

AMENDED IN SENATE MAY 7, 2002

SENATE BILL

No. 1651

Introduced by Senator Kuehl

February 21, 2002

An act to amend Section 425.16 of the Code of Civil Procedure, relating to civil actions.

LEGISLATIVE COUNSEL'S DIGEST

SB 1651, as amended, Kuehl. Civil actions.

Existing law provides that a cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue, as specified, is subject to a special motion to strike, unless the court, after considering the pleadings and supporting and opposing affidavits, determines that there is a probability that the plaintiff will prevail on the claim.

Existing law provides that an appeal may be taken directly from an order granting or denying a special motion to strike to the court of appeal, as specified. Existing law also requires any party who files or opposes a special motion to strike to promptly transmit various related documents to the Judicial Council by e-mail or facsimile, and requires the Judicial Council to maintain a public record of this information for at least 3 years.

This bill would provide that certain actions are not subject to a special motion to strike, as specified. The bill would provide specified procedures to obtain relief from any stay of proceedings related to the appeal of the denial of a special motion to strike.

This bill would delete an obsolete provision relating to the Judicial Council’s duty to report to the Legislature on these special motions, *and declare the intent of the Legislature.*

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 425.16 of the Code of Civil Procedure
2 is amended to read:

3 425.16. (a) The Legislature finds and declares that there has
4 been a disturbing increase in lawsuits brought primarily to chill the
5 valid exercise of the constitutional rights of freedom of speech and
6 petition for the redress of grievances. The Legislature finds and
7 declares that it is in the public interest to encourage continued
8 participation in matters of public significance, and that this
9 participation should not be chilled through abuse of the judicial
10 process. To this end, this section shall be construed broadly.

11 (b) (1) A cause of action against a person arising from any act
12 of that person in furtherance of the person’s right of petition or free
13 speech under the United States or California Constitution in
14 connection with a public issue shall be subject to a special motion
15 to strike, unless the court determines that the plaintiff has
16 established that there is a probability that the plaintiff will prevail
17 on the claim.

18 (2) In making its determination, the court shall consider the
19 pleadings; and supporting and opposing affidavits stating the facts
20 upon which the liability or defense is based.

21 (3) If the court determines that the plaintiff has established a
22 probability that he or she will prevail on the claim, neither that
23 determination nor the fact of that determination shall be
24 admissible in evidence at any later stage of the case, and no burden
25 of proof or degree of proof otherwise applicable shall be affected
26 by that determination.

27 (c) In any action subject to subdivision (b), a prevailing
28 defendant on a special motion to strike shall be entitled to recover
29 his or her attorney’s fees and costs. If the court finds that a special
30 motion to strike is frivolous or is solely intended to cause
31 unnecessary delay, the court shall award costs and reasonable



1 attorney’s fees to a plaintiff prevailing on the motion, pursuant to
2 Section 128.5.

3 ~~(d) This section shall not apply to any enforcement action~~
4 ~~brought in the name of the people of the State of California by the~~
5 ~~Attorney General, district attorney, or city attorney, acting as a~~
6 ~~public prosecutor.~~

7 *(d) (1) This section does not apply to any of the following:*

8 *(A) Any enforcement action brought in the name of the people*
9 *of the State of California by the Attorney General, district attorney,*
10 *or city attorney, acting as a public prosecutor.*

11 *(B) Any cause of action against any manufacturer, wholesaler,*
12 *retailer, or other entity involved in the stream of commerce, arising*
13 *from any statement, representation, conduct, label, advertising, or*
14 *other communication, made in regard to the product, services, or*
15 *business operations of that person or entity, or any competitor.*

16 *(C) Any cause of action brought in the public interest or on*
17 *behalf of the general public as a class action suit, if the plaintiff*
18 *does not seek any relief greater than or different from the relief*
19 *sought for the public or the class of which plaintiff is a member.*

20 *(D) Any cause of action brought for a violation of the*
21 *Consumers Legal Remedies Act (Title 1.5 (commencing with*
22 *Section 1750) of Part 4 of Division 3 of the Civil Code).*

23 *(2) Paragraph (1) does not apply to any person enumerated in*
24 *subdivision (b) of Section 2 of Article 1 of the California*
25 *Constitution or Section 1070 of the Evidence Code, or to any*
26 *person engaged in the dissemination of ideas or expression in any*
27 *book or academic journal.*

28 *(e) As used in this section, “act in furtherance of a person’s*
29 *right of petition or free speech under the United States or*
30 *California Constitution in connection with a public issue”*
31 *includes: (1) any written or oral statement or writing made before*
32 *a legislative, executive, or judicial proceeding, or any other*
33 *official proceeding authorized by law; (2) any written or oral*
34 *statement or writing made in connection with an issue under*
35 *consideration or review by a legislative, executive, or judicial*
36 *body, or any other official proceeding authorized by law; (3) any*
37 *written or oral statement or writing made in a place open to the*
38 *public or a public forum in connection with an issue of public*
39 *interest; (4) or any other conduct in furtherance of the exercise of*
40 *includes any of the following:*



1 (1) Any written or oral statement or writing made before a
2 legislative, executive, or judicial proceeding, or any other official
3 proceeding authorized by law.

4 (2) Any written or oral statement or writing made in connection
5 with an issue under consideration or review by a legislative,
6 executive, or judicial body, or any other official proceeding
7 authorized by law.

8 (3) Any written or oral statement or writing made in a place
9 open to the public or a public forum in connection with an issue
10 of public interest.

11 (4) Any other conduct in furtherance of the exercise of the
12 constitutional right of petition or the constitutional right of free
13 speech in connection with a public issue or an issue of public
14 interest.

15 (f) The special motion may be filed within 60 days of the
16 service of the complaint or, in the court's discretion, at any later
17 time upon terms it deems proper. The motion shall be noticed for
18 hearing not more than 30 days after service unless the docket
19 conditions of the court require a later hearing.

20 (g) All discovery proceedings in the action shall be stayed upon
21 the filing of a notice of motion made pursuant to this section. The
22 stay of discovery shall remain in effect until notice of entry of the
23 order ruling on the motion. The court, on noticed motion and for
24 good cause shown, may order that specified discovery be
25 conducted notwithstanding this subdivision.

26 (h) For purposes of this section, "complaint" includes
27 "cross-complaint" and "petition," "plaintiff" includes
28 "cross-complainant" and "petitioner," and "defendant" includes
29 "cross-defendant" and "respondent."

30 (i) An order granting or denying a special motion to strike ~~shall~~
31 ~~be~~ is appealable under Section 904.1. *If an appeal of the denial of*
32 *a special motion to strike is brought pursuant to this section and*
33 *a stay of proceedings is ordered, any party may apply to the trial*
34 *court for relief from that stay. The court may vacate or modify the*
35 *stay upon a showing that the defendant is not likely to prevail on*
36 *the merits and the plaintiff will sustain undue hardship as a result*
37 *of the stay. In making its own determinations on the merits of the*
38 *appeal, the appellate court shall not consider whether the trial*
39 *court granted or denied relief from any stay.*



1 (j) (1) Any party who files a special motion to strike pursuant
2 to this section, and any party who files an opposition to a special
3 motion to strike, shall, promptly upon so filing, transmit to the
4 Judicial Council, by e-mail or facsimile, a copy of the
5 endorsed-filed caption page of the motion or opposition, a copy of
6 any related notice of appeal or petition for a writ, and a conformed
7 copy of any order issued pursuant to this section, including any
8 order granting or denying a special motion to strike, discovery, or
9 fees.

10 (2) The Judicial Council shall maintain a public record of
11 information transmitted pursuant to this subdivision for at least
12 three years, and may store the information on microfilm or other
13 appropriate electronic media.

14 (k) *In enacting the amendments to this section made by Senate*
15 *Bill 1651 of the 2001–02 Regular Session, it is the intent of the*
16 *Legislature to respond in disapproval to the holding of DuPont*
17 *Merck Pharm. Co. v. Superior Court (2000) 78 Cal.App.4th 562,*
18 *in that a drug manufacturer invoked the use of this section to*
19 *defend against a class action suit that alleged a violation of the*
20 *Consumers Legal Remedies Act (Title 1.5 (commencing with*
21 *Section 1750) of Part 4 of Division 3 of the Civil Code) and Section*
22 *17500 of the Business and Professions Code, including allegations*
23 *of the publishing and dissemination of false and misleading*
24 *information to regulatory bodies, the medical profession, and the*
25 *public.*

26 *It is further the intent of the Legislature that the applicability of*
27 *this section does not restrict the ability of the news media to*
28 *comment on matters of public significance and gather and*
29 *disseminate information as news to the public, and is not limited*
30 *to the news media. It is further the intent of the Legislature that this*
31 *act does not apply to the dissemination of ideas or expression in*
32 *any book or academic journal.*

33 SEC. 2. *The provisions of this section are severable. If any*
34 *provision of this section or its application is held invalid, that*
35 *invalidity does not affect other provisions or applications that can*
36 *be given effect without the invalid provision or application.*

