

AMENDED IN SENATE AUGUST 5, 2002

AMENDED IN SENATE JUNE 25, 2002

AMENDED IN ASSEMBLY MAY 14, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1861**

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**Introduced by Assembly Member Harman**

January 31, 2002

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An act to add Section 437.5 to the Code of Civil Procedure, relating to civil actions.

LEGISLATIVE COUNSEL'S DIGEST

AB 1861, as amended, Harman. Motion to strike: incarcerated plaintiffs.

Existing law authorizes a court to strike out all or part of a pleading not drawn or filed in conformity with state laws, a court rule, or a court order.

Existing law also provides that a ~~privileged~~ publication or broadcast ~~is one~~ made in the proper discharge of an official duty or in any legislative, judicial, or other, specified ~~proceedings~~ *proceeding is privileged.*

This bill would authorize a defendant in a civil action ~~against whom a complaint containing an allegation in violation of the provision described above regarding privileged publications and broadcasts is filed, to file a special motion to strike based on that privilege, if the~~ *to file a special motion to strike all or any part of the complaint based on any privileged statement, testimony, or evidence made or offered at a parole hearing, if the complaint, or any portion thereof, filed against*

that defendant is filed by a plaintiff who is not represented by counsel and is incarcerated, as specified.

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

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

1 SECTION 1. Section 437.5 is added to the Code of Civil  
2 Procedure, to read:

3 437.5. (a) In any civil action in which the complaint, or any  
4 portion thereof, is based on any statement, testimony, or evidence  
5 that is *made or offered at a parole hearing and is privileged under*  
6 *Section 47 of the Civil Code, and filed by a plaintiff who (1) is not*  
7 *represented by legal counsel and (2) is incarcerated in any penal,*  
8 *correctional, or jail facility, the defendant against whom an*  
9 *allegation in violation of Section 47 of the Civil Code is made in*  
10 *the complaint, may, within the time allowed to respond to a*  
11 *complaint and, in lieu of filing of an answer to the complaint, or*  
12 *any other responsive pleadings, ~~file with the court a special motion~~*  
13 *~~to strike~~ serve and file a notice of special motion to strike all or any*  
14 *part of the complaint based on a privilege under Section 47 of the*  
15 *Civil Code. The special motion shall include all of the following*  
16 *allegations:*

17 (1) The complaint is based on a statement, testimony, or  
18 evidence that is privileged pursuant to Section 47 of the Civil  
19 Code.

20 (2) The plaintiff is not represented by legal counsel.

21 (3) The plaintiff is incarcerated in a penal, correctional, or jail  
22 facility.

23 (b) The special motion shall be entitled “Special Motion To  
24 Strike Based On Privilege Under Section 47 of the Civil Code.”  
25 No memorandum of points and authorities is required in support  
26 of this special motion. No filing or appearance fee is required of  
27 any defendant who files this special motion. ~~The defendant is not~~  
28 ~~required to file an answer to the complaint or any further~~  
29 ~~responsive pleadings to the complaint until 30 days after the court~~  
30 ~~rules on the motion.~~

31 ~~(c) The special motion shall be filed with the court by the~~  
32 ~~defendant within 30 days of the service of the complaint, or, in the~~  
33 ~~court’s discretion, at any later time upon terms it deems proper.~~



1 ~~Upon the filing of the special motion with the court, the court shall~~  
2 ~~set the date for the hearing of the motion and give notice of the~~  
3 ~~hearing date to all parties of record.~~

4 ~~(d) The plaintiff may file responsive pleadings to the motion to~~  
5 ~~strike. If a party serves and files a notice of special motion to strike~~  
6 ~~the complaint, or a portion thereof, the time to answer the~~  
7 ~~complaint is extended and no default may be entered against that~~  
8 ~~defendant, except as provided in Sections 585 and 586.~~

9 ~~(c) A notice of a special motion to strike the complaint, or a~~  
10 ~~portion thereof, shall specify a hearing date in accordance with~~  
11 ~~Section 1005.~~

12 ~~(d) The defendant is entitled, but is not required, to appear at~~  
13 ~~the hearing on the motion to strike. In making its determination,~~  
14 ~~the court shall consider the pleadings, and supporting and~~  
15 ~~opposing affidavits stating the facts upon which the liability is~~  
16 ~~based. After the hearing on the special motion to strike, the court~~  
17 ~~shall issue an appropriate ruling. If the court determines that the~~  
18 ~~allegations contained in the complaint, in whole or in part, are~~  
19 ~~based on matters that are privileged under Section 47 of the Civil~~  
20 ~~Code, the court shall either strike the complaint in its entirety or~~  
21 ~~strike those portions of the complaint that are based on the~~  
22 ~~privilege provided under Section 47 of the Civil Code. If the court~~  
23 ~~strikes the complaint in its entirety, the court shall dismiss the~~  
24 ~~entire action with prejudice.~~

25 ~~(e) All discovery proceedings in the action shall be stayed upon~~  
26 ~~the filing of the special motion made pursuant to this section. The~~  
27 ~~stay of discovery shall remain in effect until notice of entry of the~~  
28 ~~order ruling on the motion. The court, on noticed motion and for~~  
29 ~~good cause shown, may order that specified discovery be~~  
30 ~~conducted notwithstanding this subdivision.~~

31 ~~(f) For purposes of this section, “complaint” includes~~  
32 ~~“cross-complaint” and “petition,” “plaintiff” includes~~  
33 ~~“cross-complainant” and “petitioner,” and “defendant” includes~~  
34 ~~“cross-defendant” and “respondent.”~~

