

ASSEMBLY BILL

No. 579

Introduced by Assembly Member Monning

February 16, 2011

An act to amend Sections 1021.5 and 1036 of, and to add Section 425.20 to, the Code of Civil Procedure, and to amend Section 800 of the Government Code, relating to mobilehome parks.

LEGISLATIVE COUNSEL'S DIGEST

AB 579, as introduced, Monning. Mobilehome parks: liability: attorney's fees.

Existing law permits a court to award attorney's fees to a successful party in an action that has resulted in the enforcement of an important right affecting public interest, but does not allow an award of attorney's fees in favor of public entities, except in limited circumstances. Existing law requires the court to determine and award a successful plaintiff in an inverse condemnation proceeding certain costs, disbursements, expenses, and fees, as provided. Existing law permits a complainant to collect specified attorney's fees in a civil action to appeal or review an administrative proceeding where the proceeding was the result of arbitrary or capricious action or conduct by the public entity or officer.

This bill would permit the award of attorney's fees and, in some cases, other litigation expenses, to a local governmental entity in an action brought by the owner of a mobilehome park to challenge the validity or application of a local ordinance, rule, regulation, or initiative measure that regulates space rent or is intended to benefit or protect residents in a mobilehome park, if the local governmental entity is determined to be the prevailing party.

Existing law provides that a cause of action against a person arising from the person’s right of petition or free speech is subject to a special motion to strike, unless the court determines there is a probability that the plaintiff will prevail on the claim.

This bill would also subject certain causes of action against a local government regarding mobilehome parks to a special motion to strike. The motion would apply to a cause of action that challenges the validity or application of a local ordinance, rule, regulation, or initiative measure that regulates space rent, as specified, or a cause of action that challenges a local government’s application or enforcement of any statute that is intended to benefit or protect residents in a mobilehome park, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.

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. The Legislature finds and declares all of the
2 following:

3 (a) Many local jurisdictions, in an effort to preserve and support
4 affordable housing options, and to protect the investments of all
5 mobilehome owners, have adopted mobilehome rent ordinances
6 to protect mobilehome owners from excessive rent increases.
7 Various state statutes also require local jurisdictions to review and
8 rule upon park owner applications to close or convert rental
9 mobilehome parks and to ensure that proper mitigation is provided
10 to all mobilehome owners who may be displaced from their
11 mobilehome parks due to its closure or conversion.

12 (b) Under current law, cities and counties that successfully
13 defend their mobilehome rent ordinances, their administrative
14 decisions under their ordinances, and their decisions on park owner
15 closure and conversion applications must bear the costs of their
16 legal defense, even if they win. On the other hand, pursuant to
17 several current state statutes that this bill amends, they must pay
18 the other side’s attorney’s fees if they prevail under these statutes
19 that allow them to challenge mobilehome rent ordinances, local
20 administrative decisions under those ordinances, and local
21 administrative decisions on park owner applications to close and
22 convert rental mobilehome parks.

1 (c) There has been a disturbing increase in lawsuits brought by
2 mobilehome park owners challenging the adoption and retention
3 of local mobilehome ordinances, challenging local administrative
4 decisions under those ordinances, and challenging local decisions
5 on mobilehome park owner applications to close and convert rental
6 mobilehome parks. These lawsuits often have little likelihood of
7 success, involve excessive, unnecessary, and expensive discovery
8 procedures and, in many instances, cause local jurisdictions to
9 abandon the above protections of mobilehome owners because of
10 the great expense of defending against these lawsuits regardless
11 of the local jurisdictions chances of prevailing. These
12 circumstances have caused these lawsuits to have a chilling effect
13 on local jurisdictions' willingness and ability to continue to
14 preserve and support affordable housing in mobilehome parks,
15 and to protect the investments of all mobilehome owners, through
16 the adoption and retention of mobilehome rent ordinances, and
17 through the proper enforcement of both these ordinances and the
18 state statutes regarding the closure and conversion of rental
19 mobilehome parks.

20 (d) It is in the public interest to encourage cities to continue to
21 adopt and retain these local ordinances and continue to properly
22 enforce both these mobilehome park rent ordinances and state
23 statutes regulating the closure and conversion of rental mobilehome
24 parks. To this end, the provisions enacted by this measure shall be
25 construed broadly.

26 SEC. 2. Section 425.20 is added to the Code of Civil Procedure,
27 to read:

28 425.20. (a) (1) The following causes of action shall be subject
29 to a special motion to strike, unless the court determines that the
30 plaintiff has established that there is a probability that the plaintiff
31 will prevail on the claim:

32 (A) A cause of action brought by the owner of a mobilehome
33 park, as defined in Section 798.4 of the Civil Code, to challenge
34 the validity or application of an ordinance, rule, regulation, or
35 initiative measure adopted by any local governmental entity that
36 regulates space rent, or is otherwise intended to benefit or protect
37 residents in the park.

38 (B) A cause of action that challenges a local government's
39 application or enforcement of any state statute that is intended to
40 benefit or protect residents in the mobilehome park.

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

4 (3) If the court determines that the plaintiff has established a
5 probability that he or she will prevail on the claim, neither that
6 determination nor the fact of that determination shall be admissible
7 in evidence at any later stage of the case, or in any subsequent
8 action, and no burden of proof or degree of proof otherwise
9 applicable shall be affected by that determination in any later stage
10 of the case or in any subsequent proceeding.

11 (b) In any action subject to subdivision (a), a prevailing
12 defendant on a special motion to strike shall be entitled to recover
13 his or her attorney’s fees and costs. If the court finds that a special
14 motion to strike is frivolous or is solely intended to cause
15 unnecessary delay, the court shall award costs and reasonable
16 attorney’s fees to a plaintiff prevailing on the motion, pursuant to
17 Section 128.5.

18 (c) The special motion may be filed within 60 days of the service
19 of the complaint or, in the court’s discretion, at any later time upon
20 terms it deems proper. The motion shall be scheduled by the clerk
21 of the court for a hearing not more than 30 days after the service
22 of the motion unless the docket conditions of the court require a
23 later hearing.

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

30 (e) For purposes of this section, the following apply:

- 31 (1) “Complaint” includes a cross-complaint or a petition.
- 32 (2) “Plaintiff” includes a cross-complainant or a petitioner.
- 33 (3) “Defendant” includes a cross-defendant or a respondent.

34 (f) An order granting or denying a special motion to strike shall
35 be appealable under Section 904.1.

36 SEC. 3. Section 1021.5 of the Code of Civil Procedure is
37 amended to read:

38 1021.5. (a) Upon motion, a court may award ~~attorneys’~~
39 *attorney’s* fees to a successful party against one or more opposing
40 parties in any action which has resulted in the enforcement of an

1 important right affecting the public interest if: ~~(a)~~ (1) a significant
2 benefit, whether pecuniary or nonpecuniary, has been conferred
3 on the general public or a large class of persons, ~~(b)~~ (2) the
4 necessity and financial burden of private enforcement, or of
5 enforcement by one public entity against another public entity, are
6 such as to make the award appropriate, and ~~(c)~~ ~~such~~ (3) the fees
7 should not in the interest of justice be paid out of the recovery, if
8 any. ~~With respect to~~ *Except as provided in subdivision (c), in*
9 *actions involving public entities, this section applies to allowances*
10 *against, but not in favor of, public entities, and no claim shall be*
11 *required to be filed therefor, unless one or more successful parties*
12 *and one or more opposing parties are public entities, in which case*
13 *no claim shall be required to be filed therefor under Part 3*
14 *(commencing with Section 900) of Division 3.6 of Title 1 of the*
15 *Government Code.*

16 ~~Attorneys'~~

17 (b) *Attorney's fees awarded to a public entity pursuant to this*
18 *section shall not be increased or decreased by a multiplier based*
19 *upon extrinsic circumstances, as discussed in Serrano v. Priest, 20*
20 *Cal. 3d 25, 49.*

21 (c) *In an action brought by the owner of a mobilehome park,*
22 *as defined in Section 798.4 of the Civil Code, to challenge the*
23 *validity or application of an ordinance, rule, regulation, or*
24 *initiative measure adopted by any local governmental entity that*
25 *regulates space rent, or is otherwise intended to benefit or protect*
26 *residents in the park, or is an action that challenges a local*
27 *government's application or enforcement of any state statute that*
28 *is intended to benefit or protect residents in the park, if the local*
29 *governmental entity is determined to be the prevailing party in the*
30 *action, or in the defense against the action, meets the criteria of*
31 *subdivision (a), the court shall award attorney's fees to the local*
32 *governmental entity.*

33 SEC. 4. Section 1036 of the Code of Civil Procedure is
34 amended to read:

35 1036. (a) In any inverse condemnation proceeding, the court
36 rendering judgment for the plaintiff by awarding compensation,
37 or the attorney representing the public entity who effects a
38 settlement of that proceeding, shall determine and award or allow
39 to the plaintiff, as a part of that judgment or settlement, a sum that
40 will, in the opinion of the court, reimburse the plaintiff's reasonable

1 costs, disbursements, and expenses, including reasonable attorney,
2 appraisal, and engineering fees, actually incurred because of that
3 proceeding in the trial court or in any appellate proceeding in which
4 the plaintiff prevails on any issue in that proceeding.

5 *(b) In an inverse condemnation proceeding brought by the owner*
6 *of a mobilehome park, as defined in Section 798.4 of the Civil*
7 *Code, to challenge the validity or application of an ordinance,*
8 *rule, regulation, or initiative measure adopted by any local*
9 *governmental entity which regulates space rent, or is otherwise*
10 *intended to benefit or protect residents in the park, or is an inverse*
11 *condemnation proceeding that challenges a local government's*
12 *application or enforcement of any state statute that is intended to*
13 *benefit or protect residents in the park, if the local governmental*
14 *entity is determined to be the prevailing party and the action meets*
15 *the criteria of subdivision (a), the court shall award attorney's*
16 *fees to the local governmental entity.*

17 SEC. 5. Section 800 of the Government Code is amended to
18 read:

19 800. (a) In any civil action to appeal or review the award,
20 finding, or other determination of any administrative proceeding
21 under this code or under any other provision of state law, except
22 actions resulting from actions of the California Victim
23 Compensation and Government Claims Board, if it is shown that
24 the award, finding, or other determination of the proceeding was
25 the result of arbitrary or capricious action or conduct by a public
26 entity or an officer thereof in his or her official capacity, the
27 complainant if he or she prevails in the civil action may collect
28 from the public entity reasonable attorney's fees, computed at one
29 hundred dollars (\$100) per hour, but not to exceed seven thousand
30 five hundred dollars (\$7,500), if he or she is personally obligated
31 to pay the fees in addition to any other relief granted or other costs
32 awarded.

33 (b) This section is ancillary only, and shall not be construed to
34 create a new cause of action.

35 (c) The refusal by a public entity or officer thereof to admit
36 liability pursuant to a contract of insurance shall not be considered
37 arbitrary or capricious action or conduct within the meaning of
38 this section.

39 *(d) In any civil action brought by the owner of a mobilehome*
40 *park, as defined in Section 798.4 of the Civil Code, pursuant to*

1 *this section, to challenge the validity or application of an*
2 *ordinance, rule, regulation, or initiative measure adopted by any*
3 *local governmental entity that regulates space rent, or is otherwise*
4 *intended to benefit or protect residents in the park, if the local*
5 *governmental entity is determined to be the prevailing party, the*
6 *court shall award attorney's fees and other litigation expenses to*
7 *the local governmental entity.*

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