

AMENDED IN ASSEMBLY JULY 8, 2003
AMENDED IN ASSEMBLY JUNE 27, 2003
AMENDED IN SENATE MAY 1, 2003

SENATE BILL

No. 515

Introduced by Senator Kuehl
(Coauthor: Assembly Member Montanez)

February 20, 2003

An act to add Section 425.17 to the Code of Civil Procedure, relating to civil actions.

LEGISLATIVE COUNSEL'S DIGEST

SB 515, 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.

This bill would provide that certain actions are not subject to a special motion to strike, as specified, including, but not limited to, any action brought solely in the public interest or on behalf of the general public, if specified conditions exist. The bill would further provide that related appeal provisions are not applicable to these actions. The bill would also provide that its provisions are severable, and would make specified findings and declarations.

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 425.17 is added to the Code of Civil
2 Procedure, to read:
3 425.17. (a) The Legislature finds and declares that there has
4 been a disturbing abuse of Section 425.16, the California
5 Anti-SLAPP Law, which has undermined the exercise of the
6 constitutional rights of freedom of speech and petition for the
7 redress of grievances, contrary to the purpose and intent of Section
8 425.16. The Legislature finds and declares that it is in the public
9 interest to encourage continued participation in matters of public
10 significance, and that this participation should not be chilled
11 through abuse of the judicial process or Section 425.16.
12 (b) Section 425.16 does not apply to any action brought solely
13 in the public interest or on behalf of the general public if all of the
14 following conditions exist:
15 (1) The plaintiff does not seek any relief greater than or
16 different from the relief sought for the general public or a class of
17 which the plaintiff is a member. A claim for attorney’s fees, costs,
18 or penalties does not constitute greater or different relief for
19 purposes of this subdivision.
20 (2) The action, if successful, would enforce an important right
21 affecting the public interest, and would confer a significant
22 benefit, whether pecuniary or nonpecuniary, on the general public
23 or a large class of persons.
24 (3) Private enforcement is necessary and places a
25 disproportionate financial burden on the plaintiff in relation to the
26 plaintiff’s stake in the matter.
27 (c) Section 425.16 does not apply to any cause of action
28 brought against a person primarily engaged in the business of
29 selling or leasing goods or services, including, but not limited to,
30 insurance, securities, or financial instruments, arising from any
31 statement or conduct by that person if both of the following
32 conditions exist:
33 (1) The statement or conduct consists of representations of fact
34 about that person’s or a business competitor’s business operations,
35 goods, or services, that is made for the purpose of obtaining
36 approval for, promoting, or securing sales or leases of, or
37 commercial transactions in, the person’s goods or services, or the



1 statement or conduct was made in the course of delivering the
2 person's goods or services.

3 (2) The intended audience is an actual or potential buyer or
4 customer, or a person likely to repeat the statement to, or otherwise
5 influence, an actual or potential buyer or customer, or the
6 statement or conduct arose out of or within the context of a
7 regulatory approval process, proceeding, or investigation, except
8 where the statement or conduct was made by a telephone
9 corporation in ~~a matter~~ *the course of a proceeding* before the
10 California Public Utilities Commission and is the subject of a
11 lawsuit brought by a competitor, notwithstanding that the conduct
12 or statement concerns an important public issue.

13 (d) Subdivisions (b) and (c) do not apply to any of the
14 following:

15 (1) Any person enumerated in subdivision (b) of Section 2 of
16 Article I of the California Constitution or Section 1070 of the
17 Evidence Code, or any person engaged in the dissemination of
18 ideas or expression in any book or academic journal, while
19 engaged in the gathering, receiving, or processing of information
20 for communication to the public.

21 (2) Any action against any person or entity based upon the
22 creation, dissemination, exhibition, advertisement, or other
23 similar promotion of any dramatic, literary, musical, political, or
24 artistic work, including, but not limited to, a motion picture or
25 television program, or an article published in a newspaper or
26 magazine of general circulation.

27 (3) Any nonprofit organization that receives more than 50
28 percent of its annual revenues from federal, state, or local
29 government grants, awards, programs, or ~~reimbursement~~
30 *reimbursements* for services rendered.

31 (e) If any trial court denies a special motion to strike on the
32 grounds that the *action or* cause of action is exempt pursuant to this
33 section, the appeal provisions in subdivision (j) of Section 425.16
34 and paragraph (13) of subdivision (a) of Section 904.1 do not apply
35 *to that action or cause of action.*

36 SEC. 2. The provisions of this act are severable. If any
37 provision of this act or its application is held invalid, that invalidity



- 1 does not affect other provisions or applications that can be given
- 2 effect without the invalid provision or application.

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