

NEW CALIFORNIA STATUTE PUTS SOME LIMITS ON TIME-LIMITED DEMANDS WITHIN LIABILITY POLICY LIMITS

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The California legislature has passed a new statute that provides some protections to liability insurers, in certain contexts. The statute is Code of Civil Procedure Sections 999 to 999.5. It goes into effect on January 1, 2023.

Types of demands the new statute applies to:

- It applies to time-limited demands within policy limits.
- It applies to pre-suit demands only.
- It applies only to claims, made by the third-party claimant, for personal injury, property damage, bodily injury, or wrongful death, which are covered under auto, motor vehicle, homeowners, or commercial premises liability policies.
 - “Personal injury” is not defined in the statute. Whether this term refers to the popular meaning of personal injury, or the term as defined in general liability policies (such as defamation, wrongful eviction, false imprisonment, and so forth) remains to be seen.

Contents of the demand:

- Demands must be in writing, be labeled as a time-limited demand or reference the statute, and contain material terms, including the following:
 - A deadline to accept, which must be at least 30 days (if sent by email, fax, or certified mail), or 33 days (if sent by regular mail).
 - A clear and unequivocal offer to settle all claims within limits, including the satisfaction of all liens.
 - An offer of a complete release of all insureds.
 - The date and location of the loss.
 - The claim number, if known.
 - A description of all known injuries.
 - Reasonable proof, including medical records or bills, sufficient to support the claim.

(The above requirements do not apply to demands made after suit is filed. But a post-suit time-limited demand that does not substantially comply with the above is not considered a reasonable demand, for purposes of a bad faith suit against the insurer. The provision regarding post-suit demands applies only to claimants who are represented by a lawyer.)

Who the demand must be sent to:

- The demand must be sent to either:
 - The email or physical address designated by the insurer for receipt of these types of demands.
 - The adjuster, if known.

Accepting, requesting more information, or rejecting the demand:

- The insurer may accept the demand by providing written acceptance of the material terms. (The material terms include the terms listed under “Contents of the demand,” above.)
- If, before the deadline to respond, the insurer attempts to seek clarification or additional information, or to request an extension due to the need for further information or investigation, doing so is not, by itself, a counteroffer or rejection of the demand.
- If the insurer does not accept the demand, it must notify the claimant in writing of the decision and the reason(s). The notification must be sent before the deadline. The notification is deemed relevant in any bad faith lawsuit.

A pdf copy of the bill text and legislative summary is available at <https://legiscan.com/CA/text/SB1155/2021>.

After January 1, 2023, the statute will be available through California’s free online code search, at <https://leginfo.legislature.ca.gov/faces/codes.xhtml>.