 10 days after service of the answer to ~~his~~ *the* pleading,
 9 demur to the answer.
 10 (c) *Before filing a demurrer, the demurring party shall meet*
 11 *and confer in person or by telephone with the party who filed the*
 12 *pleading that is subject to demurrer for the purpose of determining*
 13 *whether an agreement can be reached that would resolve the*
 14 *objections to be raised in the demurrer. If an amended complaint,*
 15 *cross-complaint, or answer is filed, the responding party shall*
 16 *meet and confer again with the party who filed the amended*
 17 *pleading before filing a demurrer to the amended pleading.*

1 (1) *As part of the meet and confer process, the demurring party*
2 *shall identify all of the specific paragraphs that it believes are*
3 *subject to demurrer and identify with legal support any causes of*
4 *action that are claimed to have not been sufficiently stated. The*
5 *party who filed the complaint, cross-complaint, or answer shall*
6 *provide legal support for its position that the pleading is legally*
7 *sufficient or, in the alternative, how the complaint, cross-complaint,*
8 *or answer could be amended to cure any legal insufficiency.*

9 (2) *The parties shall meet and confer at least five days before*
10 *the date the responsive pleading is due. If the parties are not able*
11 *to meet and confer at least five days prior to the date the responsive*
12 *pleading is due, the demurring party may obtain a 30-day extension*
13 *of time within which to file a responsive pleading, by filing and*
14 *-serving, on or before the date on which a demurrer would be due,*
15 *a declaration stating under penalty of perjury that a good faith*
16 *attempt to meet and confer was made and explaining the reasons*
17 *why the parties could not meet and confer. Any further extensions*
18 *shall be obtained by court order upon a showing of good cause.*

19 (3) *The demurring party shall file and serve with the demurrer*
20 *a declaration stating the means by which the demurring party met*
21 *and conferred with the party who filed the pleading subject to*
22 *demurrer, and that the parties did not reach an agreement as to*
23 *amendment of all challenged portions of the pleading.*

24 (4) *Any determination by the court that the meet and confer*
25 *process was insufficient shall not be grounds to overrule or sustain*
26 *a demurrer. However, the court may continue the hearing on the*
27 *demurrer and order the parties to meet and confer in compliance*
28 *with this subdivision.*

29 (d) (1) *A party demurring to a pleading that has been amended*
30 *after a demurrer to an earlier version of the pleading was sustained*
31 *shall not demur to any portion of the amended complaint,*
32 *cross-complaint, or answer on grounds that could have raised by*
33 *demurrer to the earlier version of the complaint, cross-complaint,*
34 *or answer.*

35 (2) *If a demurrer is overruled as to a cause of action and that*
36 *cause of action is not further amended, the demurring party*
37 *preserves its right to appeal after final judgment without filing a*
38 *further demurrer.*

39 (e) *If a court sustains a demurrer to one or more causes of*
40 *action and grants leave to amend, the court may order a conference*

1 of the parties before an amended complaint or cross-complaint or
2 a demurrer to an amended complaint or cross-complaint, may be
3 filed. If a conference is held, the court shall not preclude a party
4 from filing a demurrer and the time to file a demurrer shall not
5 begin until after the conference has concluded. Nothing in this
6 section prohibits the court from ordering a conference on its own
7 motion at any time or prevents a party from requesting that the
8 court order a conference to be held.

9 SEC. 2. Section 472 of the Code of Civil Procedure is amended
10 to read:

11 472. ~~Any pleading may be amended once by the party of~~
12 ~~course, and without costs, A party may amend its pleading once~~
13 ~~without leave of the court at any time before the answer or demurrer~~
14 ~~is filed, or after a demurrer and before the trial of the issue of law~~
15 ~~thereon, by filing the same as amended and serving a copy on the~~
16 ~~adverse party, and the time in which the adverse party must respond~~
17 ~~thereto shall be computed from the date of notice of the~~
18 ~~amendment. is filed but before the demurrer is heard if the~~
19 ~~amended complaint, cross-complaint, or answer is filed and served~~
20 ~~no later than the date for filing an opposition to the demurrer. The~~
21 ~~time for responding to an amended pleading shall be computed~~
22 ~~from the date of filing of a notice of the amended pleading.~~

23 SEC. 3. No reimbursement is required by this act pursuant to
24 Section 6 of Article XIII B of the California Constitution because
25 the only costs that may be incurred by a local agency or school
26 district will be incurred because this act creates a new crime or
27 infraction, eliminates a crime or infraction, or changes the penalty
28 for a crime or infraction, within the meaning of Section 17556 of
29 the Government Code, or changes the definition of a crime within
30 the meaning of Section 6 of Article XIII B of the California
31 Constitution.

32 SECTION 1. ~~Section 430.30 of the Code of Civil Procedure~~
33 ~~is amended to read:~~

34 430.30. (a) ~~If a ground for objection to a complaint,~~
35 ~~cross-complaint, or answer appears on the face thereof, or from~~
36 ~~any matter of which the court is required to or may take judicial~~
37 ~~notice, the objection on that ground may be taken by a demurrer~~
38 ~~to the pleading.~~

- 1 ~~(b) If a ground for objection to a complaint or cross-complaint~~
2 ~~does not appear on the face of the pleading, the objection may be~~
3 ~~taken by answer.~~
- 4 ~~(c) A party objecting to a complaint or cross-complaint may~~
5 ~~demur and answer at the same time.~~
- 6 ~~(d) (1) Before filing a demurrer, a party shall meet and confer,~~
7 ~~in person or by telephone, with the opposing party who filed the~~
8 ~~pleading subject to demurrer.~~
- 9 ~~(2) Notwithstanding Section 430.40, the time to file a responsive~~
10 ~~pleading shall be extended by 30 days if both of the following~~
11 ~~conditions are met:~~
- 12 ~~(A) The parties are unable to meet and confer within the time~~
13 ~~specified in Section 430.40 to file a responsive pleading.~~
- 14 ~~(B) The party seeking to file a demurrer files a declaration~~
15 ~~stating that he or she made a good faith attempt to meet and confer~~
16 ~~with the opposing party within the time specified in Section 430.40.~~
- 17 ~~(3) A court may grant an additional extension of time upon a~~
18 ~~showing of good cause.~~