

**Introduced by Senator Jackson**February 25, 2015

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An act to amend Section 437c of the Code of Civil Procedure, relating to civil actions.

## LEGISLATIVE COUNSEL'S DIGEST

SB 470, as introduced, Jackson. Civil actions: summary judgment.

Existing law authorizes a party, pursuant to a specified procedure, to move for summary judgment in any action or proceeding if it is contended that the action has no merit or that there is no defense to it and to move for summary adjudication as to certain issues in the action or proceeding. Existing law requires the court to grant a motion for summary judgment if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. In determining whether the papers show that there is no triable issue as to any material fact, existing law requires the court to consider all of the evidence set forth in the papers, except evidence to which objections have been made and sustained by the court.

This bill would authorize a court, in its discretion, to rule only on objections made to evidence that is material to the disposition of the motion for summary judgment. The bill would provide that any objection not ruled on for purposes of the motion for summary judgment would be preserved on appeal.

The bill would also make nonsubstantive changes to the provisions.

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 437c of the Code of Civil Procedure is  
2 amended to read:

3 437c. (a) ~~Any~~A party may move for summary judgment in  
4 any action or proceeding if it is contended that the action has no  
5 merit or that there is no defense to the action or proceeding. The  
6 motion may be made at any time after 60 days have elapsed since  
7 the general appearance in the action or proceeding of each party  
8 against whom the motion is directed or at any earlier time after  
9 the general appearance that the court, with or without notice and  
10 upon good cause shown, may direct. Notice of the motion and  
11 supporting papers shall be served on all other parties to the action  
12 at least 75 days before the time appointed for hearing. However,  
13 if the notice is served by mail, the required 75-day period of notice  
14 shall be increased by five days if the place of address is within the  
15 State of California, 10 days if the place of address is outside the  
16 State of California but within the United States, and 20 days if the  
17 place of address is outside the United States, and if the notice is  
18 served by facsimile transmission, Express Mail, or another method  
19 of delivery providing for overnight delivery, the required 75-day  
20 period of notice shall be increased by two court days. The motion  
21 shall be heard no later than 30 days before the date of trial, unless  
22 the court for good cause orders otherwise. The filing of the motion  
23 shall not extend the time within which a party must otherwise file  
24 a responsive pleading.

25 (b) (1) The motion shall be supported by affidavits, declarations,  
26 admissions, answers to interrogatories, depositions, and matters  
27 of which judicial notice shall or may be taken. The supporting  
28 papers shall include a separate statement setting forth plainly and  
29 concisely all material facts ~~which~~ that the moving party contends  
30 are undisputed. Each of the material facts stated shall be followed  
31 by a reference to the supporting evidence. The failure to comply  
32 with this requirement of a separate statement may in the court's  
33 discretion constitute a sufficient ground for denial of the motion.

34 (2) ~~Any~~An opposition to the motion shall be served and filed  
35 not less than 14 days preceding the noticed or continued date of  
36 hearing, unless the court for good cause orders otherwise. The  
37 opposition, where appropriate, shall consist of affidavits,

1 declarations, admissions, answers to interrogatories, depositions,  
2 and matters of which judicial notice shall or may be taken.

3 (3) The opposition papers shall include a separate statement  
4 that responds to each of the material facts contended by the moving  
5 party to be undisputed, indicating whether the opposing party  
6 agrees or disagrees that those facts are undisputed. The statement  
7 also shall set forth plainly and concisely any other material facts  
8 that the opposing party contends are disputed. Each material fact  
9 contended by the opposing party to be disputed shall be followed  
10 by a reference to the supporting evidence. Failure to comply with  
11 this requirement of a separate statement may constitute a sufficient  
12 ground, in the court's discretion, for granting the motion.

13 (4) ~~Any~~A reply to the opposition shall be served and filed by  
14 the moving party not less than five days preceding the noticed or  
15 continued date of hearing, unless the court for good cause orders  
16 otherwise.

17 (5) Evidentiary objections not made at the hearing shall be  
18 deemed waived.

19 (6) Except for subdivision (c) of Section 1005 relating to the  
20 method of service of opposition and reply papers, Sections 1005  
21 and 1013, extending the time within which a right may be exercised  
22 or an act may be done, do not apply to this section.

23 (7) ~~Any~~An incorporation by reference of a matter in the court's  
24 file shall set forth with specificity the exact matter to which  
25 reference is being made and shall not incorporate the entire file.

26 (c) The motion for summary judgment shall be granted if all  
27 the papers submitted show that there is no triable issue as to any  
28 material fact and that the moving party is entitled to a judgment  
29 as a matter of law. In determining whether the papers show that  
30 there is no triable issue as to any material fact the court shall  
31 consider all of the evidence set forth in the papers, except that to  
32 which objections have been made and sustained by the court, and  
33 all inferences reasonably deducible from the evidence, except  
34 summary judgment may not be granted by the court based on  
35 inferences reasonably deducible from the ~~evidence~~, *evidence* if  
36 contradicted by other inferences or ~~evidence~~, *evidence that*  
37 raise a triable issue as to any material fact.

38 (d) *The court may, in its discretion, rule only on those objections*  
39 *made to evidence that is material to the disposition of the motion*

1 *for summary judgment. Objections to evidence that are not ruled*  
 2 *on for purposes of the motion shall be preserved on appeal.*

3 ~~(d)~~

4 (e) Supporting and opposing affidavits or declarations shall be  
 5 made by ~~any~~ a person on personal knowledge, shall set forth  
 6 admissible evidence, and shall show affirmatively that the affiant  
 7 is competent to testify to the matters stated in the affidavits or  
 8 declarations. ~~Any objections~~ An *objection* based on the failure to  
 9 comply with the requirements of this subdivision shall be ~~made at~~  
 10 ~~the hearing or if not made at the hearing~~ shall be deemed waived.

11 ~~(e)~~

12 (f) If a party is otherwise entitled to a summary judgment  
 13 pursuant to this section, summary judgment may not be denied on  
 14 grounds of credibility or for want of cross-examination of witnesses  
 15 furnishing affidavits or declarations in support of the summary  
 16 judgment, except that summary judgment may be denied in the  
 17 discretion of the court, ~~where~~ *if* the only proof of a material fact  
 18 offered in support of the summary judgment is an affidavit or  
 19 declaration made by an individual who was the sole witness to that  
 20 fact; or ~~where~~ *if* a material fact is an individual's state of mind, or  
 21 lack thereof, and that fact is sought to be established solely by the  
 22 individual's affirmation thereof.

23 ~~(f)~~

24 (g) (1) A party may move for summary adjudication as to one  
 25 or more causes of action within an action, one or more affirmative  
 26 defenses, one or more claims for damages, or one or more issues  
 27 of duty, if that party contends that the cause of action has no merit  
 28 or that there is no affirmative defense thereto, or that there is no  
 29 merit to an affirmative defense as to any cause of action, or both,  
 30 or that there is no merit to a claim for damages, as specified in  
 31 Section 3294 of the Civil Code, or that one or more defendants  
 32 either owed or did not owe a duty to the plaintiff or plaintiffs. A  
 33 motion for summary adjudication shall be granted only if it  
 34 completely disposes of a cause of action, an affirmative defense,  
 35 a claim for damages, or an issue of duty.

36 (2) A motion for summary adjudication may be made by itself  
 37 or as an alternative to a motion for summary judgment and shall  
 38 proceed in all procedural respects as a motion for summary  
 39 judgment. However, a party may not move for summary judgment  
 40 based on issues asserted in a prior motion for summary adjudication

1 and denied by the ~~court~~, *court* unless that party establishes, to the  
2 satisfaction of the court, newly discovered facts or circumstances  
3 or a change of law supporting the issues reasserted in the summary  
4 judgment motion.

5 ~~(g)~~

6 *(h)* Upon the denial of a motion for summary ~~judgment~~,  
7 *judgment* on the ground that there is a triable issue as to one or  
8 more material facts, the court shall, by written or oral order, specify  
9 one or more material facts raised by the motion as to which the  
10 court has determined there exists a triable controversy. This  
11 determination shall specifically refer to the evidence proffered in  
12 support of and in opposition to the motion ~~which~~ *that* indicates  
13 that a triable controversy exists. Upon the grant of a motion for  
14 summary ~~judgment~~, *judgment* on the ground that there is no triable  
15 issue of material fact, the court shall, by written or oral order,  
16 specify the reasons for its determination. The order shall  
17 specifically refer to the evidence proffered in support ~~of~~, *and of*  
18 ~~and~~, if ~~applicable~~ *applicable*, in opposition ~~to~~, *to* the motion which  
19 indicates that no triable issue exists. The court shall also state its  
20 reasons for any other determination. The court shall record its  
21 determination by court reporter or written order.

22 ~~(h)~~

23 *(i)* If it appears from the affidavits submitted in opposition to a  
24 motion for summary judgment or summary adjudication or both  
25 that facts essential to justify opposition may exist but cannot, for  
26 reasons stated, then be presented, the court shall deny the ~~motion~~,  
27 *motion* or order a continuance to permit affidavits to be obtained  
28 or discovery to be had, or may make any other order as may be  
29 just. The application to continue the motion to obtain necessary  
30 discovery may also be made by ex parte motion at any time on or  
31 before the date the opposition response to the motion is due.

32 ~~(i)~~

33 *(j)* If, after granting a continuance to allow specified additional  
34 discovery, the court determines that the party seeking summary  
35 judgment has unreasonably failed to allow the discovery to be  
36 conducted, the court shall grant a continuance to permit the  
37 discovery to go forward or deny the motion for summary judgment  
38 or summary adjudication. This section does not affect or limit the  
39 ability of ~~any~~ *a* party to compel discovery under the Civil

1 Discovery Act (Title 4 (commencing with Section 2016.010) of  
2 Part 4).

3 ~~(j)~~

4 ~~(k)~~ If the court determines at any time that ~~any of the affidavits~~  
5 ~~are an affidavit~~ was presented in bad faith or solely for purposes  
6 ~~the purpose~~ of delay, the court shall order the party ~~presenting who~~  
7 ~~presented the affidavits~~ affidavit to pay the other party the amount  
8 of the reasonable expenses which the filing of the ~~affidavits~~  
9 ~~affidavit~~ caused the other party to incur. Sanctions ~~may~~ shall not  
10 be imposed pursuant to this ~~subdivision~~, *subdivision* except on  
11 notice contained in a party's ~~papers~~, *papers* or on the court's own  
12 noticed motion, and after an opportunity to be heard.

13 ~~(k)~~

14 ~~(l)~~ ~~Except when~~ *Unless* a separate judgment may properly be  
15 awarded in the action, ~~no a final judgment may~~ shall not be entered  
16 on a motion for summary judgment ~~prior to~~ *before* the termination  
17 of the action, but the final judgment shall, in addition to any matters  
18 determined in the action, award judgment as established by the  
19 summary proceeding herein provided for.

20 ~~(t)~~

21 ~~(m)~~ In actions ~~which arise~~ *arising* out of an injury to the person  
22 or to property, if a motion for summary judgment was granted on  
23 the basis that the defendant was without fault, no other defendant  
24 during trial, over plaintiff's objection, may attempt to attribute  
25 fault to or comment on the absence or involvement of the defendant  
26 who was granted the motion.

27 ~~(m)~~

28 ~~(n)~~ (1) A summary judgment entered under this section is an  
29 appealable judgment as in other cases. Upon entry of ~~any an~~ order  
30 pursuant to this section, except the entry of summary judgment, a  
31 party may, within 20 days after service upon him or her of a written  
32 notice of entry of the order, petition an appropriate reviewing court  
33 for a peremptory writ. If the notice is served by mail, the initial  
34 period within which to file the petition shall be increased by five  
35 days if the place of address is within the State of California, 10  
36 days if the place of address is outside the State of California but  
37 within the United States, and 20 days if the place of address is  
38 outside the United States. If the notice is served by facsimile  
39 transmission, Express Mail, or another method of delivery  
40 providing for overnight delivery, the initial period within which

1 to file the petition shall be increased by two court days. The  
2 superior court may, for good cause, and prior to the expiration of  
3 the initial period, extend the time for one additional period not to  
4 exceed 10 days.

5 (2) Before a reviewing court affirms an order granting summary  
6 judgment or summary adjudication on a ground not relied upon  
7 by the trial court, the reviewing court shall afford the parties an  
8 opportunity to present their views on the issue by submitting  
9 supplemental briefs. The supplemental briefing may include an  
10 argument that additional evidence relating to that ground exists,  
11 but that the party has not had an adequate opportunity to present  
12 the evidence or to conduct discovery on the issue. The court may  
13 reverse or remand based upon the supplemental briefing to allow  
14 the parties to present additional evidence or to conduct discovery  
15 on the issue. If the court fails to allow supplemental briefing, a  
16 rehearing shall be ordered upon timely petition of ~~any~~ a party.

17 ~~(n)~~

18 (o) (1) If a motion for summary adjudication is granted, at the  
19 trial of the action, the cause or causes of action within the action,  
20 affirmative defense or defenses, claim for damages, or issue or  
21 issues of duty as to the motion which has been granted shall be  
22 deemed to be established and the action shall proceed as to the  
23 cause or causes of action, affirmative defense or defenses, claim  
24 for damages, or issue or issues of duty remaining.

25 (2) In the trial of the action, the fact that a motion for summary  
26 adjudication is granted as to one or more causes of action,  
27 affirmative defenses, claims for damages, or issues of duty within  
28 the action shall not operate to bar any cause of action, affirmative  
29 defense, claim for damages, or issue of duty as to which summary  
30 adjudication was either not sought or denied.

31 (3) In the trial of an action, neither a party, ~~nor~~ a witness, nor  
32 the court shall comment *to a jury* upon the grant or denial of a  
33 motion for summary adjudication ~~to a jury~~.

34 ~~(o)~~

35 (p) A cause of action has no merit if either of the following  
36 exists:

37 (1) One or more of the elements of the cause of action cannot  
38 be separately established, even if that element is separately pleaded.

39 (2) A defendant establishes an affirmative defense to that cause  
40 of action.

1     ~~(p)~~

2     ~~(q)~~ For purposes of motions for summary judgment and  
3 summary adjudication:

4     (1) A plaintiff or cross-complainant has met his or her burden  
5 of showing that there is no defense to a cause of action if that party  
6 has proved each element of the cause of action entitling the party  
7 to judgment on that cause of action. Once the plaintiff or  
8 cross-complainant has met that burden, the burden shifts to the  
9 defendant or cross-defendant to show that a triable issue of one or  
10 more material facts exists as to that cause of action or a defense  
11 thereto. The defendant or cross-defendant ~~may~~ *shall* not rely upon  
12 the mere allegations or denials of its pleadings to show that a triable  
13 issue of material fact exists but, instead, shall set forth the specific  
14 facts showing that a triable issue of material fact exists as to that  
15 cause of action or a defense thereto.

16     (2) A defendant or cross-defendant has met his or her burden  
17 of showing that a cause of action has no merit if that party has  
18 shown that one or more elements of the cause of action, even if  
19 not separately pleaded, cannot be established, or that there is a  
20 complete defense to that cause of action. Once the defendant or  
21 cross-defendant has met that burden, the burden shifts to the  
22 plaintiff or cross-complainant to show that a triable issue of one  
23 or more material facts exists as to that cause of action or a defense  
24 thereto. The plaintiff or cross-complainant ~~may~~ *shall* not rely upon  
25 the mere allegations or denials of its pleadings to show that a triable  
26 issue of material fact exists but, instead, shall set forth the specific  
27 facts showing that a triable issue of material fact exists as to that  
28 cause of action or a defense thereto.

29     ~~(q)~~

30     ~~(r)~~ This section does not extend the period for trial provided by  
31 Section 1170.5.

32     ~~(t)~~

33     ~~(s)~~ Subdivisions (a) and (b) do not apply to actions brought  
34 pursuant to Chapter 4 (commencing with Section 1159) of Title 3  
35 of Part 3.

36     ~~(s)~~

37     ~~(t)~~ For ~~the~~ purposes of this section, a change in law does not  
38 include a later enacted statute without retroactive application.



1    ~~(t) This section shall become operative on January 1, 2015.~~

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