

## Code of Civil Procedure – Section 425.16 California’s Anti-SLAPP Law

Posted By *lisa* On April 12, 2011 @ 7:08 pm In | [Comments Disabled](#)

---

### Code of Civil Procedure – Section 425.16.

(a) The Legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process. To this end, this section shall be construed broadly.

(b) (1) 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 Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim. (2) In making its determination, the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based. (3) If the court determines that the plaintiff has established a probability that he or she will prevail on the claim, neither that determination nor the fact of that determination shall be admissible in evidence at any later stage of the case, or in any subsequent action, and no burden of proof or degree of proof otherwise applicable shall be affected by that determination in any later stage of the case or in any subsequent proceeding.

(c) (1) Except as provided in paragraph (2), in any action subject to subdivision (b), a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney’s fees and costs. If the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney’s fees to a plaintiff prevailing on the motion, pursuant to Section 128.5. (2) A defendant who prevails on a special motion to strike in an action subject to paragraph (1) shall not be entitled to attorney’s fees and costs if that cause of action is brought pursuant to Section 6259, 11130, 11130.3, 54960, or 54960.1 of the Government Code. Nothing in this paragraph shall be construed to prevent a prevailing defendant from recovering attorney’s fees and costs pursuant to subdivision (d) of Section 6259, 11130.5, or 54690.5.

(d) This section shall not apply to any enforcement action brought in the name of the people of the State of California by the Attorney General, district attorney, or city attorney, acting as a public prosecutor.

(e) As used in this section, “act in furtherance of a person’s right of petition or free speech under the United States or California Constitution in connection with a public issue” includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial

proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

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

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

(h) For purposes of this section, "complaint" includes "cross-complaint" and "petition," "plaintiff" includes "cross-complainant" and "petitioner," and "defendant" includes "cross-defendant" and "respondent."

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

(j) (1) Any party who files a special motion to strike pursuant to this section, and any party who files an opposition to a special motion to strike, shall, promptly upon so filing, transmit to the Judicial Council, by e-mail or facsimile, a copy of the endorsed, filed caption page of the motion or opposition, a copy of any related notice of appeal or petition for a writ, and a conformed copy of any order issued pursuant to this section, including any order granting or denying a special motion to strike, discovery, or fees. (2) The Judicial Council shall maintain a public record of information transmitted pursuant to this subdivision for at least three years, and may store the information on microfilm or other appropriate electronic media.

#### **History of statute:**

**1992** — Senate Bill 264 (Lockyer). For a list of organizations and newspapers that supported enactment of the original statute, see [Supporters of 1992 Anti-SLAPP Bill](#) <sup>[1]</sup>.

**1993** — The statute was amended to *require* award of costs and attorney fees to the plaintiff if the court finds that a special motion to strike is frivolous or solely intended to cause unnecessary delay.

**1997** — [Senate Bill 1296 \(Lockyer\)](#) <sup>[2]</sup>. The statute was amended in light of appellate court opinions that had narrowly construed application of the statute to disputes involving matters of "public interest". In amending the statute, the Legislature clarified its intent that *any* conduct in furtherance of the rights of petition or free speech is protected under the anti-SLAPP law.

**1999** — [Assembly Bill 1675 \(Assembly Judiciary Committee\)](#) <sup>[3]</sup>. Under the original statute, a defendant whose special motion to strike a complaint was denied could challenge the denial only through a petition for a writ in the Court of Appeal. Writs are discretionary, disfavored, and rarely successful. If, however, a plaintiff's complaint were dismissed pursuant to a special motion to strike, the plaintiff was able to appeal the dismissal immediately. Thus, the statute was amended to give the SLAPP target — the person whom the anti-SLAPP law was designed to protect — the same ability as the filer of the SLAPP to challenge an adverse trial court decision. See also [Supporters of AB 1675](#) <sup>[4]</sup>.

**2005** — [Assembly Bill 1158 \(Lieber\)](#) <sup>[5]</sup>. The statute was amended to overrule the decision by the California Supreme Court in [Wilson v. Parker, Covert & Chidester](#) <sup>[6]</sup> (2002) 28 Cal.4th 811, which held that the trial court's erroneous denial of an anti-SLAPP motion constitutes probable cause for filing and maintaining a SLAPP, as well as the decisions in [Decker v. The U.D. Registry, Inc.](#) <sup>[7]</sup> (2003) 105 Cal.App.4th 1382, and [Fair Political Practices Commission v. American Civil Rights Coalition, Inc.](#) <sup>[8]</sup> (2004) 121 Cal.App.4th 1171, which held that the 30-day period in which to schedule a hearing on an anti-SLAPP motion is jurisdictional.

**2009** — The statute was amended to add section 425.16(c)(2), which provides that a defendant who prevails on an anti-SLAPP motion may not be awarded fees on claims of violation of the public records act or open meetings law.

---

Article printed from California Anti-SLAPP Project: <https://www.casp.net>

URL to article: <https://www.casp.net/california-anti-slapp-first-amendment-law-resources/statutes/c-c-p-section-425-16/>

URLs in this post:

[1] [Supporters of 1992 Anti-SLAPP Bill](#): <http://www.casp.net/legal-resources/california-anti-slapp-law-and-related-statutes/section-425-16/support-for-california-senate-bills-341-and-1264/>

[2] [Senate Bill 1296 \(Lockyer\)](#): <http://www.casp.net/legal-resources/california-anti-slapp-law-and-related-statutes/section-425-16/california-senate-bill-1296/>

[3] [Assembly Bill 1675 \(Assembly Judiciary Committee\)](#): <http://www.casp.net/legal-resources/california-anti-slapp-law-and-related-statutes/section-425-16/california-assembly-bill-1675/>

[4] [Supporters of AB 1675](#): <http://www.casp.net/legal-resources/california-anti-slapp-law-and-related-statutes/section-425-16/supporters-of-assembly-bill-1675/>

[5] [Assembly Bill 1158 \(Lieber\)](#): <http://www.casp.net/legal-resources/california-anti-slapp-law-and-related-statutes/section-425-16/california-assembly-bill-1158/>

[6] [Wilson v. Parker, Covert & Chidester](#): <http://www.casp.net/legal-resources/cases-involving-the-california-anti-slapp-law/california-supreme-court-cases/wilson-et-al-v-parker-covert-chidester-et-al/>

[7] [Decker v. The U.D. Registry, Inc.](#) : <http://www.casp.net/legal-resources/cases-involving-the-california-anti-slapp-law/california-courts-of-appeal-cases/decker-et-al-v-u-d-registry-inc-et-al/>

[8] [Fair Political Practices Commission v. American Civil Rights Coalition, Inc.](#) : <http://www.casp.net/legal-resources/cases-involving-the-california-anti-slapp-law/california-courts-of-appeal-cases/fair-political-practices-commission-v-american-civil-rights-coalition-et-al/>