

AMENDED IN ASSEMBLY MAY 28, 2015

AMENDED IN SENATE APRIL 22, 2015

**SENATE BILL**

**No. 470**

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**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. *judgment and summary adjudication.*

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. *law, and to grant a motion for summary adjudication if the papers submitted show that there is no triable as to one or more material facts the adjudication of which will completely dispose of a cause of action, an affirmative defense, a claim for damages, or an issue of duty.* In determining whether the papers show that there is no triable issue as to ~~any~~ a 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 provide that ~~a~~, *in granting or denying a motion for summary judgment or summary adjudication, the court need rule only*

on objections made to evidence that the court deems material to the disposition of the ~~motion for summary judgment~~. *motion*. The bill would also provide that ~~any and all~~ objections *to evidence* not ruled on for purposes of the ~~motion for summary judgment would be deemed overruled and~~ *would be preserved on appeal for appellate review*.

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 5 days if the place of address is within the State of  
 15 California, 10 days if the place of address is outside the State of  
 16 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

1 undisputed. Each of the material facts stated shall be followed by  
2 a reference to the supporting evidence. The failure to comply with  
3 this requirement of a separate statement may in the court's  
4 discretion constitute a sufficient ground for denial of the motion.

5 (2) An opposition to the motion shall be served and filed not  
6 less than 14 days preceding the noticed or continued date of  
7 hearing, unless the court for good cause orders otherwise. The  
8 opposition, where appropriate, shall consist of affidavits,  
9 declarations, admissions, answers to interrogatories, depositions,  
10 and matters of which judicial notice shall or may be taken.

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

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

25 (5) Evidentiary objections not made at the hearing shall be  
26 deemed waived.

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

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

34 (c) The motion for summary judgment shall be granted if all  
35 the papers submitted show that there is no triable issue as to any  
36 material fact and that the moving party is entitled to a judgment  
37 as a matter of law. In determining whether the papers show that  
38 there is no triable issue as to any material fact the court shall  
39 consider all of the evidence set forth in the papers, except that to  
40 which objections have been made and sustained by the court, and

1 all inferences reasonably deducible from the evidence, except  
2 summary judgment may not be granted by the court based on  
3 inferences reasonably deducible from the evidence if contradicted  
4 by other inferences or evidence that raise a triable issue as to any  
5 material fact.

6 ~~(d) The court need rule only on those objections to evidence~~  
7 ~~that it deems material to its disposition of the motion for summary~~  
8 ~~judgment. Any and all objections not ruled on shall be deemed~~  
9 ~~overruled and preserved on appeal.~~

10 (e)

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

17 (f)

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

29 (g)

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

1 completely disposes of a cause of action, an affirmative defense,  
2 a claim for damages, or an issue of duty.

3 (2) A motion for summary adjudication may be made by itself  
4 or as an alternative to a motion for summary judgment and shall  
5 proceed in all procedural respects as a motion for summary  
6 judgment. However, a party may not move for summary judgment  
7 based on issues asserted in a prior motion for summary adjudication  
8 and denied by the court unless that party establishes, to the  
9 satisfaction of the court, newly discovered facts or circumstances  
10 or a change of law supporting the issues reasserted in the summary  
11 judgment motion.

12 ~~(h)~~

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

28 ~~(i)~~

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

38 ~~(j)~~

39 (i) If, after granting a continuance to allow specified additional  
40 discovery, the court determines that the party seeking summary

1 judgment has unreasonably failed to allow the discovery to be  
2 conducted, the court shall grant a continuance to permit the  
3 discovery to go forward or deny the motion for summary judgment  
4 or summary adjudication. This section does not affect or limit the  
5 ability of a party to compel discovery under the Civil Discovery  
6 Act (Title 4 (commencing with Section 2016.010) of Part 4).

7 ~~(k)~~

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

16 ~~(l)~~

17 (k) Unless a separate judgment may properly be awarded in the  
18 action, a final judgment shall not be entered on a motion for  
19 summary judgment before the termination of the action, but the  
20 final judgment shall, in addition to any matters determined in the  
21 action, award judgment as established by the summary proceeding  
22 herein provided for.

23 ~~(m)~~

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

30 ~~(n)~~

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

1 outside the United States. If the notice is served by facsimile  
2 transmission, Express Mail, or another method of delivery  
3 providing for overnight delivery, the initial period within which  
4 to file the petition shall be increased by two court days. The  
5 superior court may, for good cause, and prior to the expiration of  
6 the initial period, extend the time for one additional period not to  
7 exceed 10 days.

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

20 ~~(e)~~

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

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

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

37 ~~(p)~~

38 (o) A cause of action has no merit if either of the following  
39 exists:

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

3 (2) A defendant establishes an affirmative defense to that cause  
4 of action.

5 (q)

6 (p) For purposes of motions for summary judgment and  
7 summary adjudication:

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

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

33 (q) *In granting or denying a motion for summary judgment or*  
34 *summary adjudication, the court need rule only on those objections*  
35 *to evidence that it deems material to its disposition of the motion.*  
36 *Objections to evidence that are not ruled on for purposes of the*  
37 *motion shall be preserved for appellate review.*

38 (r) This section does not extend the period for trial provided by  
39 Section 1170.5.

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

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

O