

**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 amended, 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 provide that a court need~~ rule only on objections made to evidence that ~~is the court deems~~ material to the disposition of the motion for summary judgment. The bill would *also* provide that any ~~objection and all objections~~ not ruled on for purposes of the motion for summary judgment would be *deemed overruled and 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) A party may move for summary judgment in any  
4 action or proceeding if it is contended that the action has no merit  
5 or that there is no defense to the action or proceeding. The motion  
6 may be made at any time after 60 days have elapsed since the  
7 general appearance in the action or proceeding of each party against  
8 whom the motion is directed or at any earlier time after the general  
9 appearance that the court, with or without notice and upon good  
10 cause shown, may direct. Notice of the motion and supporting  
11 papers shall be served on all other parties to the action at least 75  
12 days before the time appointed for hearing. However, if the notice  
13 is served by mail, the required 75-day period of notice shall be  
14 increased by five days if the place of address is within the State  
15 of California, 10 days if the place of address is outside the State  
16 of California but within the United States, and 20 days if the place  
17 of address is outside the United States, and if the notice is served  
18 by facsimile transmission, Express Mail, or another method of  
19 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 that the moving party contends are  
30 undisputed. Each of the material facts stated shall be followed by  
31 a reference to the supporting evidence. The failure to comply with  
32 this requirement of a separate statement may in the court's  
33 discretion constitute a sufficient ground for denial of the motion.

34 (2) An opposition to the motion shall be served and filed not  
35 less than 14 days preceding the noticed or continued date of

1 hearing, unless the court for good cause orders otherwise. The  
2 opposition, where appropriate, shall consist of affidavits,  
3 declarations, admissions, answers to interrogatories, depositions,  
4 and matters of which judicial notice shall or may be taken.

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

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

19 (5) Evidentiary objections not made at the hearing shall be  
20 deemed waived.

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

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

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

1 (d) The court ~~may, in its discretion,~~ *need* rule only on those  
2 objections ~~made to evidence that is material to the disposition to~~  
3 *evidence that it deems material to its disposition* of the motion for  
4 summary judgment. ~~Objections to evidence that are not ruled on~~  
5 *for purposes of the motion shall be Any and all objections not ruled*  
6 *on shall be deemed overruled and preserved on appeal.*

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

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

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

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

1 based on issues asserted in a prior motion for summary adjudication  
2 and denied by the court unless that party establishes, to the  
3 satisfaction of the court, newly discovered facts or circumstances  
4 or a change of law supporting the issues reasserted in the summary  
5 judgment motion.

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

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

30 (j) If, after granting a continuance to allow specified additional  
31 discovery, the court determines that the party seeking summary  
32 judgment has unreasonably failed to allow the discovery to be  
33 conducted, the court shall grant a continuance to permit the  
34 discovery to go forward or deny the motion for summary judgment  
35 or summary adjudication. This section does not affect or limit the  
36 ability of a party to compel discovery under the Civil Discovery  
37 Act (Title 4 (commencing with Section 2016.010) of Part 4).

38 (k) If the court determines at any time that an affidavit was  
39 presented in bad faith or solely for the purpose of delay, the court  
40 shall order the party who presented the affidavit to pay the other

1 party the amount of the reasonable expenses which the filing of  
2 the affidavit caused the other party to incur. Sanctions shall not  
3 be imposed pursuant to this subdivision except on notice contained  
4 in a party's papers or on the court's own noticed motion, and after  
5 an opportunity to be heard.

6 (l) Unless a separate judgment may properly be awarded in the  
7 action, a final judgment shall not be entered on a motion for  
8 summary judgment before the termination of the action, but the  
9 final judgment shall, in addition to any matters determined in the  
10 action, award judgment as established by the summary proceeding  
11 herein provided for.

12 (m) In actions arising out of an injury to the person or to  
13 property, if a motion for summary judgment was granted on the  
14 basis that the defendant was without fault, no other defendant  
15 during trial, over plaintiff's objection, may attempt to attribute  
16 fault to or comment on the absence or involvement of the defendant  
17 who was granted the motion.

18 (n) (1) A summary judgment entered under this section is an  
19 appealable judgment as in other cases. Upon entry of an order  
20 pursuant to this section, except the entry of summary judgment, a  
21 party may, within 20 days after service upon him or her of a written  
22 notice of entry of the order, petition an appropriate reviewing court  
23 for a peremptory writ. If the notice is served by mail, the initial  
24 period within which to file the petition shall be increased by five  
25 days if the place of address is within the State of California, 10  
26 days if the place of address is outside the State of California but  
27 within the United States, and 20 days if the place of address is  
28 outside the United States. If the notice is served by facsimile  
29 transmission, Express Mail, or another method of delivery  
30 providing for overnight delivery, the initial period within which  
31 to file the petition shall be increased by two court days. The  
32 superior court may, for good cause, and prior to the expiration of  
33 the initial period, extend the time for one additional period not to  
34 exceed 10 days.

35 (2) Before a reviewing court affirms an order granting summary  
36 judgment or summary adjudication on a ground not relied upon  
37 by the trial court, the reviewing court shall afford the parties an  
38 opportunity to present their views on the issue by submitting  
39 supplemental briefs. The supplemental briefing may include an  
40 argument that additional evidence relating to that ground exists,

1 but that the party has not had an adequate opportunity to present  
2 the evidence or to conduct discovery on the issue. The court may  
3 reverse or remand based upon the supplemental briefing to allow  
4 the parties to present additional evidence or to conduct discovery  
5 on the issue. If the court fails to allow supplemental briefing, a  
6 rehearing shall be ordered upon timely petition of a party.

7 (o) (1) If a motion for summary adjudication is granted, at the  
8 trial of the action, the cause or causes of action within the action,  
9 affirmative defense or defenses, claim for damages, or issue or  
10 issues of duty as to the motion which has been granted shall be  
11 deemed to be established and the action shall proceed as to the  
12 cause or causes of action, affirmative defense or defenses, claim  
13 for damages, or issue or issues of duty remaining.

14 (2) In the trial of the action, the fact that a motion for summary  
15 adjudication is granted as to one or more causes of action,  
16 affirmative defenses, claims for damages, or issues of duty within  
17 the action shall not operate to bar any cause of action, affirmative  
18 defense, claim for damages, or issue of duty as to which summary  
19 adjudication was either not sought or denied.

20 (3) In the trial of an action, neither a party, a witness, nor the  
21 court shall comment to a jury upon the grant or denial of a motion  
22 for summary adjudication.

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

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

27 (2) A defendant establishes an affirmative defense to that cause  
28 of action.

29 (q) For purposes of motions for summary judgment and  
30 summary adjudication:

31 (1) A plaintiff or cross-complainant has met his or her burden  
32 of showing that there is no defense to a cause of action if that party  
33 has proved each element of the cause of action entitling the party  
34 to judgment on that cause of action. Once the plaintiff or  
35 cross-complainant has met that burden, the burden shifts to the  
36 defendant or cross-defendant to show that a triable issue of one or  
37 more material facts exists as to that cause of action or a defense  
38 thereto. The defendant or cross-defendant shall not rely upon the  
39 mere allegations or denials of its pleadings to show that a triable  
40 issue of material fact exists but, instead, shall set forth the specific

1 facts showing that a triable issue of material fact exists as to that  
2 cause of action or a defense thereto.

3 (2) A defendant or cross-defendant has met his or her burden  
4 of showing that a cause of action has no merit if that party has  
5 shown that one or more elements of the cause of action, even if  
6 not separately pleaded, cannot be established, or that there is a  
7 complete defense to that cause of action. Once the defendant or  
8 cross-defendant has met that burden, the burden shifts to the  
9 plaintiff or cross-complainant to show that a triable issue of one  
10 or more material facts exists as to that cause of action or a defense  
11 thereto. The plaintiff or cross-complainant shall not rely upon the  
12 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 (r) This section does not extend the period for trial provided by  
17 Section 1170.5.

18 (s) Subdivisions (a) and (b) do not apply to actions brought  
19 pursuant to Chapter 4 (commencing with Section 1159) of Title 3  
20 of Part 3.

21 (t) For purposes of this section, a change in law does not include  
22 a later enacted statute without retroactive application.