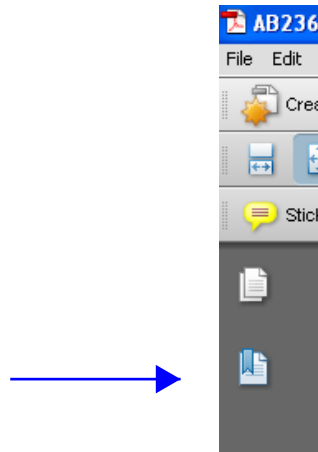


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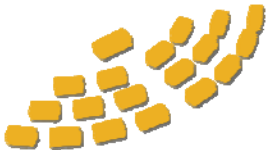
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LEGISLATIVE HISTORY REPORT AND ANALYSIS

Re: **Senate Bill 2594 (Robbins – 1990)**
Chapter 1561, Statutes of 1990

The legislative history of the above-referenced bill is documented by materials[♦] itemized in one declaration. **We discuss your section of focus in more detail later in this report.**

SENATE BILL 2594 (ROBBINS – 1990) **CHAPTER 1561, STATUTES OF 1990**

Code of Civil Procedure section 437c was amended in 1990 following legislative passage of Senate Bill 2594, a single-section bill that proposed to affect only the language of this section. (See [Exhibit #1f](#)) Senator Alan Robbins introduced Senate Bill 2594 on March 1, 1990, at the request of the California Judges Association. (See [Exhibits #1a and #3a](#))

Senate Bill 2594 was assigned to the Senate and Assembly Committees on Judiciary, where policy issues raised by the bill were considered. (See [Exhibits #3 and #7](#)) One amendment was made to the bill by the Senate on May 7, 1990, before it was forwarded to the Assembly. (See [Exhibits #1b and #2](#)) Three amendments were made to Senate Bill 2594 by the Assembly in August of 1990. (See [Exhibits #1c through #1e and #2](#)) Subsequent to legislative approval, Governor George Deukmejian signed the bill on September 29, 1990, and it was recorded by the Secretary of State the next day as Chapter 1561 of the Statutes of 1990. (See [Exhibit #1f](#))

The Unfinished Business analysis, prepared by the Office of Senate Floor Analyses, provided the following digest of Senate Bill 2594, as it was last amended August 22, 1990:

DIGEST: This bill provides that motions for summary adjudication be limited to resolving causes of action, affirmative defenses and/or claims for punitive damages.

[♦] For information on document numbers, research policies, request for judicial notice and more, please visit www.legintent.com and click on “**Research Aids and Policies**” and “**Points and Authorities**” at the bottom of the page.

This bill also makes other specified changes in summary adjudication procedures.
(See Exhibit #11, page 1)

A letter to the Governor from California Advocates, Inc., on behalf of the California Judges Association, dated August 30, 1990, provided a more detailed summary of the final form of Senate Bill 2594:

- eliminates summary adjudication of **issues**, while retaining summary adjudication of causes of action.
- at the request of insurance and banking interests, continues to permit summary adjudication of the limited issues of punitive damages and duties owed to plaintiffs by defendants.
- provides that objections as to competency and personal knowledge are waived unless raised at hearings.
- requires incorporations by reference to matters in the courts file to be made with specificity, rather than to the entire file.
(See Exhibit #12a, document A-23)

Senator Robbins provided the following explanation in a Senate Floor Statement regarding the purpose of Senate Bill 2594:

SENATE BILL 2594 DEALS WITH A VERY TECHNICAL AREA OF CIVIL PROCEDURE, THAT OF SUMMARY JUDGMENT AND SUMMARY ADJUDICATION. THE BILL ATTEMPTS TO STREAMLINE THE SUMMARY ADJUDICATION PROCESS TO THOSE MOTIONS WHICH WILL ENTIRELY DISPOSE OF A CAUSE OF ACTION. EXCEPTIONS ARE PROVIDED FOR PUNITIVE DAMAGES AND THE ISSUE OF DUTY.

THE BILL IS A CAREFULLY CRAFTED COMPROMISE BETWEEN THE JUDGES, TRIAL LAWYERS, BANKERS, INSURANCE COMPANIES AND BAR. WHEN THE BILL LEFT THE SENATE, THE INSURANCE COMPANIES WERE OPPOSED. . . .

(See Exhibit #12a, document A-22)

Senate Bill 2594 contained an uncodified section that set forth the Legislature's intent in regards to objections to the form and substance of the moving and opposing papers. (See Exhibit #1f, section 1)

Senator Robbins noted in a document entitled "Senate Bill 2594 Highlights," the bill was introduced, in part ". . . in response to a suggestion from the insurance industry [the bill] permits summary adjudication of the single issue of punitive damages." (See Exhibit #12a, document A-1)

The materials also contain letters of support for and opposition to Senate Bill 2594. (See for example, Exhibits #4, #8, #10 and #12) These materials document the consideration given the proposal while in the Legislature and provide insight into amendments taken to the initial proposal. Strong opposition to the legislation was voiced by the California Association of Insurance Companies and the State Bar of California. (Id.) Some of the amendments to the bill were made to address concerns expressed by these organizations opposing the bill. (See for example, Exhibit #12, document A-1) These materials may help you better understand the negotiations that resulted in the final version of the bill.

As mentioned above, after its introduction, Senate Bill 2594 was amended four times before it was enacted into law. (See Exhibits #1b through #1e) *We discuss your research focus below.* A full understanding of legislative intent may be dependent upon knowing about the various proposals as introduced into the bill and then as amended throughout the bill's consideration by the Assembly and the Senate Committees reviewing this measure. (Id.) This can be particularly helpful where your focus is on specific language; by contrasting that enacted with the prior proposals in the bill one can gain insight as to the intended meaning or the apparent controversy generated by the language of interest. (Id.)

Code of Civil Procedure section 437c(f)

As to your focus on subdivision (f) of Code of Civil Procedure section 437c, Senate Bill 2594 proposed to amend subdivision (f) at the time the bill was introduced to add a second paragraph. (See Exhibit #1a, page 5) In this introduced version you can see how subdivision (f) read prior to the italicized amendments. (Id.) The next amendment, dated May 7, 1990, deleted the prior language of subdivision (f) and amended the new paragraph making it the new subdivision (f). (See Exhibit #1b, page 5)

The language of subdivision (f) was again amended on August 6, August 15, and August 22, 1990. (See Exhibits #1c, #1d, and #1e) The amendments were then enacted into law. (See Exhibit #1f)

As mentioned above, the bill was very controversial and it appears that the August amendments were the result of lengthy negotiations with the interested parties and which removed all of the opposition to the bill. (See Exhibit #12a, document A-24) The Assembly Committee on Judiciary Republican analysis contained the following comment on the August 22nd amendment:

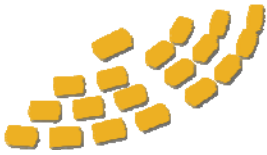
. . . Amended on 8/22/90 to permit a party to move for summary judgment on issues similar to those in a previously-denied motion based upon newly-discovered facts or circumstances to support the reasserted issues.
(See Exhibit #10a, document ARC-1)

Careful review of the documents enclosed may help you locate discussion on the issue before you as it relates to subdivision (f)(1) language. You should also be

able to draw some conclusions based upon the assumption that the language was intended to be consistent with the overall goal of the legislation. Thus, if you are unable to find specific discussion regarding your research question, the analyses contained in the legislative bill files enclosed herewith may provide you with an arguable assessment of the goals and purpose that could be applicable to your particular situation.

Any analysis provided in this report is based upon the nature and extent of your request to us, as well as a brief review of the enclosed documents. As such, it must be considered tentative in nature. A more conclusive statement of the impact of the legislative history in your case would be dependent upon a complete understanding of all of the factual issues involved and the applicable legal principles.

We appreciate the opportunity to provide this assistance and hope that these efforts will be of value to you.



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DECLARATION OF JENNY S. LILLGE

I, Jenny S. Lillge, declare:

I am an attorney licensed to practice in California, State Bar No. 265046, and am employed by Legislative Intent Service, Inc., a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service, Inc. undertook to locate and obtain all documents relevant to the enactment of Senate Bill 2594 of 1990. Senate Bill 2594 was approved by the Legislature and was enacted as Chapter 1561 of the Statutes of 1990.

The following list identifies all documents obtained by the staff of Legislative Intent Service, Inc. on Senate Bill 2594 of 1990. All listed documents have been forwarded with this Declaration except as otherwise noted in this Declaration. All documents gathered by Legislative Intent Service, Inc. and all copies forwarded with this Declaration are true and correct copies of the originals located by Legislative Intent Service, Inc. In compiling this collection, the staff of Legislative Intent Service, Inc. operated under directions to locate and obtain all available material on the bill.

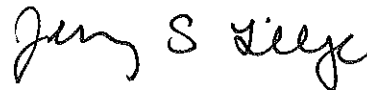
SENATE BILL 2594 OF 1990:

1. All versions of Senate Bill 2594 (Robbins-1990);
2. Procedural history of Senate Bill 2594 from the 1989-90 *Senate Final History*;
3. Two analyses of Senate Bill 2594 prepared for the Senate Committee on Judiciary;
4. Material from the legislative bill file of the Senate Committee on Judiciary on Senate Bill 2594 as follows:
 - a. Previously Obtained Material,
 - b. Updated Collection of Material;
- + 5. Third Reading analysis of Senate Bill 2594 prepared by the Office of Senate Floor Analyses;
6. Material from the legislative bill file of the Office of Senate Floor Analyses on Senate Bill 2594;

7. Two analyses of Senate Bill 2594 prepared for the Assembly Committee on Judiciary;
8. Material from the legislative bill file of the Assembly Committee on Judiciary on Senate Bill 2594 as follows:
 - a. Previously Obtained Material,
 - b. Updated Collection of Material;
- + 9. Four Third Reading analyses and one Proposed Amendments analysis of Senate Bill 2594 prepared by the Assembly Committee on Judiciary;
10. Material from the legislative bill file of the Assembly Republican Caucus on Senate Bill 2594 as follows:
 - a. Previously Obtained Material,
 - b. Updated Collection of Material;
- + 11. Unfinished Business analysis of Senate Bill 2594 prepared by the Office of Senate Floor Analyses;
12. Material from the legislative bill file of Senator Alan Robbins on Senate Bill 2594 as follows:
 - a. Previously Obtained Material,
 - b. Updated Collection of Material;
- + 13. Post-enrollment documents regarding Senate Bill 2594;
14. Press Release #651, issued by the Office of the Governor on September 30, 1990, to announce that Senate Bill 2594 had been signed;
15. Excerpt regarding Senate Bill 2594 from the 1990 *Digest of Significant Legislation*, prepared by the Office of Senate Floor Analyses, October 1990.

+ Because it is not unusual for more materials to become publicly available after our earlier research of legislation, we re-gathered these file materials, denoting them as "updated collection of material."

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 11th day of April, 2013 at Woodland, California.



JENNY S. LILLGE

Introduced by Senator Robbins

March 1, 1990

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

LEGISLATIVE COUNSEL'S DIGEST

SB 2594, as introduced, Robbins. Civil procedure: summary judgment and summary adjudication.

Existing law sets forth the grounds for and effects of summary judgment and summary adjudication. Existing law, among other things, provides evidentiary objections not made either in writing or orally at the hearing shall be deemed waived.

This bill would revise existing law and provide all of the following: (1) evidentiary objections to a motion for summary judgment not made in writing at least 2 court days prior to the hearing shall be deemed waived; (2) any incorporation by reference of matter in the court's file shall set forth with specificity the exact reference to which reference is being made and shall not incorporate the entire file; (3) any objections based on the failure to comply with provisions governing supporting and opposing affidavits or declarations shall be made in writing at least 2 court days prior to the hearing or shall be deemed waived; and (4) if it is contended that one or more causes of action within an action has no merit or that there is no defense thereto, any party may move for a summary adjudication as to that cause of action or causes of action or that affirmative defense.

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. It is the intent of this legislation to
 2 provide that all objections to the form and substance of
 3 the moving and opposing papers shall be first made in the
 4 trial court and not on appeal by the parties or by the
 5 appellate court and to expressly overrule the rules stated
 6 in *Witchell v. De Korne*, 179 Cal. App. 3d 965 and
 7 *Zuckerman v. Pacific Savings Bank*, 187 Cal. App. 3d 1394.
 8 It is also the intent of this legislation to stop the practice
 9 of adjudication of facts or adjudication of issues that do
 10 not completely dispose of a cause of action or a defense.
 11 SEC. 2. Section 437c of the Code of Civil Procedure
 12 is amended to read:

13 437c. (a) Any party may move for summary
 14 judgment in any action or proceeding if it is contended
 15 that the action has no merit or that there is no defense
 16 thereto. The motion may be made at any time after 60
 17 days have elapsed since the general appearance in the
 18 action or proceeding of each party against whom the
 19 motion is directed or at such earlier time after the
 20 general appearance as the court, with or without notice
 21 and upon good cause shown, may direct. Notice of the
 22 motion and supporting papers shall be served on all other
 23 parties to the action at least 28 days before the time
 24 appointed for hearing. However, if the notice is served by
 25 mail, the required 28-day period of notice shall be
 26 increased by five days if the place of address is within the
 27 State of California, 10 days if the place of address is
 28 outside the State of California but within the United
 29 States, and 20 days if the place of address is outside the
 30 United States. The motion shall be heard no later than 30
 31 days before the date of trial, unless the court for good
 32 cause orders otherwise. The filing of the motion shall not
 33 extend the time within which a party must otherwise file
 34 a responsive pleading.

35 (b) The motion shall be supported by affidavits,
 36 declarations, admissions, answers to interrogatories,
 37 depositions, and matters of which judicial notice shall or
 38 may be taken. The supporting papers shall include a

1 separate statement setting forth plainly and concisely all
 2 material facts which the moving party contends are
 3 undisputed. Each of the material facts stated shall be
 4 followed by a reference to the supporting evidence. The
 5 failure to comply with this requirement of a separate
 6 statement may in the court's discretion constitute a
 7 sufficient ground for denial of the motion.

8 Any opposition to the motion shall be served and filed
 9 not less than 14 days preceding the noticed or continued
 10 date of hearing, unless the court for good cause orders
 11 otherwise. The opposition, where appropriate, shall
 12 consist of affidavits, declarations, admissions, answers to
 13 interrogatories, depositions, and matters of which judicial
 14 notice shall or may be taken. The opposition papers shall
 15 include a separate statement which responds to each of
 16 the material facts contended by the moving party to be
 17 undisputed, indicating whether the opposing party
 18 agrees or disagrees that those facts are undisputed. The
 19 statement also shall set forth plainly and concisely any
 20 other material facts which the opposing party contends
 21 are disputed. Each material fact contended by the
 22 opposing party to be disputed shall be followed by a
 23 reference to the supporting evidence. Failure to comply
 24 with this requirement of a separate statement may
 25 constitute a sufficient ground, in the court's discretion,
 26 for granting the motion.

27 Any reply to the opposition shall be served and filed by
 28 the moving party not less than five days preceding the
 29 noticed or continued date of hearing, unless the court for
 30 good cause orders otherwise.

31 Evidentiary objections not made either in writing or
 32 orally at least two court days prior to the hearing shall be
 33 deemed waived.

34 The provisions of Section 1005 and the provisions of
 35 subdivision (a) of Section 1013, extending the time within
 36 which a right may be exercised or an act may be done, do
 37 not apply to this section.

38 Any incorporation by reference of matter in the court's
 39 file shall set forth with specificity the exact matter to
 40 which reference is being made and shall not incorporate



1 *the entire file.*

2 (c) The motion for summary judgment shall be
3 granted if all the papers submitted show that there is no
4 triable issue as to any material fact and that the moving
5 party is entitled to a judgment as a matter of law. In
6 determining whether the papers show that there is no
7 triable issue as to any material fact the court shall
8 consider all of the evidence set forth in the papers, except
9 that to which objections have been made and sustained
10 by the court, and all inferences reasonably deducible
11 from the evidence, except summary judgment shall not
12 be granted by the court based on inferences reasonably
13 deducible from the evidence, if contradicted by other
14 inferences or evidence, which raise a triable issue as to
15 any material fact.

16 (d) Supporting and opposing affidavits or declarations
17 shall be made by any person on personal knowledge, shall
18 set forth admissible evidence, and shall show
19 affirmatively that the affiant is competent to testify to the
20 matters stated therein. *Any objections based on the*
21 *failure to comply with the requirements of this*
22 *subdivision shall be made in writing at least two court*
23 *days prior to the hearing or shall be deemed waived.*

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

37 (f) A party may move for summary adjudication of
38 issues, either by itself or as an alternative to summary
39 judgment. If it appears that the proof supports the
40 granting of the motion for summary adjudication as to

1 some but not all the issues involved in the action, or that
2 one or more of the issues raised by a claim is admitted, or
3 that one or more of the issues raised by a defense is
4 conceded, the court shall, by order, specify that those
5 issues are without substantial controversy. Moreover,
6 upon a motion for summary adjudication, the court shall,
7 by written order or oral order recorded verbatim, specify
8 those issues raised by the motion for summary
9 adjudication as to which there exists a material, triable
10 controversy, and shall specifically refer to the evidence
11 which establishes a triable issue of fact regarding each of
12 those issues. At the trial of the action the issue so specified
13 shall be deemed established and the action shall proceed
14 as to the issues remaining.

15 *If it is contended that one or more causes of action*
16 *within an action has no merit or that there is no defense*
17 *thereto, and that there is no merit to an affirmative*
18 *defense as to any cause of action, any party may move for*
19 *summary adjudication as to that cause or causes of*
20 *action or that affirmative defense. A motion may be made*
21 *by itself or as an alternative to a motion for summary*
22 *judgment and shall proceed in all procedural respects as*
23 *a motion for summary judgment.*

24 (g) Upon the denial of a motion for summary
25 judgment, on the ground that there is a triable issue as to
26 one or more material facts, the court shall, by written or
27 oral order, specify one or more material facts raised by
28 the motion as to which the court has determined there
29 exists a triable controversy. This determination shall
30 specifically refer to the evidence proffered in support of
31 and in opposition to the motion which indicates that a
32 triable controversy exists. The court shall also state its
33 reasons for any other determination. The court shall
34 record its determination by court reporter or written
35 order.

36 (h) If it appears from the affidavits submitted in
37 opposition to a motion for summary judgment or
38 summary adjudication or both that facts essential to
39 justify opposition may exist but cannot, for reasons stated,
40 then be presented, the court shall deny the motion, or



1 order a continuance to permit affidavits to be obtained or
2 discovery to be had or may make any other order as may
3 be just.

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

13 (j) Except where a separate judgment may properly
14 be awarded in the action, no final judgment shall be
15 entered on a motion for summary judgment prior to the
16 termination of the action, but the final judgment shall, in
17 addition to any matters determined in the action, award
18 judgment as established by the summary proceeding
19 herein provided for.

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

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

1 the time for one additional period not to exceed 10 days.
2 (m) Nothing in this section shall be construed to
3 extend the period for trial provided by Section 1170.5.

4 (n) ~~The provisions of subdivisions~~ *Subdivisions* (a)
5 and (b) shall not apply to actions brought pursuant to
6 Chapter 4 (commencing with Section 1159) of Title 3 of
7 Part 3.

O



Introduced by Senator Robbins

March 1, 1990

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

LEGISLATIVE COUNSEL'S DIGEST

SB 2594, as amended, Robbins. Civil procedure: summary judgment and summary adjudication.

Existing law sets forth the grounds for and effects of summary judgment and summary adjudication. Existing law, among other things, provides evidentiary objections not made either in writing or orally at the hearing shall be deemed waived.

This bill would revise existing law and provide all of the following: (1) evidentiary objections to a motion for summary judgment not made ~~in writing~~ at least ~~2 court days~~ prior to the hearing shall be deemed waived; (2) any incorporation by reference of matter in the court's file shall set forth with specificity the exact reference to which reference is being made and shall not incorporate the entire file; (3) any objections based on the failure to comply with provisions governing supporting and opposing affidavits or declarations shall be made ~~in writing~~ at least ~~2 court days~~ prior to the hearing or shall be deemed waived; and (4) if it is contended that one or more causes of action within an action has no merit or that there is no defense thereto, ~~as specified~~, any party may move for a summary adjudication as to that cause of action ~~or~~, causes of action, ~~claim for damages~~ or ~~that~~ affirmative defense; and (5) ~~that upon the grant of a motion for summary judgment, on the ground that there is no triable issue of material fact, the court shall make an oral or written order, as~~



specified.

This bill would also delete specified provisions allowing a party to move for summary adjudication of issues, as specified.

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. It is the intent of this legislation to
 2 provide that all objections to the form and substance of
 3 the moving and opposing papers shall be first made in the
 4 trial court and not on appeal by the parties or by the
 5 appellate court and to expressly overrule the rules stated
 6 in *Witchell v. De Korne*, 179 Cal. App. 3d 965 and
 7 *Zuckerman v. Pacific Savings Bank*, 187 Cal. App. 3d 1394.
 8 It is also the intent of this legislation to stop the practice
 9 of adjudication of facts or adjudication of issues that do
 10 not completely dispose of a cause of action or a defense.
 11 SEC. 2. Section 437c of the Code of Civil Procedure
 12 is amended to read:

13 437c. (a) Any party may move for summary
 14 judgment in any action or proceeding if it is contended
 15 that the action has no merit or that there is no defense
 16 thereto. The motion may be made at any time after 60
 17 days have elapsed since the general appearance in the
 18 action or proceeding of each party against whom the
 19 motion is directed or at such earlier time after the
 20 general appearance as the court, with or without notice
 21 and upon good cause shown, may direct. Notice of the
 22 motion and supporting papers shall be served on all other
 23 parties to the action at least 28 days before the time
 24 appointed for hearing. However, if the notice is served by
 25 mail, the required 28-day period of notice shall be
 26 increased by five days if the place of address is within the
 27 State of California, 10 days if the place of address is
 28 outside the State of California but within the United
 29 States, and 20 days if the place of address is outside the
 30 United States. The motion shall be heard no later than 30
 31 days before the date of trial, unless the court for good
 32 cause orders otherwise. The filing of the motion shall not

extend the time within which a party must otherwise file a responsive pleading.

1 (b) The motion shall be supported by affidavits,
 2 declarations, admissions, answers to interrogatories,
 3 depositions, and matters of which judicial notice shall or
 4 may be taken. The supporting papers shall include a
 5 separate statement setting forth plainly and concisely all
 6 material facts which the moving party contends are
 7 undisputed. Each of the material facts stated shall be
 8 followed by a reference to the supporting evidence. The
 9 failure to comply with this requirement of a separate
 10 statement may in the court's discretion constitute a
 11 sufficient ground for denial of the motion.

12 Any opposition to the motion shall be served and filed
 13 not less than 14 days preceding the noticed or continued
 14 date of hearing, unless the court for good cause orders
 15 otherwise. The opposition, where appropriate, shall
 16 consist of affidavits, declarations, admissions, answers to
 17 interrogatories, depositions, and matters of which judicial
 18 notice shall or may be taken. The opposition papers shall
 19 include a separate statement which responds to each of
 20 the material facts contended by the moving party to be
 21 undisputed, indicating whether the opposing party
 22 agrees or disagrees that those facts are undisputed. The
 23 statement also shall set forth plainly and concisely any
 24 other material facts which the opposing party contends
 25 are disputed. Each material fact contended by the
 26 opposing party to be disputed shall be followed by a
 27 reference to the supporting evidence. Failure to comply
 28 with this requirement of a separate statement may
 29 constitute a sufficient ground, in the court's discretion,
 30 for granting the motion.

31 Any reply to the opposition shall be served and filed by
 32 the moving party not less than five days preceding the
 33 noticed or continued date of hearing, unless the court for
 34 good cause orders otherwise.

35 Evidentiary objections not made ~~in writing~~ at least two
 36 court days prior to the hearing shall be deemed waived.
 37 Section 1005 and subdivision (a) of Section 1013,
 38 extending the time within which a right may be exercised



1 or an act may be done, do not apply to this section.
2 Any incorporation by reference of matter in the court's
3 file shall set forth with specificity the exact matter to
4 which reference is being made and shall not incorporate
5 the entire file.

6 (c) The motion for summary judgment shall be
7 granted if all the papers submitted show that there is no
8 triable issue as to any material fact and that the moving
9 party is entitled to a judgment as a matter of law. In
10 determining whether the papers show that there is no
11 triable issue as to any material fact the court shall
12 consider all of the evidence set forth in the papers, except
13 that to which objections have been made and sustained
14 by the court, and all inferences reasonably deducible
15 from the evidence, except summary judgment shall not
16 be granted by the court based on inferences reasonably
17 deducible from the evidence, if contradicted by other
18 inferences or evidence, which raise a triable issue as to
19 any material fact.

20 (d) Supporting and opposing affidavits or declarations
21 shall be made by any person on personal knowledge, shall
22 set forth admissible evidence, and shall show
23 affirmatively that the affiant is competent to testify to the
24 matters stated therein. Any objections based on the
25 failure to comply with the requirements of this
26 subdivision shall be made ~~in writing at least two court~~
27 ~~days prior to~~ at the hearing or shall be deemed waived.

28 (e) If a party is otherwise entitled to a summary
29 judgment pursuant to the provisions of this section,
30 summary judgment shall not be denied on grounds of
31 credibility or for want of cross-examination of witnesses
32 furnishing affidavits or declarations in support of the
33 summary judgment, except that summary judgment may
34 be denied in the discretion of the court, where the only
35 proof of a material fact offered in support of the summary
36 judgment is an affidavit or declaration made by an
37 individual who was the sole witness to that fact; or where
38 a material fact is an individual's state of mind, or lack
39 thereof, and that fact is sought to be established solely by
40 the individual's affirmation thereof.

1 (f) A party may move for summary adjudication of
2 issues, either by itself or as an alternative to summary
3 judgment. If it appears that the proof supports the
4 granting of the motion for summary adjudication as to
5 some but not all the issues involved in the action, or that
6 one or more of the issues raised by a claim is admitted, or
7 that one or more of the issues raised by a defense is
8 conceded, the court shall, by order, specify that those
9 issues are without substantial controversy. Moreover,
10 upon a motion for summary adjudication, the court shall,
11 by written order or oral order recorded verbatim, specify
12 those issues raised by the motion for summary
13 adjudication as to which there exists a material, triable
14 controversy; and shall specifically refer to the evidence
15 which establishes a triable issue of fact regarding each of
16 these issues. At the trial of the action the issue so specified
17 shall be deemed established and the action shall proceed
18 as to the issues remaining.
19 If

20 (f) If it is contended that one or more causes of action
21 within an action has no merit or that there is no defense
22 thereto, and or that there is no merit to an affirmative
23 defense as to any cause of action, or both, or that there
24 is no merit to a claim for damages, as specified in Section
25 3294 of the Civil Code, any party may move for
26 summary summary adjudication as to that cause or
27 causes of action or, that affirmative defense, or that
28 claim for damages. A motion may be made by itself or as
29 an alternative to a motion for summary judgment and
30 shall proceed in all procedural respects as a motion for
31 summary judgment.

32 (g) Upon the denial of a motion for summary
33 judgment, on the ground that there is a triable issue as to
34 one or more material facts, the court shall, by written or
35 oral order, specify one or more material facts raised by
36 the motion as to which the court has determined there
37 exists a triable controversy. This determination shall
38 specifically refer to the evidence proffered in support of
39 and in opposition to the motion which indicates that a
40 triable controversy exists. Upon the grant of a motion for



(l) A summary judgment entered under this section is an appealable judgment as in other cases. Upon entry of any order pursuant to this section except the entry of a summary judgment, a party may, within 20 days after service upon him or her of a written notice of entry of the order, petition an appropriate reviewing court for a peremptory writ. If the notice is served by mail, the initial period within which to file the petition shall be increased by five days if the place of address is within the State of California, 10 days if the place of address is outside the State of California but within the United States, and 20 days if the place of address is outside the United States. The superior court may, for good cause, and prior to the expiration of the initial period, extend the time for one additional period not to exceed 10 days.

(m) Nothing in this section shall be construed to extend the period for trial provided by Section 1170.5.

(n) Subdivisions (a) and (b) shall not apply to actions brought pursuant to Chapter 4 (commencing with Section 1159) of Title 3 of Part 3.

O

summary judgment, on the ground that there is no triable issue of material fact, the court shall, by written or oral order, specify the reasons for its determination. The order shall specifically refer to the evidence proffered in support of, and if applicable in opposition to, the motion which indicates that no triable issue exists. The court shall also state its reasons for any other determination. The court shall record its determination by court reporter or written order.

(h) If it appears from the affidavits submitted in opposition to a motion for summary judgment or summary adjudication or both that facts essential to justify opposition may exist but cannot, for reasons stated, then be presented, the court shall deny the motion, or order a continuance to permit affidavits to be obtained or discovery to be had or may make any other order as may be just.

(i) If the court determines at any time that any of the affidavits are presented in bad faith or solely for purposes of delay, the court shall order the party presenting the affidavits to pay the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur. Sanctions shall not be imposed pursuant to this subdivision except on notice contained in a party's papers, or on the court's own noticed motion, and after an opportunity to be heard.

(j) Except where a separate judgment may properly be awarded in the action, no final judgment shall be entered on a motion for summary judgment prior to the termination of the action, but the final judgment shall, in addition to any matters determined in the action, award judgment as established by the summary proceeding herein provided for.

(k) In actions which arise out of an injury to the person or to property, when a motion for summary judgment was granted on the basis that the defendant was without fault, no other defendant during trial, over plaintiff's objection, may attempt to attribute fault to or comment on the absence or involvement of the defendant who was granted the motion.



AMENDED IN ASSEMBLY AUGUST 6, 1990
AMENDED IN SENATE MAY 7, 1990

SENATE BILL **No. 2594**

Introduced by Senator Robbins

March 1, 1990

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

LEGISLATIVE COUNSEL'S DIGEST

SB 2594, as amended, Robbins. Civil procedure: summary judgment and summary adjudication.

Existing law sets forth the grounds for and effects of summary judgment and summary adjudication. Existing law, among other things, provides evidentiary objections not made either in writing or orally at the hearing shall be deemed waived.

This bill would revise existing law and provide all of the following: (1) evidentiary objections to a motion for summary judgment not made at the hearing shall be deemed waived; (2) any incorporation by reference of matter in the court's file shall set forth with specificity the exact reference to which reference is being made and shall not incorporate the entire file; (3) any objections based on the failure to comply with provisions governing supporting and opposing affidavits or declarations shall be made at the hearing or shall be deemed waived; (4) if it is contended that one or more causes of action within an action has no merit, as specified, or that there is no defense thereto, as specified, any party may move for a summary adjudication as to that cause of action, causes of action, claim for damages or affirmative defense; and (5) that upon the grant of a motion for summary judgment, on the ground that there is no triable issue of material fact, the court

shall make an oral or written order, as specified.
This bill would also delete specified provisions allowing a party to move for summary adjudication of issues, as specified.
Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. It is the intent of this legislation to provide that all objections to the form and substance of the moving and opposing papers shall be first made in the trial court and not on appeal by the parties or by the appellate court and to expressly overrule the rules stated in *Witchell v. De Korne*, 179 Cal. App. 3d 965 and *Zuckerman v. Pacific Savings Bank*, 187 Cal. App. 3d 1394.
It is also the intent of this legislation to stop the practice of adjudication of facts or adjudication of issues that do not completely dispose of a cause of action or a defense.
SEC. 2. Section 437c of the Code of Civil Procedure is amended to read:

(a) Any party may 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 thereto. The motion may be made at any time after 60 days have elapsed since the general appearance in the action or proceeding of each party against whom the motion is directed or at such earlier time after the general appearance as the court, with or without notice and upon good cause shown, may direct. Notice of the motion and supporting papers shall be served on all other parties to the action at least 28 days before the time appointed for hearing. However, if the notice is served by mail, the required 28-day period of notice shall be increased by five days if the place of address is within the State of California, 10 days if the place of address is outside the State of California but within the United States, and 20 days if the place of address is outside the United States. The motion shall be heard no later than 30 days before the date of trial, unless the court for good cause orders otherwise. The filing of the motion shall not

extend the time within which a party must otherwise file a responsive pleading.

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

Any opposition to the motion shall be served and filed not less than 14 days preceding the noticed or continued date of hearing, unless the court for good cause orders otherwise. The opposition, where appropriate, shall consist of affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. The opposition papers shall include a separate statement which responds to each of the material facts contended by the moving party to be undisputed, indicating whether the opposing party agrees or disagrees that those facts are undisputed. The statement also shall set forth plainly and concisely any other material facts which the opposing party contends are disputed. Each material fact contended by the opposing party to be disputed shall be followed by a reference to the supporting evidence. Failure to comply with this requirement of a separate statement may constitute a sufficient ground, in the court's discretion, for granting the motion.

Any reply to the opposition shall be served and filed by the moving party not less than five days preceding the noticed or continued date of hearing, unless the court for good cause orders otherwise.

Evidentiary objections not made at the hearing shall be deemed waived.

Section 1005 and subdivision (a) of Section 1013, extending the time within which a right may be exercised

1 or an act may be done, do not apply to this section.
 2 Any incorporation by reference of matter in the court's
 3 file shall set forth with specificity the exact matter to
 4 which reference is being made and shall not incorporate
 5 the entire file.

6 (c) The motion for summary judgment shall be
 7 granted if all the papers submitted show that there is no
 8 triable issue as to any material fact and that the moving
 9 party is entitled to a judgment as a matter of law. In
 10 determining whether the papers show that there is no
 11 triable issue as to any material fact the court shall
 12 consider all of the evidence set forth in the papers, except
 13 that to which objections have been made and sustained
 14 by the court, and all inferences reasonably deducible
 15 from the evidence, except summary judgment shall not
 16 be granted by the court based on inferences reasonably
 17 deducible from the evidence, if contradicted by other
 18 inferences or evidence, which raise a triable issue as to
 19 any material fact.

20 (d) Supporting and opposing affidavits or declarations
 21 shall be made by any person on personal knowledge, shall
 22 set forth admissible evidence, and shall show
 23 affirmatively that the affiant is competent to testify to the
 24 matters stated therein. Any objections based on the
 25 failure to comply with the requirements of this
 26 subdivision shall be made at the hearing or shall be
 27 deemed waived.

28 (e) If a party is otherwise entitled to a summary
 29 judgment pursuant to the provisions of this section,
 30 summary judgment shall not be denied on grounds of
 31 credibility or for want of cross-examination of witnesses
 32 furnishing affidavits or declarations in support of the
 33 summary judgment, except that summary judgment may
 34 be denied in the discretion of the court, where the only
 35 proof of a material fact offered in support of the summary
 36 judgment is an affidavit or declaration made by an
 37 individual who was the sole witness to that fact; or where
 38 a material fact is an individual's state of mind, or lack
 39 thereof, and that fact is sought to be established solely by
 40 the individual's affirmation thereof.

1 (f) If it is contended that one or more causes of action
 2 within an action has no merit or that there is no defense
 3 thereto, or that there is no merit to an affirmative defense
 4 as to any cause of action, or both, or that there is no merit
 5 to a claim for damages, as specified in Section 3294 of the
 6 Civil Code, any party may move for summary
 7 adjudication as to that cause or causes of action, that
 8 affirmative defense, or that claim for damages. A cause
 9 of action has no merit if one or more of the elements of
 10 the cause of action, even if not separately pleaded, cannot
 11 be established. A motion may be made by itself or as an
 12 alternative to a motion for summary judgment and shall
 13 proceed in all procedural respects as a motion for
 14 summary judgment.

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

33 (h) If it appears from the affidavits submitted in
 34 opposition to a motion for summary judgment or
 35 summary adjudication or both that facts essential to
 36 justify opposition may exist but cannot, for reasons stated,
 37 then be presented, the court shall deny the motion, or
 38 order a continuance to permit affidavits to be obtained or
 39 discovery to be had or may make any other order as may
 40 be just.



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

10 (j) Except where a separate judgment may properly
 11 be awarded in the action, no final judgment shall be
 12 entered on a motion for summary judgment prior to the
 13 termination of the action, but the final judgment shall, in
 14 addition to any matters determined in the action, award
 15 judgment as established by the summary proceeding
 16 herein provided for.

17 (k) In actions which arise out of an injury to the person
 18 or to property, when a motion for summary judgment
 19 was granted on the basis that the defendant was without
 20 fault, no other defendant during trial, over plaintiff's
 21 objection, may attempt to attribute fault to or comment
 22 on the absence or involvement of the defendant who was
 23 granted the motion.

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

39 (m) Nothing in this section shall be construed to
 40 extend the period for trial provided by Section 1170.5.

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



AMENDED IN ASSEMBLY AUGUST 15, 1990
AMENDED IN ASSEMBLY AUGUST 6, 1990
AMENDED IN SENATE MAY 7, 1990

SENATE BILL

No. 2594

Introduced by Senator Robbins

March 1, 1990

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

LEGISLATIVE COUNSEL'S DIGEST

SB 2594, as amended, Robbins. Civil procedure: summary judgment and summary adjudication.

Existing law sets forth the grounds for and effects of summary judgment and summary adjudication. Existing law, among other things, provides evidentiary objections not made either in writing or orally at the hearing shall be deemed waived.

This bill would revise existing law and provide all of the following: (1) evidentiary objections to a motion for summary judgment not made at the hearing shall be deemed waived; (2) any incorporation by reference of matter in the court's file shall set forth with specificity the exact reference to which reference is being made and shall not incorporate the entire file; (3) any objections based on the failure to comply with provisions governing supporting and opposing affidavits or declarations shall be made at the hearing or shall be deemed waived; (4) if it is contended that one or more causes of action within an action has no merit, as specified, or that there is no defense thereto, as specified, *or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs*, any party may move for a summary adjudication as to that cause of action, causes of action, claim for damages or



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affirmative defense; and (5) that upon the grant of a motion for summary judgment, on the ground that there is no triable issue of material fact, the court shall make an oral or written order, as specified.

This bill would also delete specified provisions allowing a party to move for summary adjudication of issues, as specified. Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. It is the intent of this legislation to provide that all objections to the form and substance of the moving and opposing papers shall be first made in the trial court and not on appeal by the parties or by the appellate court and to expressly overrule the rules stated in *Witchell v. De Korne*, 179 Cal. App. 3d 965 and *Zuckerman v. Pacific Savings Bank*, 187 Cal. App. 3d 1394. It is also the intent of this legislation to stop the practice of adjudication of facts or adjudication of issues that do not completely dispose of a cause of action or a defense. SEC. 2. Section 437c of the Code of Civil Procedure is amended to read:

(a) Any party may 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 thereto. The motion may be made at any time after 60 days have elapsed since the general appearance in the action or proceeding of each party against whom the motion is directed or at such earlier time after the general appearance as the court, with or without notice and upon good cause shown, may direct. Notice of the motion and supporting papers shall be served on all other parties to the action at least 28 days before the time appointed for hearing. However, if the notice is served by mail, the required 28-day period of notice shall be increased by five days if the place of address is within the State of California, 10 days if the place of address is outside the State of California but within the United States, and 20 days if the place of address is outside the

United States. The motion shall be heard no later than 30 days before the date of trial, unless the court for good cause orders otherwise. The filing of the motion shall not extend the time within which a party must otherwise file a responsive pleading.

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

Any opposition to the motion shall be served and filed not less than 14 days preceding the noticed or continued date of hearing, unless the court for good cause orders otherwise. The opposition, where appropriate, shall consist of affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. The opposition papers shall include a separate statement which responds to each of the material facts contended by the moving party to be undisputed, indicating whether the opposing party agrees or disagrees that those facts are undisputed. The statement also shall set forth plainly and concisely any other material facts which the opposing party contends are disputed. Each material fact contended by the opposing party to be disputed shall be followed by a reference to the supporting evidence. Failure to comply with this requirement of a separate statement may constitute a sufficient ground, in the court's discretion, for granting the motion.

Any reply to the opposition shall be served and filed by the moving party not less than five days preceding the noticed or continued date of hearing, unless the court for good cause orders otherwise.

Evidentiary objections not made at the hearing shall be



1 deemed waived.

2 Section 1005 and subdivision (a) of Section 1013,
3 extending the time within which a right may be exercised
4 or an act may be done, do not apply to this section.
5 Any incorporation by reference of matter in the court's
6 file shall set forth with specificity the exact matter to
7 which reference is being made and shall not incorporate
8 the entire file.

9 (c) The motion for summary judgment shall be
10 granted if all the papers submitted show that there is no
11 triable issue as to any material fact and that the moving
12 party is entitled to a judgment as a matter of law. In
13 determining whether the papers show that there is no
14 triable issue as to any material fact the court shall
15 consider all of the evidence set forth in the papers, except
16 that to which objections have been made and sustained
17 by the court, and all inferences reasonably deducible
18 from the evidence, except summary judgment shall not
19 be granted by the court based on inferences reasonably
20 deducible from the evidence, if contradicted by other
21 inferences or evidence, which raise a triable issue as to
22 any material fact.

23 (d) Supporting and opposing affidavits or declarations
24 shall be made by any person on personal knowledge, shall
25 set forth admissible evidence, and shall show
26 affirmatively that the affiant is competent to testify to the
27 matters stated therein. Any objections based on the
28 failure to comply with the requirements of this
29 subdivision shall be made at the hearing or shall be
30 deemed waived.

31 (e) If a party is otherwise entitled to a summary
32 judgment pursuant to this section, summary judgment
33 shall not be denied on grounds of credibility or for want
34 of cross-examination of witnesses furnishing affidavits or
35 declarations in support of the summary judgment, except
36 that summary judgment may be denied in the discretion
37 of the court, where the only proof of a material fact
38 offered in support of the summary judgment is an
39 affidavit or declaration made by an individual who was
40 the sole witness to that fact; or where a material fact is an

1 individual's state of mind, or lack thereof, and that fact is
2 sought to be established solely by the individual's
3 affirmation thereof.

4 (f) If it is contended that one or more causes of action
5 within an action has no merit or that there is no defense
6 thereto, or that there is no merit to an affirmative defense
7 as to any cause of action, or both, or that there is no merit
8 to a claim for damages, as specified in Section 3294 of the
9 Civil Code, or that one or more defendants either owned
10 or did not owe a duty to the plaintiff or plaintiffs, any
11 party may move for summary adjudication as to that
12 cause or causes of action, that affirmative defense, or that
13 claim for damages. A cause of action has no merit if one
14 or more of the elements of the cause of action, even if not
15 separately pleaded, cannot be established. A motion may
16 be made by itself or as an alternative to a motion for
17 summary judgment and shall proceed in all procedural
18 respects as a motion for summary judgment. However,
19 nothing in this section authorizes parties to repeat
20 contentions regarding issues in motions for summary
21 judgment following adjudication in motions for summary
22 adjudication.

23 (g) Upon the denial of a motion for summary
24 judgment, on the ground that there is a triable issue as to
25 one or more material facts, the court shall, by written or
26 oral order, specify one or more material facts raised by
27 the motion as to which the court has determined there
28 exists a triable controversy. This determination shall
29 specifically refer to the evidence proffered in support of
30 and in opposition to the motion which indicates that a
31 triable controversy exists. Upon the grant of a motion for
32 summary judgment, on the ground that there is no triable
33 issue of material fact, the court shall, by written or oral
34 order, specify the reasons for its determination. The
35 order shall specifically refer to the evidence proffered in
36 support of, and if applicable in opposition to, the motion
37 which indicates that no triable issue exists. The court shall
38 also state its reasons for any other determination. The
39 court shall record its determination by court reporter or
40 written order.



1 (h) If it appears from the affidavits submitted in
 2 opposition to a motion for summary judgment or
 3 summary adjudication or both that facts essential to
 4 justify opposition may exist but cannot, for reasons stated,
 5 then be presented, the court shall deny the motion, or
 6 order a continuance to permit affidavits to be obtained or
 7 discovery to be had or may make any other order as may
 8 be just.

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

18 (j) Except where a separate judgment may properly
 19 be awarded in the action, no final judgment shall be
 20 entered on a motion for summary judgment prior to the
 21 termination of the action, but the final judgment shall, in
 22 addition to any matters determined in the action, award
 23 judgment as established by the summary proceeding
 24 herein provided for.

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

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

1 State of California, 10 days if the place of address is
 2 outside the State of California but within the United
 3 States, and 20 days if the place of address is outside the
 4 United States. The superior court may, for good cause,
 5 and prior to the expiration of the initial period, extend
 6 the time for one additional period not to exceed 10 days.

7 (m) Nothing in this section shall be construed to
 8 extend the period for trial provided by Section 1170.5.

9 (n) Subdivisions (a) and (b) shall not apply to actions
 10 brought pursuant to Chapter 4 (commencing with
 11 Section 1159) of Title 3 of Part 3.

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AMENDED IN ASSEMBLY AUGUST 22, 1990
AMENDED IN ASSEMBLY AUGUST 15, 1990
AMENDED IN ASSEMBLY AUGUST 6, 1990
AMENDED IN SENATE MAY 7, 1990

SENATE BILL

No. 2594

Introduced by Senator Robbins

March 1, 1990

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

LEGISLATIVE COUNSEL'S DIGEST

SB 2594, as amended, Robbins. Civil procedure: summary judgment and summary adjudication.

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This bill would revise existing law and provide all of the following: (1) evidentiary objections to a motion for summary judgment not made at the hearing shall be deemed waived; (2) any incorporation by reference of matter in the court's file shall set forth with specificity the exact reference to which reference is being made and shall not incorporate the entire file; (3) any objections based on the failure to comply with provisions governing supporting and opposing affidavits or declarations shall be made at the hearing or shall be deemed waived; (4) if it is contended that one or more causes of action within an action has no merit, as specified, or that there is no defense thereto, as specified, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs,



any party may move for a summary adjudication as to that cause of action, causes of action, claim for damages or affirmative defense, or issue of duty; and (5) that upon the grant of a motion for summary judgment, on the ground that there is no triable issue of material fact, the court shall make an oral or written order, as specified.

This bill would also delete specified provisions allowing a party to move for summary adjudication of issues, as specified.

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. It is the intent of this legislation to
 2 provide that all objections to the form and substance of
 3 the moving and opposing papers shall be first made in the
 4 trial court and not on appeal by the parties or by the
 5 appellate court and to expressly overrule the rules stated
 6 in *Witchell v. De Korne*, 179 Cal. App. 3d 965 and
 7 *Zuckerman v. Pacific Savings Bank*, 187 Cal. App. 3d 1394.
 8 It is also the intent of this legislation to stop the practice
 9 of adjudication of facts or adjudication of issues that do
 10 not completely dispose of a cause of action or a defense.
 11 SEC. 2. Section 437c of the Code of Civil Procedure
 12 is amended to read:

13 437c. (a) Any party may move for summary
 14 judgment in any action or proceeding if it is contended
 15 that the action has no merit or that there is no defense
 16 thereto. The motion may be made at any time after 60
 17 days have elapsed since the general appearance in the
 18 action or proceeding of each party against whom the
 19 motion is directed or at such earlier time after the
 20 general appearance as the court, with or without notice
 21 and upon good cause shown, may direct. Notice of the
 22 motion and supporting papers shall be served on all other
 23 parties to the action at least 28 days before the time
 24 appointed for hearing. However, if the notice is served by
 25 mail, the required 28-day period of notice shall be
 26 increased by five days if the place of address is within the
 27 State of California, 10 days if the place of address is



1 outside the State of California but within the United
 2 States, and 20 days if the place of address is outside the
 3 United States. The motion shall be heard no later than 30
 4 days before the date of trial, unless the court for good
 5 cause orders otherwise. The filing of the motion shall not
 6 extend the time within which a party must otherwise file
 7 a responsive pleading.

8 (b) The motion shall be supported by affidavits,
 9 declarations, admissions, answers to interrogatories,
 10 depositions, and matters of which judicial notice shall or
 11 may be taken. The supporting papers shall include a
 12 separate statement setting forth plainly and concisely all
 13 material facts which the moving party contends are
 14 undisputed. Each of the material facts stated shall be
 15 followed by a reference to the supporting evidence. The
 16 failure to comply with this requirement of a separate
 17 statement may in the court's discretion constitute a
 18 sufficient ground for denial of the motion.

19 Any opposition to the motion shall be served and filed
 20 not less than 14 days preceding the noticed or continued
 21 date of hearing, unless the court for good cause orders
 22 otherwise. The opposition, where appropriate, shall
 23 consist of affidavits, declarations, admissions, answers to
 24 interrogatories, depositions, and matters of which judicial
 25 notice shall or may be taken. The opposition papers shall
 26 include a separate statement which responds to each of
 27 the material facts contended by the moving party to be
 28 undisputed, indicating whether the opposing party
 29 agrees or disagrees that those facts are undisputed. The
 30 statement also shall set forth plainly and concisely any
 31 other material facts which the opposing party contends
 32 are disputed. Each material fact contended by the
 33 opposing party to be disputed shall be followed by a
 34 reference to the supporting evidence. Failure to comply
 35 with this requirement of a separate statement may
 36 constitute a sufficient ground, in the court's discretion,
 37 for granting the motion.

38 Any reply to the opposition shall be served and filed by
 39 the moving party not less than five days preceding the
 40 noticed or continued date of hearing, unless the court for

1 good cause orders otherwise.

2 Evidentiary objections not made at the hearing shall be

3 deemed waived.
4 Section 1005 and subdivision (a) of Section 1013,
5 extending the time within which a right may be exercised
6 or an act may be done, do not apply to this section.

7 Any incorporation by reference of matter in the court's
8 file shall set forth with specificity the exact matter to
9 which reference is being made and shall not incorporate
10 the entire file.

11 (c) The motion for summary judgment shall be
12 granted if all the papers submitted show that there is no
13 triable issue as to any material fact and that the moving
14 party is entitled to a judgment as a matter of law. In
15 determining whether the papers show that there is no
16 triable issue as to any material fact the court shall
17 consider all of the evidence set forth in the papers, except
18 that to which objections have been made and sustained
19 by the court, and all inferences reasonably deducible
20 from the evidence, except summary judgment shall not
21 be granted by the court based on inferences reasonably
22 deducible from the evidence, if contradicted by other
23 inferences or evidence, which raise a triable issue as to
24 any material fact.

25 (d) Supporting and opposing affidavits or declarations
26 shall be made by any person on personal knowledge, shall
27 set forth admissible evidence, and shall show
28 affirmatively that the affiant is competent to testify to the
29 matters stated therein. Any objections based on the
30 failure to comply with the requirements of this
31 subdivision shall be made at the hearing or shall be
32 deemed waived.

33 (e) If a party is otherwise entitled to a summary
34 judgment pursuant to this section, summary judgment
35 shall not be denied on grounds of credibility or for want
36 of cross-examination of witnesses furnishing affidavits or
37 declarations in support of the summary judgment, except
38 that summary judgment may be denied in the discretion
39 of the court, where the only proof of a material fact
40 offered in support of the judgment is an

1 affidavit or declaration made by an individual who was
2 the sole witness to that fact; or where a material fact is an
3 individual's state of mind, or lack thereof, and that fact is
4 sought to be established solely by the individual's
5 affirmation thereof.

6 (f) If it is contended that one or more causes of action
7 within an action has no merit or that there is no defense
8 thereto, or that there is no merit to an affirmative defense
9 as to any cause of action, or both, or that there is no merit
10 to a claim for damages, as specified in Section 3294 of the
11 Civil Code, or that one or more defendants either ~~owned~~
12 ~~owed~~ or did not owe a duty to the plaintiff or plaintiffs,
13 any party may move for summary adjudication as to that
14 cause or causes of action, that affirmative defense, or that
15 claim for damages, or that issue of duty. A cause of action
16 has no merit if one or more of the elements of the cause
17 of action, even if not separately pleaded, cannot be
18 established. A motion may be made by itself or as an
19 alternative to a motion for summary judgment and shall
20 proceed in all procedural respects as a motion for
21 summary judgment. However, ~~nothing in this section~~
22 ~~authorizes parties to repeat contentions regarding issues~~
23 ~~in motions for summary judgment following adjudication~~
24 ~~in motions for summary adjudication: a party may not~~
25 ~~move for summary judgment based on issues asserted in~~
26 ~~a prior motion for summary adjudication and denied by~~
27 ~~the court, unless that party establishes to the satisfaction~~
28 ~~of the court, newly discovered facts or circumstances~~
29 ~~supporting the issues reasserted in the summary~~
30 ~~judgment motion.~~

31 (g) Upon the denial of a motion for summary
32 judgment, on the ground that there is a triable issue as to
33 one or more material facts, the court shall, by written or
34 oral order, specify one or more material facts raised by
35 the motion as to which the court has determined there
36 exists a triable controversy. This determination shall
37 specifically refer to the evidence proffered in support of
38 and in opposition to the motion which indicates that a
39 triable controversy exists. Upon the grant of a motion for
40 summary judgment, on the ground that there is no triable

1 an appealable judgment as in other cases. Upon entry of
 2 any order pursuant to this section except the entry of
 3 summary judgment, a party may, within 20 days after
 4 service upon him or her of a written notice of entry of the
 5 order, petition an appropriate reviewing court for a
 6 peremptory writ. If the notice is served by mail, the
 7 initial period within which to file the petition shall be
 8 increased by five days if the place of address is within the
 9 State of California, 10 days if the place of address is
 10 outside the State of California but within the United
 11 States, and 20 days if the place of address is outside the
 12 United States. The superior court may, for good cause,
 13 and prior to the expiration of the initial period, extend
 14 the time for one additional period not to exceed 10 days.
 15 (m) Nothing in this section shall be construed to
 16 extend the period for trial provided by Section 1170.5.
 17 (n) Subdivisions (a) and (b) shall not apply to actions
 18 brought pursuant to Chapter 4 (commencing with
 19 Section 1159) of Title 3 of Part 3.

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1 issue of material fact, the court shall, by written or oral
 2 order, specify the reasons for its determination. The
 3 order shall specifically refer to the evidence proffered in
 4 support of, and if applicable in opposition to, the motion
 5 which indicates that no triable issue exists. The court shall
 6 also state its reasons for any other determination. The
 7 court shall record its determination by court reporter or
 8 written order.

9 (h) If it appears from the affidavits submitted in
 10 opposition to a motion for summary judgment or
 11 summary adjudication or both that facts essential to
 12 justify opposition may exist but cannot, for reasons stated,
 13 then be presented, the court shall deny the motion, or
 14 order a continuance to permit affidavits to be obtained or
 15 discovery to be had or may make any other order as may
 16 be just.

17 (i) If the court determines at any time that any of the
 18 affidavits are presented in bad faith or solely for purposes
 19 of delay, the court shall order the party presenting the
 20 affidavits to pay the other party the amount of the
 21 reasonable expenses which the filing of the affidavits
 22 caused the other party to incur. Sanctions shall not be
 23 imposed pursuant to this subdivision except on notice
 24 contained in a party's papers, or on the court's own
 25 noticed motion, and after an opportunity to be heard.

26 (j) Except where a separate judgment may properly
 27 be awarded in the action, no final judgment shall be
 28 entered on a motion for summary judgment prior to the
 29 termination of the action, but the final judgment shall, in
 30 addition to any matters determined in the action, award
 31 judgment as established by the summary proceeding
 32 herein provided for.

33 (k) In actions which arise out of an injury to the person
 34 or to property, when a motion for summary judgment
 35 was granted on the basis that the defendant was without
 36 fault, no other defendant during trial, over plaintiff's
 37 objection, may attempt to attribute fault to or comment
 38 on the absence or involvement of the defendant who was
 39 granted the motion.

40 (l) A summary judgment under this section is



LEGISLATIVE INTENT SERVICE

CHAPTER 1560

An act to amend Section 208 of the Penal Code, relating to kidnapping.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 208 of the Penal Code, as amended by Chapter 55 of the Statutes of 1990, is amended to read:

208. (a) Kidnapping is punishable by imprisonment in the state prison for three, five, or eight years.

(b) If the person kidnapped is under 14 years of age at the time of the commission of the crime, the kidnapping is punishable by imprisonment in the state prison for 5, 8, or 11 years. This subdivision is not applicable to the taking, detaining, or concealing, of a minor child by a biological parent, a natural father, as specified in subdivision (a) of Section 7004 of the Civil Code, an adoptive parent, or a person who has been granted access to the minor child by a court order.

(c) In all cases in which probation is granted, the court shall, except in unusual cases where the interests of justice would best be served by a lesser penalty, require as a condition of the probation that the person be confined in the county jail for 12 months. If the court grants probation without requiring the defendant to be confined in the county jail for 12 months, it shall specify its reason or reasons for imposing a lesser penalty.

(d) If the person is kidnapped with the intent to commit rape, oral copulation, sodomy, or rape by instrument, the kidnapping is punishable by imprisonment in the state prison for 5, 8, or 11 years.

CHAPTER 1561

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

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. It is the intent of this legislation to provide that all objections to the form and substance of the moving and opposing papers shall be first made in the trial court and not on appeal by the parties or by the appellate court and to expressly overrule the rules stated in *Witchell v. De Korne*, 179 Cal. App. 3d 965 and *Zuckerman*



v. Pacific Savings Bank, 187 Cal. App. 3d 1394.

It is also the intent of this legislation to stop the practice of adjudication of facts or adjudication of issues that do not completely dispose of a cause of action or a defense.

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

437c. (a) Any party may 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 thereto. The motion may be made at any time after 60 days have elapsed since the general appearance in the action or proceeding of each party against whom the motion is directed or at such earlier time after the general appearance as the court, with or without notice and upon good cause shown, may direct. Notice of the motion and supporting papers shall be served on all other parties to the action at least 28 days before the time appointed for hearing. However, if the notice is served by mail, the required 28-day period of notice shall be increased by five days if the place of address is within the State of California, 10 days if the place of address is outside the State of California but within the United States, and 20 days if the place of address is outside the United States. The motion shall be heard no later than 30 days before the date of trial, unless the court for good cause orders otherwise. The filing of the motion shall not extend the time within which a party must otherwise file a responsive pleading.

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

Any opposition to the motion shall be served and filed not less than 14 days preceding the noticed or continued date of hearing, unless the court for good cause orders otherwise. The opposition, where appropriate, shall consist of affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. The opposition papers shall include a separate statement which responds to each of the material facts contended by the moving party to be undisputed, indicating whether the opposing party agrees or disagrees that those facts are undisputed. The statement also shall set forth plainly and concisely any other material facts which the opposing party contends are disputed. Each material fact contended by the opposing party to be disputed shall be followed by a reference to the supporting evidence. Failure to comply with this requirement of a separate statement may constitute a sufficient ground, in the court's discretion, for granting the motion.

Any reply to the opposition shall be served and filed by the moving party not less than five days preceding the noticed or continued date of hearing, unless the court for good cause orders otherwise.

Evidentiary objections not made at the hearing shall be deemed waived.

Section 1005 and subdivision (a) of Section 1013, extending the time within which a right may be exercised or an act may be done, do not apply to this section.

Any incorporation by reference of matter in the court's file shall set forth with specificity the exact matter to which reference is being made and shall not incorporate the entire file.

(c) The motion for summary judgment shall be granted 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 the court shall consider all of the evidence set forth in the papers, except that to which objections have been made and sustained by the court, and all inferences reasonably deducible from the evidence, except summary judgment shall not be granted by the court based on inferences reasonably deducible from the evidence, if contradicted by other inferences or evidence, which raise a triable issue as to any material fact.

(d) Supporting and opposing affidavits or declarations shall be made by any person on personal knowledge, shall set forth admissible evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Any objections based on the failure to comply with the requirements of this subdivision shall be made at the hearing or shall be deemed waived.

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

(f) If it is contended that one or more causes of action within an action has no merit or that there is no defense thereto, or that there is no merit to an affirmative defense as to any cause of action, or both, or that there is no merit to a claim for damages, as specified in Section 3294 of the Civil Code, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs, any party may move for summary adjudication as to that cause or causes of action, that affirmative defense, that claim for damages, or that issue of duty. A cause of action has no merit if one or more of the elements of the cause of action, even if not separately pleaded, cannot be established.

A motion may be made by itself or as an alternative to a motion for summary judgment and shall proceed in all procedural respects as a motion for summary judgment. However, a party may not move for summary judgment based on issues asserted in a prior motion for summary adjudication and denied by the court, unless that party establishes to the satisfaction of the court, newly discovered facts or circumstances supporting the issues reasserted in the summary judgment motion.

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

(h) If it appears from the affidavits submitted in opposition to a motion for summary judgment or summary adjudication or both that facts essential to justify opposition may exist but cannot, for reasons stated, then be presented, the court shall deny the motion, or order a continuance to permit affidavits to be obtained or discovery to be had or may make any other order as may be just.

(i) If the court determines at any time that any of the affidavits are presented in bad faith or solely for purposes of delay, the court shall order the party presenting the affidavits to pay the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur. Sanctions shall not be imposed pursuant to this subdivision except on notice contained in a party's papers, or on the court's own noticed motion, and after an opportunity to be heard.

(j) Except where a separate judgment may properly be awarded in the action, no final judgment shall be entered on a motion for summary judgment prior to the termination of the action, but the final judgment shall, in addition to any matters determined in the action, award judgment as established by the summary proceeding herein provided for.

(k) In actions which arise out of an injury to the person or to property, when a motion for summary judgment was granted on the basis that the defendant was without fault, no other defendant during trial, over plaintiff's objection, may attempt to attribute fault to or comment on the absence or involvement of the defendant who was granted the motion.

(l) A summary judgment entered under this section is an appealable judgment as in other cases. Upon entry of any order pursuant to this section except the entry of summary judgment, a party may, within 20 days after service upon him or her of a written notice of entry of the order, petition an appropriate reviewing court for a peremptory writ. If the notice is served by mail, the initial period within which to file the petition shall be increased by five days if the place of address is within the State of California, 10 days if the place of address is outside the State of California but within the United States, and 20 days if the place of address is outside the United States. The superior court may, for good cause, and prior to the expiration of the initial period, extend the time for one additional period not to exceed 10 days.

(m) Nothing in this section shall be construed to extend the period for trial provided by Section 1170.5.

(n) Subdivisions (a) and (b) shall not apply to actions brought pursuant to Chapter 4 (commencing with Section 1159) of Title 3 of Part 3.

CHAPTER 1562

An act to amend Section 12978 of, and to add Section 985.6 to, the Insurance Code, relating to insurance.

[Approved by Governor September 29, 1990. Filed with
Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 985.6 is added to the Insurance Code, to read:

985.6. The costs incurred in investigating and preparing the report required by Section 985.5 shall be an expense of administration within the meaning of paragraph (1) of subdivision (a) of Section 1033.

SEC. 2. Section 12978 of the Insurance Code is amended to read:

12978. Notwithstanding any other provision of law, the commissioner may increase or decrease the fees set forth in this code as necessary to allow the department to meet the appropriation authorized by the annual Budget Act. However, any increase or decrease so made shall be made only in accordance with this section.

Any increase or decrease in the statutory fees made by the department pursuant to this section shall be by a uniform percentage for all fees, rounded to the nearest whole dollar.

A single annual increase or decrease in fees, on a fiscal year basis, may be made by the department at any time during the year provided it is announced by bulletin issued at least 90 days prior to the effective date of that increase or decrease. The bulletin shall be

VOLUME 2
CALIFORNIA LEGISLATURE
AT SACRAMENTO
1989-90 REGULAR SESSION

SENATE FINAL HISTORY

SHOWING ACTION TAKEN IN THIS SESSION ON ALL SENATE BILLS
CONSTITUTIONAL AMENDMENTS, CONCURRENT, JOINT RESOLUTIONS
AND SENATE RESOLUTIONS

CONVENED DECEMBER 5, 1988
ADJOURNED SINE DIE NOVEMBER 30, 1990

DAYS IN SESSION..... 269
CALENDAR DAYS 726

LT. GOVERNOR
President of the Senate

SENATOR DAVID ROBERTI
President pro Tempore

Compiled Under the Direction of
DARRYL R. WHITE
Secretary of the Senate

By
DAVID H. KNEALE, ESQ.
History Clerk



S.B. No. 2594—Robbins.

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

1990

- Mar. 1—Introduced. Read first time. To Com. on RLS. for assignment. To print.
- Mar. 4—From print. May be acted upon on or after April 3.
- Mar. 15—To Com. on JUD.
- Mar. 19—Set for hearing April 3.
- April 2—Set, first hearing. Hearing canceled at the request of author.
- April 26—Set for hearing May 8.
- May 7—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
- May 8—Hearing postponed by committee.
- May 10—Joint Rule 61(b)(6) suspended.
- May 10—Set for hearing May 15.
- May 16—From committee: Do pass. (Ayes 8. Noes 0. Page 5841.)
- May 17—Read second time. To third reading.
- May 24—Read third time. Passed. (Ayes 22. Noes 12. Page 6008.) To Assembly.
- May 25—In Assembly. Read first time. Held at Desk.
- May 31—To Com. on JUD.
- Aug. 6—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
- Aug. 14—From committee: Do pass as amended. To Consent Calendar.
- Aug. 15—Read second time. Amended. To second reading.
- Aug. 16—Read second time. To Consent Calendar.
- Aug. 20—From Consent Calendar to third reading.
- Aug. 22—Read third time. Amended. To third reading.
- Aug. 23—Read third time. Passed. (Ayes 73. Noes 1. Page 9730.) To Senate.
- Aug. 23—In Senate. To unfinished business.
- Aug. 27—Senate concurs in Assembly amendments. (Ayes 23. Noes 1. Page 8017.) To enrollment.
- Sept. 10—Enrolled. To Governor at 1 p.m.
- Sept. 29—Approved by Governor.
- Sept. 30—Chaptered by Secretary of State. Chapter 1561, Statutes of 1990.



SENATE COMMITTEE ON JUDICIARY
Bill Lockyer, Chairman
1989-90 Regular session

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SB 2594 (Robbins)
As amended May 7
Hearing date: May 8, 1990
Code of Civil Procedure
JRP/lhm

SUMMARY JUDGMENT

HISTORY

Source: California Judges Association
Prior Legislation: None
Support: California Trial Lawyers Association
Opposition: California Association of Insurance Companies
(unless amended)

KEY ISSUES

SHOULD MOTIONS FOR SUMMARY ADJUDICATION BE LIMITED TO RESOLVING CAUSES OF ACTION, AFFIRMATIVE DEFENSES AND/OR CLAIMS FOR PUNITIVE DAMAGES?

SHOULD OTHER SPECIFIED CHANGES IN SUMMARY ADJUDICATION PROCEDURES BE MADE?

PURPOSE

1. Scope of motion for summary judgment

Existing law permits a court to grant summary judgment where an action has no merit or where there is no defense to an action. A litigant is permitted to seek summary adjudication of issues as part of, or in lieu of, a motion for summary judgment.



Existing law requires a court to determine whether there exists a material triable controversy as to each particular issue and to specify the evidence which establishes a triable issue of fact. The court is also required to identify those issues which are without substantial controversy.

This bill would instead require a court to determine:

- (a) whether there is a triable issue of fact as to the case as a whole,
 - (b) whether there is a triable issue of fact as to particular causes of action and/or affirmative defenses, and
 - (c) whether there is a triable issue of fact as to punitive damages.
2. Objections to the form and substance of moving and opposing papers

Existing case law permits an objection to the competency of a witness to be raised for the first time on appeal or by the appellate court itself.

This bill would expressly overrule case law and require that evidentiary objections and objections to the form and substance of pleadings are waived unless made at the court hearing on the motion for summary judgment.

3. Incorporation by reference of documents contained in the court file

Existing law permits the entire court file to be incorporated by reference for the purpose of resolving a motion for summary judgment.

The bill would instead provide that any incorporation by reference of matter in the court's file shall set forth with specificity the exact document to which reference is made and shall not incorporate the entire file.

The purpose of this bill is to make the summary judgment procedure more efficient and to reduce the opportunity for abuse of the procedure.

COMMENT

1. Adjudication of causes of action rather than issues

According to the sponsor, it is a waste of court time to attempt to resolve issues if the resolution of those issues will not result in summary adjudication of a cause of action or

(More)



affirmative defense. Since the cause of action must still be tried, much of the same evidence will be reconsidered by the court at the time of trial. This bill would instead require summary adjudication of issues only where an entire cause of action, affirmative defense or claim for punitive damages can be resolved.

The sponsor also states that existing law can be abused by litigant attempts to engage in a paper war by bringing motions to resolve numerous minute issues. The sponsor states that many of these issues could be more efficiently resolved through requests for admission and other discovery procedures.

The sponsor believes that the bill will save court time, reduce the cost of litigation for plaintiffs and defendants, and reduce the opportunity for abuse of the summary judgment procedure.

2. Objections to evidence

The California Court of Appeal has held that objections to the competency of a witness are not waived even if a party fails to make those objections at the hearing. Witchell v. De Korne 179 Cal.App.3d 965 and Zukerman v. Pacific Savings Bank 187 Cal.App.3d 1394.

This bill would re-enact language providing that evidentiary objections not made at the hearing are waived and would specifically provide that objections based on the failure to comply with the requirements of the statute are waived unless made at the hearing.

The bill also contains a statement of legislative intent that the rules stated in the Witchell and Zukerman cases be overturned.

The sponsor believes it is necessary to overturn the above cases to prevent relitigation and trial de novo of summary judgments in appellate court. All evidentiary issues, except those relating to the competency of a witness, are waived unless first raised in the summary judgment hearing. The sponsor believes that this should also be the rule for objections related to witness competency.

3. Incorporation of the file

Currently, an entire court file may be incorporated for the purpose of deciding a motion for summary judgment. This bill requires that only material specifically identified may be so incorporated. According to the sponsor, this prevents relitigation of the motion for summary judgment in appellate court based on a document not considered by the lower court in



granting or denying the motion.

4. Statement of decision

Under existing law a court must state the reasons for its decision and specify the evidence relied upon only where it denies a motion for summary judgment.

The bill would also require that a court, upon granting a motion for summary judgment, to specify the reasons for the decision and the evidence relied upon in making the determination.

The sponsor believes that the above language will provide a more equitable balance between plaintiffs and defendants.

5. Opposition

A major objection to the bill raised by the opposition, the elimination of the ability to resolve punitive damages claims by summary adjudication, has been resolved by the author's amendments.

Opponents also object because they believe the bill would prevent summary adjudication of important issues in situations such as the following:

- (a) Where there is an important issue as to the legal or fiduciary relationship of the plaintiff and one or more defendants.
- (b) Where there are allegations that a defendant owed a special duty of care to the plaintiff.
- (c) Where there is an issue as to the appropriate burden of proof.

Opponents state that the above examples represent question of law that can be disposed of by motion for summary adjudication. Though resolution of any of the issues would not dispose of the entire cause of action, opponents believe it would nonetheless simplify the cause of action and reduce the complexity of the litigation. Opponents state that the bill, as introduced, would increase cost and delay.

Opponents have suggested amendments that would allow resolution of the issues such as those listed above.



SENATE COMMITTEE ON JUDICIARY
Bill Lockyer, Chairman
1989-90 Regular session

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SB 2594 (Robbins)
As amended May 7
Hearing date: May 15, 1990
Code of Civil Procedure
JRP/lhm

SUMMARY JUDGMENT

HISTORY

Source: California Judges Association

Prior Legislation: None

Support: California Trial Lawyers Association

Opposition: California Association of Insurance Companies
(unless amended)

KEY ISSUES

SHOULD MOTIONS FOR SUMMARY ADJUDICATION BE LIMITED TO RESOLVING CAUSES OF ACTION, AFFIRMATIVE DEFENSES AND/OR CLAIMS FOR PUNITIVE DAMAGES?

SHOULD OTHER SPECIFIED CHANGES IN SUMMARY ADJUDICATION PROCEDURES BE MADE?

PURPOSE

1. Scope of motion for summary judgment

Existing law permits a court to grant summary judgment where an action has no merit or where there is no defense to an action. A litigant is permitted to seek summary adjudication of issues as part of, or in lieu of, a motion for summary judgment.

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Existing law requires a court to determine whether there exists a material triable controversy as to each particular issue and to specify the evidence which establishes a triable issue of fact. The court is also required to identify those issues which are without substantial controversy.

This bill would instead require a court to determine:

- (a) whether there is a triable issue of fact as to the case as a whole,
 - (b) whether there is a triable issue of fact as to particular causes of action and/or affirmative defenses, and
 - (c) whether there is a triable issue of fact as to punitive damages.
2. Objections to the form and substance of moving and opposing papers

Existing case law permits an objection to the competency of a witness to be raised for the first time on appeal or by the appellate court itself.

This bill would expressly overrule case law and require that evidentiary objections and objections to the form and substance of pleadings are waived unless made at the court hearing on the motion for summary judgment.

3. Incorporation by reference of documents contained in the court file

Existing law permits the entire court file to be incorporated by reference for the purpose of resolving a motion for summary judgment.

The bill would instead provide that any incorporation by reference of matter in the court's file shall set forth with specificity the exact document to which reference is made and shall not incorporate the entire file.

The purpose of this bill is to make the summary judgment procedure more efficient and to reduce the opportunity for abuse of the procedure.

COMMENT

1. Adjudication of causes of action rather than issues

According to the sponsor, it is a waste of court time to attempt to resolve issues if the resolution of those issues will not result in summary adjudication of a cause of action or

(More)



affirmative defense. Since the cause of action must still be tried, much of the same evidence will be reconsidered by the court at the time of trial. This bill would instead require summary adjudication of issues only where an entire cause of action, affirmative defense or claim for punitive damages can be resolved.

The sponsor also states that existing law can be abused by litigant attempts to engage in a paper war by bringing motions to resolve numerous minute issues. The sponsor states that many of these issues could be more efficiently resolved through requests for admission and other discovery procedures.

The sponsor believes that the bill will save court time, reduce the cost of litigation for plaintiffs and defendants, and reduce the opportunity for abuse of the summary judgment procedure.

2. Objections to evidence

The California Court of Appeal has held that objections to the competency of a witness are not waived even if a party fails to make those objections at the hearing. Witchell v. De Korne 179 Cal.App.3d 965 and Zukerman v. Pacific Savings Bank 187 Cal.App.3d 1394.

This bill would re-enact language providing that evidentiary objections not made at the hearing are waived and would specifically provide that objections based on the failure to comply with the requirements of the statute are waived unless made at the hearing.

The bill also contains a statement of legislative intent that the rules stated in the Witchell and Zukerman cases be overturned.

The sponsor believes it is necessary to overturn the above cases to prevent relitigation and trial de novo of summary judgments in appellate court. All evidentiary issues, except those relating to the competency of a witness, are waived unless first raised in the summary judgment hearing. The sponsor believes that this should also be the rule for objections related to witness competency.

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Currently, an entire court file may be incorporated for the purpose of deciding a motion for summary judgment. This bill requires that only material specifically identified may be so incorporated. According to the sponsor, this prevents relitigation of the motion for summary judgment in appellate court based on a document not considered by the lower court in



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Under existing law a court must state the reasons for its decision and specify the evidence relied upon only where it denies a motion for summary judgment.

The bill would also require that a court, upon granting a motion for summary judgment, to specify the reasons for the decision and the evidence relied upon in making the determination.

The sponsor believes that the above language will provide a more equitable balance between plaintiffs and defendants.

5. Opposition

A major objection to the bill raised by the opposition, the elimination of the ability to resolve punitive damages claims by summary adjudication, has been resolved by the author's amendments.

Opponents also object because they believe the bill would prevent summary adjudication of important issues in situations such as the following:

- (a) Where there is an important issue as to the legal or fiduciary relationship of the plaintiff and one or more defendants.
- (b) Where there are allegations that a defendant owed a special duty of care to the plaintiff.
- (c) Where there is an issue as to the appropriate burden of proof.

Opponents state that the above examples represent question of law that can be disposed of by motion for summary adjudication. Though resolution of any of the issues would not dispose of the entire cause of action, opponents believe it would nonetheless simplify the cause of action and reduce the complexity of the litigation. Opponents state that the bill, as introduced, would increase cost and delay.

Opponents have suggested amendments that would allow resolution of the issues such as those listed above.



SENATE JUDICIARY COMMITTEE
BACKGROUND INFORMATION

SB 2594

Please complete this form and return it to the Senate Judiciary Committee, Room 2187, as soon as possible. Your bill cannot be heard until this form is returned. Your Judiciary consultant is _____ (5-5957).

1. Who on your staff is responsible for this measure?

Jean Hall 5-1046

2. Which agency, organization or individual requested the introduction of this bill?

Name: *Cal. Judges Assn*

Contact Person: *Loren Smith SAETA*

Phone number: *441-5050*

3. Which agencies, organizations, or individuals (outside of the sponsor) have expressed support?

none known

4. Which agencies, organizations or individuals have expressed opposition?

none known

5. If a similar bill has been introduced in a previous session, what was the number and year of its introduction?

none known

6. What problem or deficiency under current law does the bill seek to remedy?

Current law allows summary adjudication of issues at present. Even though an issue may be summarily adjudicated, the cause of action relative to that particular issue may still be heard. This was designed to save some court time, but court time is not saved when the cause of action is still adjudicated.

If you have any further background information or material relating to this measure (letters of support or opposition, reports, opinions, citations, etc.) please attach copies or state where such information is available.

Your cooperation is appreciated.



This bill allows only the entire cause of action (recognizing many causes of action ~~are~~ may arise in one complaint) to be summarily adjudicated if the court finds it proper to do so. Summary adjudication of an entire cause of action, may save court trial time.



CALIFORNIA TRIAL LAWYERS ASSOCIATION

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Executive Director
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Legislative Counsel
Nancy Drabble

Legal Analyst
Will Glennon

Associate Legislative Counsel
Nancy Peverini

May 3, 1990

Senator Alan Robbins
State Capitol, Room 5114
Sacramento, Ca. 95814

RE: SB 2594 (Robbins) SUPPORT

Dear Senator Robbins:

The California Trial Lawyers Association supports SB 2594, which is scheduled to be heard before the Senate Judiciary Committee on May 8, 1990.

SB 2594 would eliminate summary adjudication of issues and replace it with summary adjudication of causes of action.

This change will simplify summary adjudication and make it more efficient. Summary adjudication of issues was originally intended to reduce the cost of litigation by eliminating issues from a case at an early stage, but it rarely serves that purpose. Summary adjudication of issues often does not eliminate a cause of action and therefore saves little time but uses enormous judicial resources. Also, SB 2594 will help correct the abuses of summary adjudication. These motions are often used by the defense to run up more billable hours regardless of merit; the motions are costly to bring and costly to defend.

If you or a member of your staff would like to discuss this issue further, please feel free to contact me or one of our legislative representatives in Sacramento.

Sincerely,



Larry Drivon
President

cc: Senate Judiciary Committee

LEGISLATIVE INTENT SERVICE (800) 666-1917





Association of California Insurance Companies

915 L Street, Suite 1160
Sacramento, CA 95814
(916) 442-4581
FAX # (916) 444-3872

May 3, 1990

The Honorable Alan Robbins
Member of the Senate
State Capitol, Room 5114
Sacramento, CA 95814

RE: SB 2594, As Introduced March 1, 1990 (Robbins)
ACIC POSITION: OPPOSE UNLESS AMENDED

Dear Senator Robbins:

The Association of California Insurance Companies, representing 32 property and casualty insurers doing business in California, opposes your Senate Bill 2594, which is scheduled to be heard in the Senate Judiciary Committee on Tuesday, May 8, 1990, unless it is amended to alleviate our concerns.

This bill would, among other things, eliminate any party's opportunity in civil actions to partially adjudicate issues that, while not disposing of complete causes of action, would nonetheless dispose of pleaded or alleged legal questions that would otherwise complicate and extend preparation for trial. Our members rely on current law to simplify and speed the course of litigation, rather than complicate it. Examples include --

- o Elements of damage alleged (particularly since the passage of Senate Bill 241 two years ago, affecting punitive damages);
- o Allegations that claimant and one or more defendants stood in a particular legal or fiduciary relationship;
- o Allegations that one or more defendants owed a special duty of care to the claimant; and
- o Allegations made that would establish a lower burden of proof for the claimant against one or more defendants.

All of these examples represent questions of law that can be disposed of by motion for summary adjudication. Though resolution of any of them would not dispose of the entire "cause of action," it would nonetheless simplify the cause of action and reduce the complexity of the litigation. This bill, as introduced, would remove any opportunity to do so and, in our opinion, would increase cost and delay. ACIC has been involved in discussions of this measure with its sponsors and other interested parties. Attached are amendments to SB 2594 as introduced that would remove our opposition to the measure; the sponsors are still evaluating them and others that have been offered.

LEGISLATIVE INTENT SERVICE (800) 666-1917

The Honorable Alan Robbins
May 3, 1990
page two

For these reasons, the Association of California Insurance Companies must respectfully oppose Assembly Bill 2594 as introduced, unless it is amended to alleviate our concerns. We will be happy to continue to work with your office, the sponsors and others to attempt to reach some accommodation.

Very truly yours,



Tim Hart
Legislative Counsel

TH:sah

Attachment

cc: Members, Senate Judiciary Committee
Jim Provenza, Counsel

LEGISLATIVE INTENT SERVICE (800) 666-1917

LEGISLATIVE INTENT SERVICE



PROPOSED ACIC AMENDMENTS TO SENATE BILL 2594
As Introduced March 1, 1990

[NOTE: These amendments assume that existing changes found on Page 3, lines 31-33, and Page 4, lines 20-23, are deleted by agreement.]

Amendment 1

Page 2, delete lines 8 through 10.

Amendment 2

Page 5, line 16, after "merit" insert "as pleaded";

Page 5, line 18, after "action," insert:

"or that there is no merit to one or more element of damages being claimed,";

Page 5, line 20, delete "or" and insert ",,";

Page 5, line 20, after "defense" insert:

", or that element of damages"; and

Page 5, line 23, after the period insert:

"For purposes of this paragraph, 'cause of action' as pleaded includes any allegation that:

- (1) Claimant and one or more defendants stood in a particular legal or fiduciary relationship;
- (2) One or more defendants owed a special duty of care to the claimant; or
- (3) Would establish on behalf of the claimant a lower burden of proof in order to impose liability on one or more defendants."

Amendment 4

Page 7, line 7, after the period insert:

"(o) By petition of either party or on its own motion, if it finds that a motion for summary judgment



SENATE JUDICIARY COMMITTEE
BACKGROUND INFORMATION

SB 2594

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Your cooperation is appreciated.

BILL LOCKYER

LIS - 4b

SP - 1b

STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL

COPY

March 21, 1990

Honorable Alan Robbins

S.B. 2594 - Conflict

The above measure, introduced by you, which is now set for hearing in the Senate Judiciary Committee ✓

appears to be in conflict with the following other measure(s):

S.B. 801 - Robbins

ENACTMENT OF THESE MEASURES IN THEIR PRESENT FORM MAY GIVE RISE TO A SERIOUS LEGAL PROBLEM WHICH PROBABLY CAN BE AVOIDED BY APPROPRIATE AMENDMENTS.

WE URGE YOU TO CONSULT OUR OFFICE IN THIS REGARD AT YOUR EARLIEST CONVENIENCE

Very truly yours,
BION M GREGORY
LEGISLATIVE COUNSEL

cc Committee
named above
Each lead author
concerned

LS 07701

LEGISLATIVE INTENT SERVICE (800) 666-1917





Association of
California
Insurance
Companies

915 L Street, Suite 1160
Sacramento, CA 95814
(916) 442-4581
FAX # (916) 444-3872

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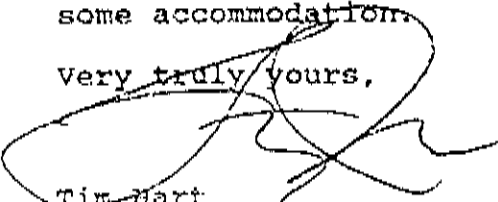
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Legislative Counsel

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Attachment

cc: Members, Senate Judiciary Committee
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LEGISLATIVE INTENT SERVICE



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Amendment 4 (cont'd.)

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CALIFORNIA TRIAL LAWYERS ASSOCIATION

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May 3, 1990

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RE: SB 2594 (Robbins) SUPPORT

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SB 2594 would eliminate summary adjudication of issues and replace it with summary adjudication of causes of action.

This change will simplify summary adjudication and make it more efficient. Summary adjudication of issues was originally intended to reduce the cost of litigation by eliminating issues from a case at an early stage, but it rarely serves that purpose. Summary adjudication of issues often does not eliminate a cause of action and therefore saves little time but uses enormous judicial resources. Also, SB 2594 will help correct the abuses of summary adjudication. These motions are often used by the defense to run up more billable hours regardless of merit; the motions are costly to bring and costly to defend.

If you or a member of your staff would like to discuss this issue further, please feel free to contact me or one of our legislative representatives in Sacramento.

Sincerely,



Larry Drivon
President

cc: Senate Judiciary Committee

LEGISLATIVE INTENT SERVICE (800) 666-1917



SENATE COMMITTEE ON JUDICIARY
Bill Lockyer, Chairman
1989-90 Regular session

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SB 2594 (Robbins)
As amended May 7
Hearing date: May 15, 1990
Code of Civil Procedure
JPP/lhm

SUMMARY JUDGMENT

HISTORY

Source: California Judges Association

Prior Legislation: None

Support: California Trial Lawyers Association

Opposition: California Association of Insurance Companies
(unless amended)

KEY ISSUES

SHOULD MOTIONS FOR SUMMARY ADJUDICATION BE LIMITED TO RESOLVING CAUSES OF ACTION, AFFIRMATIVE DEFENSES AND/OR CLAIMS FOR PUNITIVE DAMAGES?

SHOULD OTHER SPECIFIED CHANGES IN SUMMARY ADJUDICATION PROCEDURES BE MADE?

PURPOSE

1. Scope of motion for summary judgment

Existing law permits a court to grant summary judgment where an action has no merit or where there is no defense to an action. A litigant is permitted to seek summary adjudication of issues as part of, or in lieu of, a motion for summary judgment.



Existing law requires a court to determine whether there exists a material triable controversy as to each particular issue and to specify the evidence which establishes a triable issue of fact. The court is also required to identify those issues which are without substantial controversy.

This bill would instead require a court to determine:

- (a) whether there is a triable issue of fact as to the case as a whole,
- (b) whether there is a triable issue of fact as to particular causes of action and/or affirmative defenses, and
- (c) whether there is a triable issue of fact as to punitive damages.

2. Objections to the form and substance of moving and opposing papers

Existing case law permits an objection to the competency of a witness to be raised for the first time on appeal or by the appellate court itself.

This bill would expressly overrule case law and require that evidentiary objections and objections to the form and substance of pleadings are waived unless made at the court hearing on the motion for summary judgment.

3. Incorporation by reference of documents contained in the court file

Existing law permits the entire court file to be incorporated by reference for the purpose of resolving a motion for summary judgment.

The bill would instead provide that any incorporation by reference of matter in the court's file shall set forth with specificity the exact document to which reference is made and shall not incorporate the entire file.

The purpose of this bill is to make the summary judgment procedure more efficient and to reduce the opportunity for abuse of the procedure.

COMMENT

1. Adjudication of causes of action rather than issues

According to the sponsor, it is a waste of court time to attempt to resolve issues if the resolution of those issues will not result in summary adjudication of a cause of action or

affirmative defense. Since the cause of action must still be tried, much of the same evidence will be reconsidered by the court at the time of trial. This bill would instead require summary adjudication of issues only where an entire cause of action, affirmative defense or claim for punitive damages can be resolved.

The sponsor also states that existing law can be abused by litigant attempts to engage in a paper war by bringing motions to resolve numerous minute issues. The sponsor states that many of these issues could be more efficiently resolved through requests for admission and other discovery procedures.

The sponsor believes that the bill will save court time, reduce the cost of litigation for plaintiffs and defendants, and reduce the opportunity for abuse of the summary judgment procedure.

2. Objections to evidence

The California Court of Appeal has held that objections to the competency of a witness are not waived even if a party fails to make those objections at the hearing. Witchell v. De Kerne 179 Cal.App.3d 965 and Zukerman v. Pacific Savings Bank 187 Cal.App.3d 1394.

This bill would re-enact language providing that evidentiary objections not made at the hearing are waived and would specifically provide that objections based on the failure to comply with the requirements of the statute are waived unless made at the hearing.

The bill also contains a statement of legislative intent that the rules stated in the Witchell and Zukerman cases be overturned.

The sponsor believes it is necessary to overturn the above cases to prevent relitigation and trial de novo of summary judgments in appellate court. All evidentiary issues, except those relating to the competency of a witness, are waived unless first raised in the summary judgment hearing. The sponsor believes that this should also be the rule for objections related to witness competency.

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Currently, an entire court file may be incorporated for the purpose of deciding a motion for summary judgment. This bill requires that only material specifically identified may be so incorporated. According to the sponsor, this prevents relitigation of the motion for summary judgment in appellate court based on a document not considered by the lower court in

granting or denying the motion.

4. Statement of decision

Under existing law a court must state the reasons for its decision and specify the evidence relied upon only where it denies a motion for summary judgment.

The bill would also require that a court, upon granting a motion for summary judgment, to specify the reasons for the decision and the evidence relied upon in making the determination.

The sponsor believes that the above language will provide a more equitable balance between plaintiffs and defendants.

5. Opposition

A major objection to the bill raised by the opposition, the elimination of the ability to resolve punitive damages claims by summary adjudication, has been resolved by the author's amendments.

Opponents also object because they believe the bill would prevent summary adjudication of important issues in situations such as the following:

- (a) Where there is an important issue as to the legal or fiduciary relationship of the plaintiff and one or more defendants.
- (b) Where there are allegations that a defendant owed a special duty of care to the plaintiff.
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Opponents state that the above examples represent question of law that can be disposed of by motion for summary adjudication. Though resolution of any of the issues would not dispose of the entire cause of action, opponents believe it would nonetheless simplify the cause of action and reduce the complexity of the litigation. Opponents state that the bill, as introduced, would increase cost and delay.

Opponents have suggested amendments that would allow resolution of the issues such as those listed above.



Amendment 4 (cont'd.)

or summary adjudication made or opposed under this section is frivolous the trial court may order the party on whose behalf the motion or opposition was filed, the party's counsel, or both, to pay any reasonable expenses incurred by an opposing party, including attorney's fees. For purposes of this section, 'frivolous' means (1) totally and completely without merit or (2) for the sole purpose of causing delay."

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sb2594am.tjh



THIRD READING

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1100 J Street, Suite 120 445-6614	Bill No.	SB 2594
	Author:	Robbins (D)
	Amended:	5/7/90
	Vote Required:	Majority

Committee Votes:

Senate Floor Vote:

COMMITTEE: JUDICIARY		
BILL NO.: SB 2594		
DATE OF HEARING: 5-15-90		
SENATORS:	AYE	NO
Doolittle		
Keene	✓	
Marks	✓	
Petris	✓	
Presley	✓	
Roberti	✓	
Royce	✓	
Torres	✓	
Watson	✓	
Davis (VC)	✓	
Lockyer (Ch)	✓	
TOTAL:	8	0

Assembly Floor Vote:

SUBJECT: Civil procedure: summary judgment and summary adjudication

SOURCE: California Judges Association

DIGEST: This bill provides that motions for summary adjudication be limited to resolving causes of action, affirmative defenses and/or claims for punitive damages.

This bill also makes other specified changes in summary adjudication procedures.

ANALYSIS: Existing law permits a court to grant summary judgment where an action has no merit or where there is no defense to an action. A litigant is permitted to see summary adjudication of issues as part of, or in lieu of, a motion for summary judgment.

Existing law requires a court to determine whether there exists a material triable controversy as to each particular issue and to specify the evidence which establishes a triable issue of fact. The court is also required to identify those issues which are without substantial controversy.

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1. whether there is a triable issue of fact as to the case as a whole,
2. whether there is a triable issue of fact as to particular causes of action and/or affirmative defenses, and

CONTINUED

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The purpose of this bill is to make the summary judgment procedure more efficient and to reduce the opportunity for abuse of the procedure.

FISCAL EFFECT: Appropriation: No Fiscal Committee: No Local: No

SUPPORT: (Verified 5/17/90)

California Judges Association (source)
California Trial Lawyers Association

OPPOSITION: (Verified 5/17/90)

California Association of Insurance Companies

ARGUMENTS IN SUPPORT: According to the sponsor, it is a waste of court time to attempt to resolve issues if the resolution of those issues will not result in summary adjudication of a cause of action or affirmative defense. Since the cause of action must still be tried, much of the same evidence will be reconsidered by the court at the time of trial. This bill would instead require summary adjudication of issues only where an entire cause of action, affirmative defense or claim for punitive damages can be resolved.

The sponsor also states that existing law can be abused by litigant attempts to engage in a paper war by bringing motions to resolve numerous minute issues. The sponsor states that many of these issues could be more efficiently resolved through requests for admission and other discovery procedures.

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1. Where there is an important issue as to the legal or fiduciary relationship of the plaintiff and one or more defendants.



2. Where there are allegations that a defendant owed a special duty of care to the plaintiff.
3. Where there is an issue as to the appropriate burden of proof.

Opponents state that the above examples represent question of law that can be disposed of by motion for summary adjudication. Though resolution of any of the issues would not dispose of the entire cause of action, opponents believe it would nonetheless simplify the cause of action and reduce the complexity of the litigation. Opponents state that the bill, as introduced, would increase cost and delay.

RJG:lm 5/17/90 Senate Floor Analyses



UNFINISHED BUSINESS

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1100 J Street, Suite 120 445-6614	Bill No.	SB 2594
	Author:	Robbins (D)
	Amended:	8/22/90
	Vote Required:	Majority

Committee Votes:

Senate Floor Vote: p. 6008, 5/24/90

COMMITTEE: JUDICIARY		
BILL NO.:	SB 2594	
DATE OF HEARING:	5-15-90	
SENATORS:	AYE	NO
Doolittle		
Keene		
Marks		
Petris		
Presley		
Roberti		
Royce		
Torres		
Watson		
Davis (VC)		
Lockyer (Ch)		
TOTAL:	8	0

Senate Bill 2594—An act to amend Section 437c of the Code of Civil Procedure, relating to civil procedure.

Bill read third time and presented by Senator Robbins.

Roll Call

The roll was called and the bill was passed by the following vote:

AYES (22)—Senators Alquist, Ayala, Boatwright, Davis, Dills, Garamendi, Cecil Green, Leroy Greene, Hart, Keene, Kopp, Lockyer, Marks, McCorquodale, Mello, Petris, Presley, Robbins, Roberti, Rosenthal, Torres, and Watson.

NOES (12)—Senators Beverly, Craven, Doolittle, Hill, Leonard, Maddy, Morgan, Nielsen, Rogers, Royce, Russell, and Seymour.

Bill ordered transmitted to the Assembly.

Assembly Floor Vote: 73-1, p. 9730, 8/23/90

SUBJECT: Civil procedure: summary judgment and summary adjudication

SOURCE: California Judges Association

DIGEST: This bill provides that motions for summary adjudication be limited to resolving causes of action, affirmative defenses and/or claims for punitive damages.

This bill also makes other specified changes in summary adjudication procedures.

Assembly Amendments (1) specify when a cause of action has no merit, and **(2)** specify when a party may not move for a summary judgement.

ANALYSIS: Existing law permits a court to grant summary judgment where an action has no merit or where there is no defense to an action. A litigant is permitted to seek summary adjudication of issues as part of, or in lieu of, a motion for summary judgment.

Existing law requires a court to determine whether there exists a material triable controversy as to each particular issue and to specify the evidence which establishes a triable issue of fact. The court is also required to identify those issues which are without substantial controversy.

This bill would instead require a court to determine:

- whether there is a triable issue of fact as to the case as a whole,

CONTINUED

2. whether there is a triable issue of fact as to particular causes of action and/or affirmative defenses, and
3. whether there is a triable issue of fact as to punitive damages.

The bill specifies that a cause of action has no merit if one or more of the elements cannot be established.

Existing case law permits an objection to the competency of a witness to be raised for the first time on appeal or by the appellate court itself.

This bill would expressly overrule case law and require that evidentiary objections and objections to the form and substance of pleadings are waived unless made at the court hearing on the motion for summary judgment.

Existing law permits the entire court file to be incorporated by reference for the purpose of resolving a motion for summary judgment.

The bill would instead provide that any incorporation by reference of matter in the court's file shall set forth with specificity the exact document to which reference is made and shall not incorporate the entire file.

This bill provides that a party may not move for summary judgment based on issues asserted in a prior motion for summary adjudication and denied by the court, unless that party establishes to the satisfaction of the court, newly discovered facts or circumstances supporting the issues reasserted in the summary judgment motion.

The purpose of this bill is to make the summary judgment procedure more efficient and to reduce the opportunity for abuse of the procedure.

FISCAL EFFECT: Appropriation: No Fiscal Committee: No Local: No

SUPPORT: (Unable to reverify support and opposition due to time limitation.)

California Judges Association (source)
California Trial Lawyers Association

ARGUMENTS IN SUPPORT: According to the sponsor, it is a waste of court time to attempt to resolve issues if the resolution of those issues will not result in summary adjudication of a cause of action or affirmative defense. Since the cause of action must still be tried, much of the same evidence will be reconsidered by the court at the time of trial. This bill would instead require summary adjudication of issues only where an entire cause of action, affirmative defense or claim for punitive damages can be resolved.

The sponsor also states that existing law can be abused by litigant attempts to engage in a paper war by bringing motions to resolve numerous minute issues. The sponsor states that many of these issues could be more efficiently resolved through requests for admission and other discovery procedures.

The sponsor believes that the bill will save court time, reduce the cost of litigation for plaintiffs and defendants, and reduce the opportunity for abuse of the summary judgment procedure.

CONTINUED

ASSEMBLY FLOOR VOTE:

SENATE BILL NO. 2594 (Robbins)—An act to amend Section 437c of the Code of Civil Procedure, relating to civil procedure:

Bill read third time, and presented by Assembly Member Friedman.

Bill passed by the following vote:

AYES—73

Allen	Epple	Katz	Pringle
Areias	Farr	Kelley	Quackenbush
Buder	Felando	Klehs	Roos
Baker	Ferguson	La Follette	Roybal-Allard
Bane	Filante	Lancaster	Sher
Bates	Floyd	Lempert	Speier
Bentley	Frazee	Leslie	Statham
Burton	Friedman	Lewis	Tanner
Campbell	Frizzelle	Margolin	Tucker
Cannella	Hunnigan	Marston	Vasconcellos
Chacon	Hansen	McClintock	Waters, Maxine
Chandler	Harris	Mojonnier	Waters, Norman
Clute	Harvey	Moore	Woodruff
Connelly	Hughes	Mountjoy	Wright
Cortese	Hunter	Murray	Wyman
Costa	Isenberg	Nolan	Mr. Speaker
Eastin	Johnson	O'Connell	
Eaves	Johnston	Peace	
Elder	Jones	Polanco	

NOES—1

Hayden

Bill ordered transmitted to the Senate.

RJG:lm 8/23/90 Senate Floor Analyses



THIRD READING

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1100 J Street, Suite 120 445-6614	Bill No.	SB 2594
	Author:	Robbins (D)
	Amended:	5/7/90
	Vote Required:	Majority

Committee Votes:

Senate Floor Vote:

COMMITTEE: JUDICIARY		
BILL NO.:	SB 2594	
DATE OF HEARING:	5-15-90	
SENATORS:	AYE	NO
Doolittle		
Keene	✓	
Marks	✓	
Petris	✓	
Presley	✓	
Roberti	✓	
Royce		
Torres	✓	
Watson	✓	
Davis (VC)	✓	
Lockyer (Ch)	✓	
TOTAL:	8	0

Assembly Floor Vote:

SUBJECT: Civil procedure: summary judgment and summary adjudication

SOURCE: California Judges Association

DIGEST: This bill provides that motions for summary adjudication be limited to resolving causes of action, affirmative defenses and/or claims for punitive damages.

This bill also makes other specified changes in summary adjudication procedures.

ANALYSIS: Existing law permits a court to grant summary judgment where an action has no merit or where there is no defense to an action. A litigant is permitted to seek summary adjudication of issues as part of, or in lieu of, a motion for summary judgment.

Existing law requires a court to determine whether there exists a material triable controversy as to each particular issue and to specify the evidence which establishes a triable issue of fact. The court is also required to identify those issues which are without substantial controversy.

This bill would instead require a court to determine:

1. whether there is a triable issue of fact as to the case as a whole,
2. whether there is a triable issue of fact as to particular causes of action and/or affirmative defenses, and

CONTI

SFA - 4

3. whether there is a triable issue of fact as to punitive damages.

Existing case law permits an objection to the competency of a witness to be raised for the first time on appeal or by the appellate court itself.

This bill would expressly overrule case law and require that evidentiary objections and objections to the form and substance of pleadings are waived unless made at the court hearing on the motion for summary judgment.

Existing law permits the entire court file to be incorporated by reference for the purpose of resolving a motion for summary judgment.

The bill would instead provide that any incorporation by reference of matter in the court's file shall set forth with specificity the exact document to which reference is made and shall not incorporate the entire file.

The purpose of this bill is to make the summary judgment procedure more efficient and to reduce the opportunity for abuse of the procedure.

FISCAL EFFECT: Appropriation: No Fiscal Committee: No Local: No

SUPPORT: (Verified 5/17/90)

California Judges Association (source)
California Trial Lawyers Association

OPPOSITION: (Verified 5/17/90)

California Association of Insurance Companies

ARGUMENTS IN SUPPORT: According to the sponsor, it is a waste of court time to attempt to resolve issues if the resolution of those issues will not result in summary adjudication of a cause of action or affirmative defense. Since the cause of action must still be tried, much of the same evidence will be reconsidered by the court at the time of trial. This bill would instead require summary adjudication of issues only where an entire cause of action, affirmative defense or claim for punitive damages can be resolved.

The sponsor also states that existing law can be abused by litigant attempts to engage in a paper war by bringing motions to resolve numerous minute issues. The sponsor states that many of these issues could be more efficiently resolved through requests for admission and other discovery procedures.

The sponsor believes that the bill will save court time, reduce the cost of litigation for plaintiffs and defendants, and reduce the opportunity for abuse of the summary judgment procedure.

ARGUMENTS IN OPPOSITION: Opponents also object because they believe the bill would prevent summary adjudication of important issues in situations such as the following:

1. Where there is an important issue as to the legal or fiduciary relationship of the plaintiff and one or more defendants.

CONTINUED

2. Where there are allegations that a defendant owed a special duty of care to the plaintiff.
3. Where there is an issue as to the appropriate burden of proof.

Opponents state that the above examples represent question of law that can be disposed of by motion for summary adjudication. Though resolution of any of the issues would not dispose of the entire cause of action, opponents believe it would nonetheless simplify the cause of action and reduce the complexity of the litigation. Opponents state that the bill, as introduced, would increase cost and delay.

RJG:lm 5/17/90 Senate Floor Analyses



Date of Hearing: August 8, 1990

ASSEMBLY COMMITTEE ON JUDICIARY
Phillip Isenberg, Chair

SB 2594 (Robbins) - As Amended: August 6, 1990

PRIOR ACTION

Sen. Com. on JUD. 8-0

Sen. Floor 22-12

SUBJECT: This bill revises the laws relating to summary judgments and summary adjudication.

BACKGROUND

A party to an action may move for summary judgment by contending that the action has no merit or that there is no defense thereto. A motion for summary judgment must be supported or opposed by admissible evidence (i.e. affidavits, declarations, admissions, answers to interrogatories, depositions and matters of which judicial notice may be taken.) The motion shall be granted if the court finds that there is no triable issue as to any material fact. If an issue of fact is presented the court must permit trial thereof. The purpose of the summary procedure is to provide a method for prompt disposition of actions in which there is no triable, material issue of fact on which evidence shall be taken. The motion is not intended to test the sufficiency of the pleadings, but rather to determine whether the issues apparently raised are merely the result of sham or adept pleading.

Generally the granting of a motion for summary judgment disposes of the whole case (although in multiple party litigation, summary judgment may be granted as to one party, leaving the others to litigate. Even if the court determines that there are some triable issues in the case as a whole, it may find that certain other issues "are without substantial controversy" and grant summary adjudication as to those issues. A decision that certain issues are without substantial controversy does not end the action, but it does reduce the scope of trial by eliminating the need to prove or disprove those issues at trial. The court cannot summarily adjudicate issues if it is presented only with a motion for summary judgment. When the moving party wants the court to adjudicate issues a motion for summary adjudication of issues must be made. At trial any issues which have been summarily adjudicated are deemed established and the trial proceeds on the remaining issues.

DIGEST

Existing law:

- 1) Permits a court to grant summary judgment where an action has no merit or

- continued -



where there is no defense to an action. A party may move for summary adjudication of issues as part of, or in lieu of, a motion for summary judgment.

- 2) Requires a court to determine whether a material triable controversy exists as to each particular issue and to specify the evidence which establishes a triable issue of fact. The court is also required to identify those issues which are without substantial controversy.
- 3) Permits in case law, an objection to the competency of a witness to be raised for the first time on appeal or by the appellate court itself.
- 4) Permits the entire court file to be incorporated by reference for the purpose of resolving a motion for summary judgment.

This bill:

- 1) Requires a court to determine:
 - a) Whether there is a triable issue of fact as to the case as a whole.
 - b) Whether there is a triable issue of fact as to particular causes of action and/or affirmative defenses.
 - c) Whether there is a triable issue of fact as to punitive damages.
- 2) Abrogates case law by requiring that evidentiary objections and objections to the form and substance of pleadings are waived unless made at the court hearing on the motion for summary judgment.
- 3) Provides that any incorporation by reference of matter in the court's file shall set forth with specificity the exact document to which reference is made and shall not incorporate the entire file.

FISCAL EFFECT

No significant fiscal impact anticipated. This bill will not be referred to the Committee on Ways and Means.

COMMENTS

- 1) Sponsor's Statement. The California Judges Association (CJA) is the source of this bill. According to CJA, it is a waste of court time to attempt to resolve issues if the resolution of those issues will not result in summary adjudication of a cause of action or affirmative defense. Since the cause of action must still be tried, much of the same evidence will be reconsidered by the court at the time of trial. This bill would instead require summary adjudication of issues only where an entire cause of action, affirmative defense or claim for punitive damages can be resolved.

- continued -



CJA also states that existing law can be abused by litigant attempts to engage in a paper war by bringing motions to resolve numerous minute issues. The sponsor states that many of these issues could be more efficiently resolved through requests for admission and other discovery procedures.

CJA states that the bill will save court time, reduce the cost of litigation for plaintiffs and defendants, and reduce the opportunity for abuse of the summary judgment procedure.

- 2) The California Court of Appeal has held that objections to the competency of a witness are not waived even if a party fails to make those objections at the hearing. Witchell v. De Korne 179 Cal.App.3d 965 and Zukerman v. Pacific Savings Bank 179 Cal.App.3d 1394.

This bill would re-enact language providing that evidentiary objections not made at the hearing are waived and would specifically provide that objections based on the failure to comply with the requirements of the statute are waived unless made at the hearing.

The bill also contains a statement of legislative intent that the rules stated in the Witchell and Zukerman cases be overturned.

CJA states that it is necessary to overturn the above cases to prevent relitigation and trial de novo of summary judgments in appellate court. All evidentiary issues, except those relating to the competency of a witness, are waived unless first raised in the summary judgment hearing. The sponsor believes that this should also be the rule for objections related to witness competency.

- 3) Currently, an entire court file may be incorporated for the purpose of deciding a motion for summary judgment. This bill requires that only material specifically identified may be so incorporated. According to the sponsor, this prevents relitigation of the motion for summary judgment in appellate court based on a document not considered by the lower court in granting or denying the motion.

SUPPORT

California Judges Association (source)
California Trial Lawyers Association

OPPOSITION

Unknown



Date of Hearing: August 8, 1990

ASSEMBLY COMMITTEE ON JUDICIARY
Phillip Isenberg, Chair

SB 2594 (Robbins) - As Amended: August 15, 1990

PRIOR ACTION

Sen. Com. on JUD. 8-0

Sen. Floor 22-12

SUBJECT: This bill revises the laws relating to summary judgments and summary adjudication.

BACKGROUND

A party to an action may move for summary judgment by contending that the action has no merit or that there is no defense thereto. A motion for summary judgment must be supported or opposed by admissible evidence (i.e. affidavits, declarations, admissions, answers to interrogatories, depositions and matters of which judicial notice may be taken.) The motion shall be granted if the court finds that there is no triable issue as to any material fact. If an issue of fact is presented the court must permit trial thereof. The purpose of the summary procedure is to provide a method for prompt disposition of actions in which there is no triable, material issue of fact on which evidence shall be taken. The motion is not intended to test the sufficiency of the pleadings, but rather to determine whether the issues apparently raised are merely the result of sham or adept pleading.

Generally the granting of a motion for summary judgment disposes of the whole case (although in multiple party litigation, summary judgment may be granted as to one party, leaving the others to litigate.) Even if the court determines that there are some triable issues in the case as a whole, it may find that certain other issues "are without substantial controversy" and grant summary adjudication as to those issues. A decision that certain issues are without substantial controversy does not end the action, but it does reduce the scope of trial by eliminating the need to prove or disprove those issues at trial. The court cannot summarily adjudicate issues if it is presented only with a motion for summary judgment. When the moving party wants the court to adjudicate issues a motion for summary adjudication of issues must be made. At trial any issues which have been summarily adjudicated are deemed established and the trial proceeds on the remaining issues.

DIGEST

Existing law:

- 1) Permits a court to grant summary judgment where an action has no merit or

- continued -



where there is no defense to an action. A party may move for summary adjudication of issues as part of, or in lieu of, a motion for summary judgment.

- 2) Requires a court to determine whether a material triable controversy exists as to each particular issue and to specify the evidence which establishes a triable issue of fact. The court is also required to identify those issues which are without substantial controversy.
- 3) Permits in case law, an objection to the competency of a witness to be raised for the first time on appeal or by the appellate court itself.
- 4) Permits the entire court file to be incorporated by reference for the purpose of resolving a motion for summary judgment.

This bill:

- 1) Requires a court to determine:
 - a) Whether there is a triable issue of fact as to the case as a whole.
 - b) Whether there is a triable issue of fact as to particular causes of action and/or affirmative defenses.
 - c) Whether there is a triable issue of fact as to punitive damages.
- 2) Specifies that a cause of action has no merit if one or more of the elements cannot be established.
- 3) Abrogates case law by requiring that evidentiary objections and objections to the form and substance of pleadings are waived unless made at the court hearing on the motion for summary judgment.
- 4) Provides that any incorporation by reference of matter in the court's file shall set forth with specificity the exact document to which reference is made and shall not incorporate the entire file.

FISCAL EFFECT

No significant fiscal impact anticipated. This bill will not be referred to the Committee on Ways and Means.

COMMENTS

- 1) Sponsor's Statement. The California Judges Association (CJA) is the source of this bill. According to CJA, it is a waste of court time to attempt to resolve issues if the resolution of those issues will not result in summary adjudication of a cause of action or affirmative defense. Since the cause of action must still be tried, much of the same evidence will be reconsidered by the court at the time of trial. This

- continued -



bill would instead require summary adjudication of issues only where an entire cause of action, affirmative defense or claim for punitive damages can be resolved.

CJA also states that existing law can be abused by litigant attempts to engage in a paper war by bringing motions to resolve numerous minute issues. The sponsor states that many of these issues could be more efficiently resolved through requests for admission and other discovery procedures.

CJA states that the bill will save court time, reduce the cost of litigation for plaintiffs and defendants, and reduce the opportunity for abuse of the summary judgment procedure.

- 2) The California Court of Appeal has held that objections to the competency of a witness are not waived even if a party fails to make those objections at the hearing. Witchell v. De Korne 179 Cal.App.3d 965 and Zukerman v. Pacific Savings Bank 179 Cal.App.3d 1394.

This bill would re-enact language providing that evidentiary objections not made at the hearing are waived and would specifically provide that objections based on the failure to comply with the requirements of the statute are waived unless made at the hearing.

The bill also contains a statement of legislative intent that the rules stated in the Witchell and Zukerman cases be overturned.

CJA states that it is necessary to overturn the above cases to prevent relitigation and trial de novo of summary judgments in appellate court. All evidentiary issues, except those relating to the competency of a witness, are waived unless first raised in the summary judgment hearing. The sponsor believes that this should also be the rule for objections related to witness competency.

- 3) Currently, an entire court file may be incorporated for the purpose of deciding a motion for summary judgment. This bill requires that only material specifically identified may be so incorporated. According to the sponsor, this prevents relitigation of the motion for summary judgment in appellate court based on a document not considered by the lower court in granting or denying the motion.

SUPPORT

California Judges Association (source)
California Trial Lawyers Association

OPPOSITION

Unknown





Association of California Insurance Companies

915 L Street, Suite 1160
Sacramento, CA 95814
(916) 442-4581
FAX # (916) 444-3872

May 3, 1990

The Honorable Alan Robbins
Member of the Senate
State Capitol, Room 5114
Sacramento, CA 95814

RE: SB 2594, As Introduced March 1, 1990 (Robbins)
ACIC POSITION: OPPOSE UNLESS AMENDED

Dear Senator Robbins:

The Association of California Insurance Companies, representing 32 property and casualty insurers doing business in California, opposes your Senate Bill 2594, which is scheduled to be heard in the Senate Judiciary Committee on Tuesday, May 8, 1990, unless it is amended to alleviate our concerns.

This bill would, among other things, eliminate any party's opportunity in civil actions to partially adjudicate issues that, while not disposing of complete causes of action, would nonetheless dispose of pleaded or alleged legal questions that would otherwise complicate and extend preparation for trial. Our members rely on current law to simplify and speed the course of litigation, rather than complicate it. Examples include --

- o Elements of damage alleged (particularly since the passage of Senate Bill 241 two years ago, affecting punitive damages);
- o Allegations that claimant and one or more defendants stood in a particular legal or fiduciary relationship;
- o Allegations that one or more defendants owed a special duty of care to the claimant; and
- o Allegations made that would establish a lower burden of proof for the claimant against one or more defendants.

All of these examples represent questions of law that can be disposed of by motion for summary adjudication. Though resolution of any of them would not dispose of the entire "cause of action," it would nonetheless simplify the cause of action and reduce the complexity of the litigation. This bill, as introduced, would remove any opportunity to do so and, in our opinion, would increase cost and delay. ACIC has been involved in discussions of this measure with its sponsors and other interested parties. Attached are amendments to SB 2594 as introduced that would remove our opposition to the measure; the sponsors are still evaluating them and others that have been offered.

LEGISLATIVE INTENT SERVICE (800) 666-1917



The Honorable Alan Robbins
May 3, 1990
page two

For these reasons, the Association of California Insurance Companies must respectfully oppose Assembly Bill 2594 as introduced, unless it is amended to alleviate our concerns. We will be happy to continue to work with your office, the sponsors and others to attempt to reach some accommodation.

Very truly yours,



Tim Hart
Legislative Counsel

TH:sah

Attachment

cc: Members, Senate Judiciary Committee
Jim Provenza, Counsel





THE STATE BAR
OF CALIFORNIA

OFFICE OF GOVERNMENTAL AFFAIRS

LARRY DOYLE, Director

915 L STREET, SUITE 1260, SACRAMENTO, CALIFORNIA 95814

TELEPHONE: (916) 444-2762 FAX: (916) 443-0562

July 21, 1990

The Honorable Alan Robbins
Senator, 20th District
State Capitol, Room 5114
Sacramento, CA 95814

SB 2594 -- OPPOSE UNLESS AMENDED

Dear Senator Robbins,

The Board of Governors of the State Bar of California regrets to oppose your Senate Bill 2594, unless it is amended to reinstate the provisions permitting motions for summary adjudication of issues (CCP Section 437c(f)).

The Board of Governors took this position by unanimous vote at its July 21, 1990, meeting, upon recommendation of the State Bar's Committee on the Administration of Justice, the Committee on Rules & Procedures of Court, and the Executive Committee of the Litigation Section. In the opinion of the board, and of the three committees and sections mentioned, motions for summary adjudication of issues are valuable and should be permitted because they can streamline and simplify litigation, and because they can aid settlement by permitting a more accurate assessment of the merits of a case.

Full reports from the State Bar committees and sections mentioned are attached for your consideration.

If you or your staff would like to discuss this issue further, please contact David Long, Director of the State Bar's Office of Research, at (415) 561-8373. Thank you.

Best Regards,

LARRY DOYLE
Director, Office of
Governmental Affairs

Attachments

cc: Chair and Counsel, Assembly Committee on Judiciary
Chuck Vogel, President-elect, State Bar of California
David Long, Director of Research
Patricia M. Sayre, Committee on Rules & Procedures of Court
Monroe Baer, Committee on the Administration of Justice
Helen Sweeny Beardsworth, Litigation Section

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THE COMMITTEE ON ADMINISTRATION OF JUSTICE
THE STATE BAR OF CALIFORNIA

555 FRANKLIN STREET
SAN FRANCISCO, CA 94102-4400
(415) 561-8277

BILL REPORT

DATE: June 18, 1990

TO: Larry D. Doyle
Office of Governmental Affairs
Sacramento

Bill No. S.B. 2594
Bill Author: Robbins
Date Last Amended: May 7, 1990

CAJ POSITION: OPPOSE AMENDMENT TO SECTION 437c(f) (Priority II)
SUPPORT AMENDMENTS TO SECTIONS 437c(b), (d) [IF
AMENDED] AND (g) (PRIORITY II)

1. The Committee supports the bill in the amended version, which returns to bill to the existing state of the law on the timing of making evidentiary objections. However, the language in subsection (d) at lines 26 and 27 of page 4 should be amended to conform to the language in subsection (b) at lines 37 and 38 on page 2. The language should be amended to provide in subsection (d):

"Any objections not made at the hearing shall be deemed waived."

The present language of subsection (d) seems to prevent the making of any evidentiary objections in papers filed prior to the hearing, which is a frequently used and appropriate way to raise such objections.

2. The Committee opposes the proposed change to subsection (f) of Section 437c. Summary adjudication of issues is an important procedure for streamlining trials and establishing important issues in an case which are not "causes of action, affirmative defenses, or claims for damages." For example, the determination of conflict of laws issues, such as choice of law, is appropriate for summary adjudication, but would not be allowed under the proposed amendment. Summary adjudication of issues such as "duty" or "reliance" would also be prevented. Determination of such issues does not establish the entire cause of action, but the establishment of essential elements of a claim by summary adjudication results in shorter trials, and savings of resources for the parties, witnesses and the courts. The Committee believes that most judges know the difference between ultimate issues and evidentiary issues, and



that parties who abuse the 437c(f) procedure by seeking rulings on evidentiary issues are appropriately sanctioned.

3. The Committee supports the requirement that the courts specify the reasons for their determinations, whether summary judgment motions are granted or denied. Subsection (g) should be enacted.

JJ:bh

cc: John M. Seitman
Peter K. Shack
Monroe Baer ✓



LEGISLATIVE INTENT SERVICE (800) 666-1917

CALIFORNIA TRIAL LAWYERS ASSOCIATION

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Executive Director
Leonard Esquina, Jr.

Legislative Counsel
Nancy Drabble

Legal Analyst
Will Glennon

Associate Legislative Counsel
Nancy Peverini

July 27, 1990

Senator Alan Robbins
State Capitol, Room 5114
Sacramento, Ca. 95814

RE: SB 2594 (Robbins) SUPPORT

Dear Senator Robbins:

The California Trial Lawyers Association supports SB 2594, which is scheduled to be heard before the Assembly Judiciary Committee on August 8, 1990.

SB 2594 would eliminate summary adjudication of issues and replace it with summary adjudication of causes of action.

This change will simplify summary adjudication and make it more efficient. Summary adjudication of issues was originally intended to reduce the cost of litigation by eliminating issues from a case at an early stage, but it rarely serves that purpose. Summary adjudication of issues often does not eliminate a cause of action and therefore saves little time but uses enormous judicial resources. Also, SB 2594 will help correct the abuses of summary adjudication. These motions are often used by the defense to run up more billable hours regardless of merit; the motions are costly to bring and costly to defend.

If you or a member of your staff would like to discuss this issue further, please feel free to contact me or one of our legislative representatives in Sacramento.

Sincerely,



Larry Drivon
President

cc: Assembly Judiciary Committee



COTKIN, COLLINS & FRANSCCELL

A PROFESSIONAL CORPORATION

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(415) 546-3939
FAX (415) 546-6171

July 27, 1990

Administrative Office of the Courts
Attn: Arline S. Tyler, Attorney
595 Market Street, 30th Floor
San Francisco, California 94105

Re: **Comment on Proposed New Rules and Guidelines
For Motions For Summary Judgment and Motions
For Summary Adjudication of Issues**

Dear Ms. Tyler:

This letter is written in response to your invitation to comment on the proposed new rules and guidelines for Motions for Summary Judgment and Motions for Summary Adjudication of Issues. As a civil litigation law firm, we are definitely interested in the proposal. We send this letter to voice our strong opposition in particular to Senate Bill 2594, which would eliminate summary adjudication of issues unless an entire cause of action, affirmative defense or claim for punitive damages can be resolved.

Our experience has demonstrated that Motions for Summary Adjudication of Issues are particularly useful for conserving trial time and expense, reducing the complexity of litigation, and promoting settlement without the necessity of trial. As you know, summary adjudication was

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Administrative Office of the Courts
Attn: Arline S. Tyler, Attorney
July 26, 1990
Page 2

designed to "adjudicat[e] issues in advance of trial so as to save . . . time and expense." Beech Aircraft Corp. v. Superior Court, 61 Cal. App. 3d 501, 516, 132 Cal. Rptr. 541 (1976). "Since the length of trial is directly related to the number of issues which must be argued, any procedure which can get major issues adjudicated in advance of the actual trial should result in saving considerable time and expense." Id.

Summary resolution of significant disputed issues has also been shown to promote settlement without the necessity of trial by resolving significant and disputed issues beforehand. "[I]t is the policy of the law to discourage litigation and to favor compromise of doubtful rights and controversies" Imen v. Glassford, 201 Cal. App. 3d 898, 912, 247 Cal. Rptr. 514 (1988); see, LaBordi v. McKesson & Robins, Inc., 264 Cal. App. 2d 363, 370, 70 Cal. Rptr. 726 (1968); Central Basin Water Dist. v. Fossette, 235 Cal. App. 2d 689, 705, 45 Cal. Rptr. 651 (1965).

Proposed Senate Bill 2594 would preclude the resolution of significant questions of law which can presently be summarily disposed of by way of a Motion for Summary Adjudication of Issues. The following cases demonstrate that summary adjudication of an issue as opposed to an entire cause of action, can significantly impact litigation and promote more efficient handling.

For example, summary adjudication of issues is appropriate where a single cause of action is premised on the existence of multiple alleged duties - and at least some of the alleged duties are non-existent as a matter of law. State Farm Fire & Casualty Co. v. Superior Court, 215 Cal. App. 3d 1455, 1461-62, 263 Cal. Rptr. 337 (1989) (court summarily adjudicates that one of two claimed statutory duties is non-existent).

Where a single cause of action is premised on multiple alleged breaches of duties, and at least some of the alleged breaches cannot give rise to liability as a matter of law, summary adjudication is appropriate. King v. State of California, 11 Cal. App. 3d 307, 309, 89 Cal. Rptr. 715 (1970) (plaintiff alleged that defendant negligently constructed bridge, highway and levee; court summarily adjudicated that construction of levee did not give rise to liability).



Administrative Office of the Courts
Attn: Arline S. Tyler, Attorney
July 26, 1990
Page 3

Summary adjudication is appropriate where there is an issue regarding the choice of law to be applied in resolving the litigation, e.g., Beech Aircraft Corp. v. Superior Court, 61 Cal. App. 3d 501, 132 Cal. Rptr. 541 (1976) (trial court may summarily adjudicate whether California or New Mexico tort law applies in resolving wrongful death litigation).

Similarly amenable to summary adjudication is the issue of "Whether in a breach of contract action, there is a contract, a breach, or [a release]. . . ." Beech Aircraft Corp. v. Superior Court, *supra*, 61 Cal. App. 3d at 516; *see*, Niederer v. Ferreira, 150 Cal. App. 3d 219, 197 Cal. Rptr. 685 (1983) (court summarily adjudicates breach of written guaranty by defendant; validity of "lack of consideration" affirmative defense left as the only remaining issue for trial); Carma Developers, Inc. v. Marathon Development, 211 Cal. App. 3d 1360, 256 Cal. Rptr. 112 (1989) (court summarily adjudicates breach of contract by defendant; proximate cause and damages are left as the only remaining issues for trial); Cal-Veda Aircraft, Inc. v. Superior Court, 179 Cal. App. 3d 435, 224 Cal. Rptr. 809 (1986) (court summarily adjudicates that an insurance claimant was not a named insured; issue of whether coverage existed by virtue of insurance company agent's conversations with claimant left for resolution at trial).

The resolution of any of the above-described issues would not have disposed of an entire cause of action. However, their resolution nevertheless did simplify the causes of action and reduced the complexity of the litigation.

Conversely, Senate Bill 2594, which proposes to eliminate Motions for Summary Adjudication of Issues unless an entire cause of action is resolved, would increase costs and delay and would hamper the efficient handling of cases. Nor would the bill promote the settlement possibilities which arise as a result of resolving significant and disputed issues prior to trial.

As a firm familiar with the very useful purpose served by a summary adjudication of issues, we strongly oppose Senate Bill 2594, which we believe unnecessarily

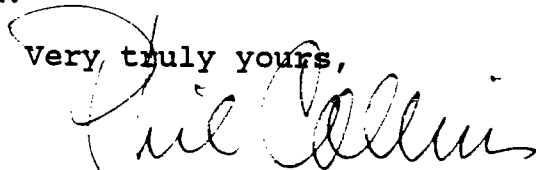


Administrative Office of the Courts
Attn: Arline S. Tyler, Attorney
July 26, 1990
Page 4

complicates litigation and deprives the litigants themselves of possibilities for early resolution of disputed matters.

Should you require any further comment, we would certainly be happy to respond.

Very truly yours,



JAMES P. COLLINS, JR.

JPC/DBA/em
cc: Assembly Judiciary Committee
State Capitol

Senator Alan Robbins
State Capitol

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Associate Legislative Counsel
Nancy Peverini

May 3, 1990

Senator Alan Robbins
State Capitol, Room 5114
Sacramento, Ca. 95814

RE: SB 2594 (Robbins) SUPPORT

Dear Senator Robbins:

The California Trial Lawyers Association supports SB 2594, which is scheduled to be heard before the Senate Judiciary Committee on May 8, 1990.

SB 2594 would eliminate summary adjudication of issues and replace it with summary adjudication of causes of action.

This change will simplify summary adjudication and make it more efficient. Summary adjudication of issues was originally intended to reduce the cost of litigation by eliminating issues from a case at an early stage, but it rarely serves that purpose. Summary adjudication of issues often does not eliminate a cause of action and therefore saves little time but uses enormous judicial resources. Also, SB 2594 will help correct the abuses of summary adjudication. These motions are often used by the defense to run up more billable hours regardless of merit; the motions are costly to bring and costly to defend.

If you or a member of your staff would like to discuss this issue further, please feel free to contact me or one of our legislative representatives in Sacramento.

Sincerely,



Larry Drivon
President

cc: Senate Judiciary Committee

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LAW OFFICES
PATRICIA M. SAYRE
A PROFESSIONAL CORPORATION
2851 CAMINO DEL RIO SOUTH, SUITE 400
SAN DIEGO, CALIFORNIA 92108
TELEPHONE: (619) 297-0101
FAX (619) 297-7956

DATE: July 9, 1990

FROM: Patricia M. Sayre
For the Committee
on Rules and Procedures of Court

TO: David C. Long
Director of Research

SUBJECT: Secretary Referral
Proposed New Rules and Guidelines
for Motions for Summary Judgment
and Motions for Summary Adjudication of Issues

1. Proposed Amendment to Rules of Court

The Committee on Rules and Procedures of Court supports the proposed amendment to the rules for motions for summary judgment and motions for summary adjudication of issues. The Committee believes that a uniform rule in the detail set forth in the proposed rules will provide one comprehensive, uniform procedure with respect to these motions to the benefit of counsel practicing in all jurisdictions in California.

The appendix should be modified in the following respect:

Section 6 (f) should be modified by substituting the following language in place of the third paragraph of 6(f):

"Following this procedure avoids delay during the hearing but it does not excuse production of the original at the hearing except when the documents' existence and contents are admitted by verified pleadings, answers to interrogatories, or responses or an order of the court that the documents' existence and contents are deemed admitted following a failure to respond to request for admissions. If the documents' existence and contents have been admitted, the moving papers should refer to the pleadings, discovery or court order which contains the admission."

The foregoing change is necessary so that the rule is consistent with California Code of Civil Procedure Section 2033(k). It would not be wise for the rule to imply that a matter is deemed admitted by the mere failure to respond to requests for admissions when the statute has been amended to provide that the matter is

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PATRIGIA M. SAYRE

Committee on Rules and
Procedures of Court
Response/July 9, 1990

only "deemed admitted" as a result of an order by the court on a noticed motion.

2. SB 2594

The Committee opposes Senate Bill 2594. SB 2594 would allow the parties to make evidentiary objections orally at the hearing on the motion for summary judgment rather than making them at least two court days prior to the hearing. In light of the importance of a motion for summary judgment in conclusively determining issues between the parties, the Committee believes that it is more appropriate to continue to require written objections at least two court days prior to the hearing on a motion for summary judgment.

The Committee believes that it is inappropriate to delete C.C.P. Section 437(c)(f). The parties should be able to move to adjudicate issues which may not dispose of an entire cause of action. Summary adjudication of issues is an effective way to limit the scope of discovery and provide greater predictability to the outcome of the litigation. If the outcome of the litigation is more predictable, the chances of settlement are greatly enhanced. Although the proponents of SB 2594 indicate that motions for summary adjudication of issues can be a source of abuse, courts are provided with other mechanisms to limit and deter abuses without depriving parties of their rights to seek summary adjudication of issues.

cc: Committee Members



LITIGATION SECTION
THE STATE BAR OF CALIFORNIA



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JOSEPH R. ZAMORA, *Los Angeles*

July 18, 1990

Monroe Baer
Office of Research
The State Bar of California
555 Franklin Street
San Francisco, CA. 94102

Re: Proposed Rules and Guidelines
for Motions for Summary Judgment and Motion for
Summary Adjudication of Issues

Dear Mr. Baer:

The Litigation Section has reviewed Secretary Referral containing the proposed new rules and guidelines for summary judgment proposed by the Superior Court Committee of the Judicial Council.

Motions for Summary Judgment, etc.

The Litigation Section opposes the elimination of summary adjudication of issues. These motions resolve issues which streamline cases for trial and often assist the parties in evaluation cases for settlement negotiations.

We recommend that objections to evidence produced in support of, or in opposition to, motions for summary judgment, be deemed waived, unless made in writing before the hearing or orally at the hearing on the motion.

We recommend that the burden of proof on motions for summary judgment be the same as the burden of proof at trial.



Monroe Baer
July 18, 1990

Proposed Rules and Guidelines

The Litigation Section supports the proposed rules and guidelines in principle, particularly in light of the difficulties caused by the lack of uniformity in local rules. We believe that the rules should include a statement that these rules supersede all local rules concerning motions for summary judgment and summary adjudication of issues. Such a statement might be included in Section 1, "General Considerations" in the Appendix on page 9.

During our consideration of this proposal we noted that some rules were ambiguous and may create unnecessary burdens, particularly for smaller law offices. The potential problem areas are listed below:

Column format: This may result in statements of undisputed facts that are much longer than necessary (and wasting paper). (See pp. 4-5, Rules 343 (b), 343.1 (b); pp. 16-18, Example A and B.)

Statement of Undisputed Facts: This statement is called a Statement of Undisputed Facts in 343.1 (a) (1) but it seems that it should be called a Statement of Disputed Facts. (p.5)

Statement of Disputed Facts (In Opposition to Motion for Summary Judgment, etc): The requirement that the moving party's statement of undisputed facts, including recitation of evidence cited by moving party may be burdensome and unnecessary. (p.5, Rule 343.1 (b))

Adjudication of Issues: A separate statement of facts is required if an alternate motion for adjudication of issues is filed (i. e. two statements). (p.6, Rule 343.2) One statement may be sufficient for both motions.

Order: This section should also provide that the order be submitted to opposing counsel for approval prior to submission to the court. Some procedure should be set forth if the parties disagree concerning the proposed order.

Exhibits: Section 6 of the Appendix (pp. 11-15) states that "[i]f 10 or more items of evidence are submitted" the evidence should be contained in a separate



Monroe Baer
July 18, 1990

document. This rule, if adopted, should contain a definition of an "item" of evidence.

This section may require modification concerning the method of labeling, marking and indexing exhibits. For example, the name of the deponent must be included on each page of the transcript which is included. (p.14) Maybe a rule should be adopted requiring court reporters to include this on each page before these rules affecting motions for summary judgment are adopted. The method of "highlighting" depositions (p.15) should be clarified. Yellow highlighting must be done manually because copying machines cannot pick up highlighting. Thus, we suggest that alternative methods of highlighting be permitted.

We have made suggestions concerning sections of the proposed rules which should be considered before the rules and guidelines are adopted. We do support the standardization of rules and request a clear statement that these rules supersede local rules affecting motions for summary judgment and motions for adjudication of issues.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Helen S. Beardsworth

HELEN SWEENEY BEARDSWORTH
455 Golden Gate Ave. #6200
San Francisco, CA. 94102
(415) 557-0215

cc: Michael Whelan
Janet Carver



SENATE BILL 2594 HIGHLIGHTS

Amends Section 437c of the Code of Civil Procedure dealing with summary resolution to:

- o eliminate summary adjudication of issues, retaining summary adjudication of causes of action; in response to a suggestion from the insurance industry permits summary adjudication of the single issue of punitive damages.
- o require papers filed with the court relating to summary resolution which incorporate material in the court's file to specify the matter being incorporated with specificity, thereby eliminating the incentive to incorporate generally to maintain the broadest possible appeal rights.
- o provide that objections based upon competency are waived unless raised at the hearing.
- o require the court to provide specific reasons for granting summary judgment in addition to current law requiring reasons for denying summary judgment.

Extensive meetings have:

- o crafted a bill achieving CTLA support.
- o resulted in an amendment to address insurance industry concerns.
- o identified other insurance concerns currently being evaluated; we believe that these concerns revolve around motions which actually dispose of causes of action, but are studying them and working with ACIC.



DATE: July 23, 1990
TO: Pam Pierson, Jim Pokorny, Ed Poll, Janean Stadler
FROM: Ruthe Ashley
SUBJECT: First draft of "THE LAW AND MR. FINNEGAN"

I received the first draft on Saturday at home and it looks good. Dave went to work on it. Unfortunately, there wasn't time to send you a copy before our conference call scheduled today. Therefore, copies are being fed ex'ed to each of you today for arrival tomorrow. I am postponing our conference call until Wednesday, July 25, at 3:00 p.m.

In the meantime, I will give Dave the green light to finalize the script. The substantive content looks terrific and, in my opinion, only minor changes may be necessary. Dave thinks the script may be longer than the 30 minutes designated for the video and some cutting may be necessary. Keep that in mind.

I think it's important to have diversity in the casting of the actors and actresses by including women and minorities. One of the clients is now a woman, so concentration on including minorities would be appropriate.

Thanks for all your time and cooperation. I think all is set for our Friday program. If I don't hear from you by today, I will assume you don't need assistance on anything else, such as cue cards, etc.

You have reservations at the Stockton Hilton for Thursday night. Remember, the five of you (including Cherie) meet at 7:00 p.m. at the Hilton for dress rehearsal. Remember your list of tasks to do.

See you Friday morning.

cc: Gus Lee
Cherie Kerr
Dave Morgasen



TO: Honorable Alan Robbins

JUN 8 1990

RE: SB 2594

PLEASE RETURN BY 6-8-90

TO: ASSEMBLY COMMITTEE ON JUDICIARY
STATE CAPITOL, ROOM 6005

WORKSHEET
(Please type)

Your bill has been referred to the Assembly Committee on Judiciary. It is imperative that you provide us with as much information regarding your bill as possible, including the following:

AUTHOR'S CONTACT PERSON:

Address, telephone number: Teri Burns 5-3121

SPONSORING ORGANIZATION NAME: (Also list the bill's source if differs from sponsor.)

Name of contact person: Mike Belote, Cal. Judges' Assn
Address, telephone number: 441-5050

PRIOR COMMITTEE & FLOOR VOTES:

Sen Floor 22-12 Sen Judic. - 8-0

SET INFORMATION:

Preferred hearing dates: 8/8
Estimated time to present testimony: _____
Names of witnesses: _____

PURPOSE OF BILL: (Specify problem or deficiency in existing law.)

Existing law allows summary adjudication of issues. Even though an issue may be summarily adjudicated, the cause of action relative to that particular issue may still be heard. This was designed to save court time, but there is no time savings when the cause of action is still adjudicated.

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HOW DOES THIS BILL REMEDY THE PROBLEM?

It allows, with exception of punitive damage issues, only the cause of action to be summarily adjudicated. The bill also requires evidentiary objections to motion for summary judgment be made at the hearing, or they are waived.

STUDIES, REPORTS, STATISTICS & FACTS: (List all documented sources supporting your conclusion that there is a problem. Be specific and attach major sources.)

see attached

major source - Cal. Judges Assn
Hon. Philip Sacta
(213) 974-8807

PRIOR/SIMILAR/COMPANION LEGISLATION. (Bill number, author, coauthors, session and final disposition.)

none known

POSITIONS OF THE DEPARTMENT OF FINANCE, STATE AGENCIES, & INTEREST GROUPS. (State precise reason if opposed.)

non fiscal

Cal - Judges Assn - Support
CTLA - support

ACIC - oppose unless amended. Many of ACIC concerns have been amended into the bill. We are continuing to work with them on further appropriate amendments

ADDITIONAL INFORMATION:

Attach copies of background and related materials, including letters of support & opposition.

Attach an author's or sponsor's statement as to the purpose of this bill.



SENATE COMMITTEE ON JUDICIARY
Bill Lockyer, Chairman
1989-90 Regular session

SB
2594

SB 2594 (Robbins)
As amended May 7
Hearing date: May 8, 1990
Code of Civil Procedure
JRP/lhm

SUMMARY JUDGMENT

HISTORY

Source: California Judges Association
Prior Legislation: None
Support: California Trial Lawyers Association
Opposition: California Association of Insurance Companies
(unless amended)

KEY ISSUES

SHOULD MOTIONS FOR SUMMARY ADJUDICATION BE LIMITED TO RESOLVING CAUSES OF ACTION, AFFIRMATIVE DEFENSES AND/OR CLAIMS FOR PUNITIVE DAMAGES?

SHOULD OTHER SPECIFIED CHANGES IN SUMMARY ADJUDICATION PROCEDURES BE MADE?

PURPOSE

1. Scope of motion for summary judgment

Existing law permits a court to grant summary judgment where an action has no merit or where there is no defense to an action. A litigant is permitted to seek summary adjudication of issues as part of, or in lieu of, a motion for summary judgment.

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Existing law requires a court to determine whether there exists a material triable controversy as to each particular issue and to specify the evidence which establishes a triable issue of fact. The court is also required to identify those issues which are without substantial controversy.

This bill would instead require a court to determine:

- (a) whether there is a triable issue of fact as to the case as a whole,
 - (b) whether there is a triable issue of fact as to particular causes of action and/or affirmative defenses, and
 - (c) whether there is a triable issue of fact as to punitive damages.
2. Objections to the form and substance of moving and opposing papers

Existing case law permits an objection to the competency of a witness to be raised for the first time on appeal or by the appellate court itself.

This bill would expressly overrule case law and require that evidentiary objections and objections to the form and substance of pleadings are waived unless made at the court hearing on the motion for summary judgment.

3. Incorporation by reference of documents contained in the court file

Existing law permits the entire court file to be incorporated by reference for the purpose of resolving a motion for summary judgment.

The bill would instead provide that any incorporation by reference of matter in the court's file shall set forth with specificity the exact document to which reference is made and shall not incorporate the entire file.

The purpose of this bill is to make the summary judgment procedure more efficient and to reduce the opportunity for abuse of the procedure.

COMMENT

1. Adjudication of causes of action rather than issues

According to the sponsor, it is a waste of court time to attempt to resolve issues if the resolution of those issues will not result in summary adjudication of a cause of action or



affirmative defense. Since the cause of action must still be tried, much of the same evidence will be reconsidered by the court at the time of trial. This bill would instead require summary adjudication of issues only where an entire cause of action, affirmative defense or claim for punitive damages can be resolved.

The sponsor also states that existing law can be abused by litigant attempts to engage in a paper war by bringing motions to resolve numerous minute issues. The sponsor states that many of these issues could be more efficiently resolved through requests for admission and other discovery procedures.

The sponsor believes that the bill will save court time, reduce the cost of litigation for plaintiffs and defendants, and reduce the opportunity for abuse of the summary judgment procedure.

2. Objections to evidence

The California Court of Appeal has held that objections to the competency of a witness are not waived even if a party fails to make those objections at the hearing. Witchell v. De Korne 179 Cal.App.3d 965 and Zukerman v. Pacific Savings Bank 187 Cal.App.3d 1394.

This bill would re-enact language providing that evidentiary objections not made at the hearing are waived and would specifically provide that objections based on the failure to comply with the requirements of the statute are waived unless made at the hearing.

The bill also contains a statement of legislative intent that the rules stated in the Witchell and Zukerman cases be overturned.

The sponsor believes it is necessary to overturn the above cases to prevent relitigation and trial de novo of summary judgments in appellate court. All evidentiary issues, except those relating to the competency of a witness, are waived unless first raised in the summary judgment hearing. The sponsor believes that this should also be the rule for objections related to witness competency.

3. Incorporation of the file

Currently, an entire court file may be incorporated for the purpose of deciding a motion for summary judgment. This bill requires that only material specifically identified may be so incorporated. According to the sponsor, this prevents relitigation of the motion for summary judgment in appellate court based on a document not considered by the lower court in

granting or denying the motion.

4. Statement of decision

Under existing law a court must state the reasons for its decision and specify the evidence relied upon only where it denies a motion for summary judgment.

The bill would also require that a court, upon granting a motion for summary judgment, to specify the reasons for the decision and the evidence relied upon in making the determination.

The sponsor believes that the above language will provide a more equitable balance between plaintiffs and defendants.

5. Opposition

A major objection to the bill raised by the opposition, the elimination of the ability to resolve punitive damages claims by summary adjudication, has been resolved by the author's amendments.

Opponents also object because they believe the bill would prevent summary adjudication of important issues in situations such as the following:

- (a) Where there is an important issue as to the legal or fiduciary relationship of the plaintiff and one or more defendants.
- (b) Where there are allegations that a defendant owed a special duty of care to the plaintiff.
- (c) Where there is an issue as to the appropriate burden of proof.

Opponents state that the above examples represent question of law that can be disposed of by motion for summary adjudication. Though resolution of any of the issues would not dispose of the entire cause of action, opponents believe it would nonetheless simplify the cause of action and reduce the complexity of the litigation. Opponents state that the bill, as introduced, would increase cost and delay.

Opponents have suggested amendments that would allow resolution of the issues such as those listed above.



SENATE COMMITTEE ON JUDICIARY
Bill Lockyer, Chairman
1989-90 Regular session

SB 2594 (Robbins)
As amended May 7
Hearing date: May 15, 1990
Code of Civil Procedure
JRP/lhm

SUMMARY JUDGMENT

HISTORY

Source: California Judges Association

Prior Legislation: None

Support: California Trial Lawyers Association

Opposition: California Association of Insurance Companies
(unless amended)

KEY ISSUES

SHOULD MOTIONS FOR SUMMARY ADJUDICATION BE LIMITED TO RESOLVING CAUSES OF ACTION, AFFIRMATIVE DEFENSES AND/OR CLAIMS FOR PUNITIVE DAMAGES?

SHOULD OTHER SPECIFIED CHANGES IN SUMMARY ADJUDICATION PROCEDURES BE MADE?

PURPOSE

1. Scope of motion for summary judgment

Existing law permits a court to grant summary judgment where an action has no merit or where there is no defense to an action. A litigant is permitted to seek summary adjudication of issues as part of, or in lieu of, a motion for summary judgment.

(More)



Existing law requires a court to determine whether there exists a material triable controversy as to each particular issue and to specify the evidence which establishes a triable issue of fact. The court is also required to identify those issues which are without substantial controversy.

This bill would instead require a court to determine:

- (a) whether there is a triable issue of fact as to the case as a whole,
- (b) whether there is a triable issue of fact as to particular causes of action and/or affirmative defenses, and
- (c) whether there is a triable issue of fact as to punitive damages.

2. Objections to the form and substance of moving and opposing papers

Existing case law permits an objection to the competency of a witness to be raised for the first time on appeal or by the appellate court itself.

This bill would expressly overrule case law and require that evidentiary objections and objections to the form and substance of pleadings are waived unless made at the court hearing on the motion for summary judgment.

3. Incorporation by reference of documents contained in the court file

Existing law permits the entire court file to be incorporated by reference for the purpose of resolving a motion for summary judgment.

The bill would instead provide that any incorporation by reference of matter in the court's file shall set forth with specificity the exact document to which reference is made and shall not incorporate the entire file.

The purpose of this bill is to make the summary judgment procedure more efficient and to reduce the opportunity for abuse of the procedure.

COMMENT

1. Adjudication of causes of action rather than issues

According to the sponsor, it is a waste of court time to attempt to resolve issues if the resolution of those issues



will not result in summary adjudication of a cause of action or affirmative defense. Since the cause of action must still be tried, much of the same evidence will be reconsidered by the court at the time of trial. This bill would instead require summary adjudication of issues only where an entire cause of action, affirmative defense or claim for punitive damages can be resolved.

The sponsor also states that existing law can be abused by litigant attempts to engage in a paper war by bringing motions to resolve numerous minute issues. The sponsor states that many of these issues could be more efficiently resolved through requests for admission and other discovery procedures.

The sponsor believes that the bill will save court time, reduce the cost of litigation for plaintiffs and defendants, and reduce the opportunity for abuse of the summary judgment procedure.

2. Objections to evidence

The California Court of Appeal has held that objections to the competency of a witness are not waived even if a party fails to make those objections at the hearing. Witchell v. De Korne 179 Cal.App.3d 965 and Zukerman v. Pacific Savings Bank 187 Cal.App.3d 1394.

This bill would re-enact language providing that evidentiary objections not made at the hearing are waived and would specifically provide that objections based on the failure to comply with the requirements of the statute are waived unless made at the hearing.

The bill also contains a statement of legislative intent that the rules stated in the Witchell and Zukerman cases be overturned.

The sponsor believes it is necessary to overturn the above cases to prevent relitigation and trial de novo of summary judgments in appellate court. All evidentiary issues, except those relating to the competency of a witness, are waived unless first raised in the summary judgment hearing. The sponsor believes that this should also be the rule for objections related to witness competency.

3. Incorporation of the file

Currently, an entire court file may be incorporated for the purpose of deciding a motion for summary judgment. This bill requires that only material specifically identified may be so incorporated. According to the sponsor, this prevents relitigation of the motion for summary judgment in



appellate court based on a document not considered by the lower court in granting or denying the motion.

4. Statement of decision

Under existing law a court must state the reasons for its decision and specify the evidence relied upon only where it denies a motion for summary judgment.

The bill would also require that a court, upon granting a motion for summary judgment, to specify the reasons for the decision and the evidence relied upon in making the determination.

The sponsor believes that the above language will provide a more equitable balance between plaintiffs and defendants.

5. Opposition

A major objection to the bill raised by the opposition, the elimination of the ability to resolve punitive damages claims by summary adjudication, has been resolved by the author's amendments.

Opponents also object because they believe the bill would prevent summary adjudication of important issues in situations such as the following:

- (a) Where there is an important issue as to the legal or fiduciary relationship of the plaintiff and one or more defendants.
- (b) Where there are allegations that a defendant owed a special duty of care to the plaintiff.
- (c) Where there is an issue as to the appropriate burden of proof.

Opponents state that the above examples represent question of law that can be disposed of by motion for summary adjudication. Though resolution of any of the issues would not dispose of the entire cause of action, opponents believe it would nonetheless simplify the cause of action and reduce the complexity of the litigation. Opponents state that the bill, as introduced, would increase cost and delay.

Opponents have suggested amendments that would allow resolution of the issues such as those listed above.



SENATE THIRD READING

SB 2594 (Robbins) - As Amended: August 22, 1990

SENATE VOTE: 22-12

ASSEMBLY ACTIONS:

COMMITTEE JUD. VOTE 10-0 COMMITTEE _____ VOTE _____DIGESTExisting law:

- 1) Permits a court to grant summary judgment where an action has no merit or where there is no defense to an action. A party may move for summary adjudication of issues as part of, or in lieu of, a motion for summary judgment.
- 2) Requires a court to determine whether a material triable controversy exists as to each particular issue and to specify the evidence which establishes a triable issue of fact. The court is also required to identify those issues which are without substantial controversy.
- 3) Permits in case law, an objection to the competency of a witness to be raised for the first time on appeal or by the appellate court itself.
- 4) Permits the entire court file to be incorporated by reference for the purpose of resolving a motion for summary judgment.

This bill:

- 1) Requires a court to determine:
 - a) Whether there is a triable issue of fact as to the case as a whole.
 - b) Whether there is a triable issue of fact as to particular causes of action and/or affirmative defenses.
 - c) Whether there is a triable issue of fact as to punitive damages.
- 2) Specifies that a cause of action has no merit if one or more of the elements cannot be established.
- 3) Abrogates case law by requiring that evidentiary objections and objections to the form and substance of pleadings are waived unless made at the court hearing on the motion for summary judgment.

- continued -

- 4) Provides that any incorporation by reference of matter in the court's file shall set forth with specificity the exact document to which reference is made and shall not incorporate the entire file.
- 5) Provides that a party may not move for summary judgment based on issues asserted in a prior motion for summary adjudication and denied by the court, unless that party establishes to the satisfaction of the court, newly discovered facts or circumstances supporting the issues reasserted in the summary judgment motion.

FISCAL EFFECT

No significant fiscal impact anticipated.

COMMENTS

- 1) According to the source of the bill, the California Judges Association (CJA), it is a waste of court time to attempt to resolve issues if the resolution of those issues will not result in summary adjudication of a cause of action or affirmative defense. Since the cause of action must still be tried, much of the same evidence will be reconsidered by the court at the time of trial. This bill would, instead, require summary adjudication of issues only where an entire cause of action, affirmative defense or claim for punitive damages can be resolved.

CJA also states that existing law can be abused by litigant attempts to engage in a paper war by bringing motions to resolve numerous minute issues. The sponsor states that many of these issues could be more efficiently resolved through requests for admission and other discovery procedures.

CJA states that the bill will save court time, reduce the cost of litigation for plaintiffs and defendants, and reduce the opportunity for abuse of the summary judgment procedure.

- 2) The California Court of Appeal has held that objections to the competency of a witness are not waived even if a party fails to make those objections at the hearing. Witchell v. De Korne 179 Cal.App.3d 965 and Zukerman v. Pacific Savings Bank 179 Cal.App.3d 1394.

This bill would re-enact language providing that evidentiary objections not made at the hearing are waived and would specifically provide that objections based on the failure to comply with the requirements of the statute are waived unless made at the hearing.

The bill also contains a statement of legislative intent that the rules stated in the Witchell and Zukerman cases be overturned.

- continued -

CJA states that it is necessary to overturn the above cases to prevent relitigation and trial de novo of summary judgments in appellate court. All evidentiary issues, except those relating to the competency of a witness, are waived unless first raised in the summary judgment hearing. The sponsor believes that this should also be the rule for objections related to witness competency.

- 3) Currently, an entire court file may be incorporated for the purpose of deciding a motion for summary judgment. This bill requires that only material specifically identified may be so incorporated. According to the sponsor, this prevents relitigation of the motion for summary judgment in appellate court based on a document not considered by the lower court in granting or denying the motion.



also! 8-22-90

SB 2594

Revised - as amended 021562

SENATE THIRD READING

SB 2594 (Robbins)

SENATE VOTE: 22-12

ASSEMBLY ACTIONS:

COMMITTEE JUD. VOTE 10-0 COMMITTEE _____ VOTE _____

DIGEST

Existing law:

- 1) Permits a court to grant summary judgment where an action has no merit or where there is no defense to an action. A party may move for summary adjudication of issues as part of, or in lieu of, a motion for summary judgment.
- 2) Requires a court to determine whether a material triable controversy exists as to each particular issue and to specify the evidence which establishes a triable issue of fact. The court is also required to identify those issues which are without substantial controversy.
- 3) Permits in case law, an objection to the competency of a witness to be raised for the first time on appeal or by the appellate court itself.
- 4) Permits the entire court file to be incorporated by reference for the purpose of resolving a motion for summary judgment.

This bill:

- 1) Requires a court to determine:
 - a) Whether there is a triable issue of fact as to the case as a whole.
 - b) Whether there is a triable issue of fact as to particular causes of action and/or affirmative defenses.
 - c) Whether there is a triable issue of fact as to punitive damages.
- 2) Specifies that a cause of action has no merit if one or more of the elements cannot be established.
- 3) Abrogates case law by requiring that evidentiary objections and objections to the form and substance of pleadings are waived unless made at the court hearing on the motion for summary judgment.

- continued -

SB 2594
Page 1



- 4) Provides that any incorporation by reference of matter in the court's file shall set forth with specificity the exact document to which reference is made and shall not incorporate the entire file.
- 5) Provides that a party may not move for summary judgment based on issues asserted in a prior motion for summary adjudication and denied by the court, unless that party establishes to the satisfaction of the court, newly discovered facts or circumstances supporting the issues reasserted in the summary judgment motion.

FISCAL EFFECT

No significant fiscal impact anticipated.

COMMENTS

- 1) A party to an action may move for summary judgment by contending that the action has no merit or that there is no defense thereto. A motion for summary judgment must be supported or opposed by admissible evidence (i.e. affidavits, declarations, admissions, answers to interrogatories, depositions and matters of which judicial notice may be taken.) The motion shall be granted if the court finds that there is no triable issue as to any material fact. If an issue of fact is presented the court must permit trial thereof. The purpose of the summary procedure is to provide a method for prompt disposition of actions in which there is no triable, material issue of fact on which evidence shall be taken. The motion is not intended to test the sufficiency of the pleadings, but rather to determine whether the issues apparently raised are merely the result of sham or adept pleading.

Generally the granting of a motion for summary judgment disposes of the whole case (although in multiple party litigation, summary judgment may be granted as to one party, leaving the others to litigate.) Even if the court determines that there are some triable issues in the case as a whole, it may find that certain other issues "are without substantial controversy" and grant summary adjudication as to those issues. A decision that certain issues are without substantial controversy does not end the action, but it does reduce the scope of trial by eliminating the need to prove or disprove those issues at trial. The court cannot summarily adjudicate issues if it is presented only with a motion for summary judgment. When the moving party wants the court to adjudicate issues a motion for summary adjudication of issues must be made. At trial any issues which have been summarily adjudicated are deemed established and the trial proceeds on the remaining issues.

- 2) Sponsor's Statement. The California Judges Association (CJA) is the source of this bill. According to CJA, it is a waste of court time to attempt to resolve issues if the resolution of those issues will not result in summary adjudication of a cause of action or affirmative defense. Since the cause of action must still be tried, much of the same evidence will be reconsidered by the court at the time of trial. This

- continued -



bill would instead require summary adjudication of issues only where an entire cause of action, affirmative defense or claim for punitive damages can be resolved.

CJA also states that existing law can be abused by litigant attempts to engage in a paper war by bringing motions to resolve numerous minute issues. The sponsor states that many of these issues could be more efficiently resolved through requests for admission and other discovery procedures.

CJA states that the bill will save court time, reduce the cost of litigation for plaintiffs and defendants, and reduce the opportunity for abuse of the summary judgment procedure.

- 3) The California Court of Appeal has held that objections to the competency of a witness are not waived even if a party fails to make those objections at the hearing. Witchell v. De Korne 179 Cal.App.3d 965 and Zukerman v. Pacific Savings Bank 179 Cal.App.3d 1394.

This bill would re-enact language providing that evidentiary objections not made at the hearing are waived and would specifically provide that objections based on the failure to comply with the requirements of the statute are waived unless made at the hearing.

The bill also contains a statement of legislative intent that the rules stated in the Witchell and Zukerman cases be overturned.

CJA states that it is necessary to overturn the above cases to prevent relitigation and trial de novo of summary judgments in appellate court. All evidentiary issues, except those relating to the competency of a witness, are waived unless first raised in the summary judgment hearing. The sponsor believes that this should also be the rule for objections related to witness competency.

- 4) Currently, an entire court file may be incorporated for the purpose of deciding a motion for summary judgment. This bill requires that only material specifically identified may be so incorporated. According to the sponsor, this prevents relitigation of the motion for summary judgment in appellate court based on a document not considered by the lower court in granting or denying the motion.



ata: 8.22-98

SB 2594

PROPOSED AMENDMENTS TO SENATE BILL NO. 2594

Legislative Counsel No. 021562

(Friedman)

The proposed amendments provide that a party may not move for summary judgment based on issues asserted in a prior motion for summary adjudication and denied by the court, unless that party establishes to the satisfaction of the court, newly discovered facts or circumstances supporting the issues reasserted in the summary judgment motion.

R. LeBov
445-4560
8/23/90:ajud

SB 2594



TO: Honorable Alan Robbins

JUN 8 1990

RE: SB 2594

PLEASE RETURN BY 6-8-90

TO: ASSEMBLY COMMITTEE ON JUDICIARY
STATE CAPITOL, ROOM 6005

WORKSHEET
(Please type)

Your bill has been referred to the Assembly Committee on Judiciary. It is imperative that you provide us with as much information regarding your bill as possible, including the following:

AUTHOR'S CONTACT PERSON:

Address, telephone number: Teri Burns 5-3121

SPONSORING ORGANIZATION NAME: (Also list the bill's source if differs from sponsor.)

Name of contact person: Mike Belote, Cal. Judges' Assn
Address, telephone number: 441-5050

PRIOR COMMITTEE & FLOOR VOTES:

Sen Floor 22-12 Sen Judic.- 8-0

SET INFORMATION:

Preferred hearing dates: 8/8
Estimated time to present testimony: _____
Names of witnesses: _____

PURPOSE OF BILL: (Specify problem or deficiency in existing law.)

Existing law allows summary adjudication of issues. Even though an issue may be summarily adjudicated, the cause of action relative to that particular issue may still be heard. This was designed to save court time, but there is no time savings when the cause of action is still adjudicated.



HOW DOES THIS BILL REMEDY THE PROBLEM?

It allows, with exception of punitive damage issues, only the cause of action to be summarily adjudicated.
The bill also requires evidentiary objections to motion for summary judgment be made in the hearing or they are waived.

STUDIES, REPORTS, STATISTICS & FACTS: (List all documented sources supporting your conclusion that there is a problem. Be specific and attach major sources.)

see attached

major source - Cal. Judges Assn
Hon. Philip Saeta
(213) 974-8807

PRIOR/SIMILAR/COMPANION LEGISLATION. (Bill number, author, coauthors, session and final disposition.)

none known

POSITIONS OF THE DEPARTMENT OF FINANCE, STATE AGENCIES, & INTEREST GROUPS. (State precise reason if opposed.)

non fiscal

Cal. Judges Assn - Support
CTLA - support -

ACIC - oppose unless amended. Many of ACIC concerns have been amended into the bill. We are continuing to work with them on further appropriate amendments.

ADDITIONAL INFORMATION:

Attach copies of background and related materials, including letters of support & opposition.

Attach an author's or sponsor's statement as to the purpose of this bill.





Association of California Insurance Companies

915 L Street, Suite 1160
Sacramento, CA 95814
(916) 442-3531
FAX # (916) 444-3872

May 3, 1990

The Honorable Alan Robbins
Member of the Senate
State Capitol, Room 5114
Sacramento, CA 95814

RE: SB 2594, As Introduced March 1, 1990 (Robbins)
ACIC POSITION: OPPOSE UNLESS AMENDED

Dear Senator Robbins:

The Association of California Insurance Companies, representing 22 property and casualty insurers doing business in California, opposes your Senate Bill 2594, which is scheduled to be heard in the Senate Judiciary Committee on Tuesday, May 8, 1990, unless it is amended to alleviate our concerns.

This bill would, among other things, eliminate any party's opportunity in civil actions to partially adjudicate issues that, while not disposing of complete causes of action, would nonetheless dispose of pleaded or alleged legal questions that would otherwise complicate and extend preparation for trial. Our members rely on current law to simplify and speed the course of litigation, rather than complicate it. Examples include --

- o Elements of damage alleged (particularly since the passage of Senate Bill 241 two years ago, affecting punitive damages);
- o Allegations that claimant and one or more defendants stood in a particular legal or fiduciary relationship;
- o Allegations that one or more defendants owed a special duty of care to the claimant; and
- o Allegations made that would establish a lower burden of proof for the claimant against one or more defendants.

All of these examples represent questions of law that can be disposed of by motion for summary adjudication. Though resolution of any of them would not dispose of the entire "cause of action," it would nonetheless simplify the cause of action and reduce the complexity of the litigation. This bill, as introduced, would remove any opportunity to do so and, in our opinion, would increase cost and delay. ACIC has been involved in discussions of this measure with its sponsors and other interested parties. Attached are amendments to SB 2594 as introduced that would remove our opposition to the measure; the sponsors are still evaluating them and others that have been offered.

The Honorable Alan Robbins
May 3, 1990
page two

For these reasons, the Association of California Insurance Companies must respectfully oppose Assembly Bill 2594 as introduced, unless it is amended to alleviate our concerns. We will be happy to continue to work with your office, the sponsors and others to attempt to reach some accommodation.

Very truly yours,



Tim Hart
Legislative Counsel

TH:sah

Attachment

cc: Members, Senate Judiciary Committee
Jim Provenza, Counsel



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Ian Herzog

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Nancy Drabble

Legal Analyst
Will Glennon

Associate Legislative Counsel
Nancy Peverini

May 3, 1990

Senator Alan Robbins
State Capitol, Room 5114
Sacramento, Ca. 95814

RE: SB 2594 (Robbins) SUPPORT

Dear Senator Robbins:

The California Trial Lawyers Association supports SB 2594, which is scheduled to be heard before the Senate Judiciary Committee on May 8, 1990.

SB 2594 would eliminate summary adjudication of issues and replace it with summary adjudication of causes of action.

This change will simplify summary adjudication and make it more efficient. Summary adjudication of issues was originally intended to reduce the cost of litigation by eliminating issues from a case at an early stage, but it rarely serves that purpose. Summary adjudication of issues often does not eliminate a cause of action and therefore saves little time but uses enormous judicial resources. Also, SB 2594 will help correct the abuses of summary adjudication. These motions are often used by the defense to run up more billable hours regardless of merit; the motions are costly to bring and costly to defend.

If you or a member of your staff would like to discuss this issue further, please feel free to contact me or one of our legislative representatives in Sacramento.

Sincerely,



Larry Drivon
President

cc: Senate Judiciary Committee

CALIFORNIA TRIAL LAWYERS ASSOCIATION

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Legislative Counsel
Nancy Drabbie

Legal Analyst
Will Glennon

Associate Legislative
Counsel
Nancy Peverini

July 27, 1990

Senator Alan Robbins
State Capitol, Room 5114
Sacramento, Ca. 95814

RE: SB 2594 (Robbins) SUPPORT

Dear Senator Robbins:

The California Trial Lawyers Association supports SB 2594, which is scheduled to be heard before the Assembly Judiciary Committee on August 8, 1990.

SB 2594 would eliminate summary adjudication of issues and replace it with summary adjudication of causes of action.

This change will simplify summary adjudication and make it more efficient. Summary adjudication of issues was originally intended to reduce the cost of litigation by eliminating issues from a case at an early stage, but it rarely serves that purpose. Summary adjudication of issues often does not eliminate a cause of action and therefore saves little time but uses enormous judicial resources. Also, SB 2594 will help correct the abuses of summary adjudication. These motions are often used by the defense to run up more billable hours regardless of merit; the motions are costly to bring and costly to defend.

If you or a member of your staff would like to discuss this issue further, please feel free to contact me or one of our legislative representatives in Sacramento.

Sincerely,



Larry Drivon
President

cc: Assembly Judiciary Committee



THE STATE BAR OF CALIFORNIA

OFFICE OF GOVERNMENTAL AFFAIRS

LARRY DOYLE, Director

915 L STREET, SUITE 1260, SACRAMENTO, CALIFORNIA 95814

TELEPHONE: (916) 444-2762 FAX: (916) 443-0562

441-5859

July 21, 1990

The Honorable Alan Robbins
Senator, 20th District
State Capitol, Room 5114
Sacramento, CA 95814

RECEIVED

JUL 24 1990

ISENBERG
CAPITOL OFFICE

SB 2594 -- OPPOSE UNLESS AMENDED

Dear Senator Robbins,

The Board of Governors of the State Bar of California regrets to oppose your Senate Bill 2594, unless it is amended to reinstate the provisions permitting motions for summary adjudication of issues (CCP Section 437c(f)).

The Board of Governors took this position by unanimous vote at its July 21, 1990, meeting, upon recommendation of the State Bar's Committee on the Administration of Justice, the Committee on Rules & Procedures of Court, and the Executive Committee of the Litigation Section. In the opinion of the board, and of the three committees and sections mentioned, motions for summary adjudication of issues are valuable and should be permitted because they can streamline and simplify litigation, and because they can aid settlement by permitting a more accurate assessment of the merits of a case.

Full reports from the State Bar committees and sections mentioned are attached for your consideration.

If you or your staff would like to discuss this issue further, please contact David Long, Director of the State Bar's Office of Research, at (415) 561-8373. Thank you.

Best Regards,

LARRY DOYLE
Director, Office of
Governmental Affairs

Attachments

- cc: Chair and Counsel, Assembly Committee on Judiciary
- Chuck Vogel, President-elect, State Bar of California
- David Long, Director of Research
- Patricia M. Sayre, Committee on Rules & Procedures of Court
- Monroe Baer, Committee on the Administration of Justice
- Helen Sweeny Beardsworth, Litigation Section

LEGISLATIVE INTENT SERVICE (800) 666-1917





THE COMMITTEE ON ADMINISTRATION OF JUSTICE
THE STATE BAR OF CALIFORNIA

555 FRANKLIN STREET
SAN FRANCISCO, CA 94102-4400
(415) 561-8277

BILL REPORT

DATE: June 18, 1990

TO: Larry D. Doyle
Office of Governmental Affairs
Sacramento

Bill No. S.B. 2594
Bill Author: Robbins
Date Last Amended: May 7, 1990

CAJ POSITION: OPPOSE AMENDMENT TO SECTION 437c(f) (Priority II)
SUPPORT AMENDMENTS TO SECTIONS 437c(b), (d) [IF
AMENDED] AND (g) (PRIORITY II)

1. The Committee supports the bill in the amended version, which returns to bill to the existing state of the law on the timing of making evidentiary objections. However, the language in subsection (d) at lines 26 and 27 of page 4 should be amended to conform to the language in subsection (b) at lines 37 and 38 on page 2. The language should be amended to provide in subsection (d):

"Any objections not made at the hearing shall be deemed waived."

The present language of subsection (d) seems to prevent the making of any evidentiary objections in papers filed prior to the hearing, which is a frequently used and appropriate way to raise such objections.

2. The Committee opposes the proposed change to subsection (f) of Section 437c. Summary adjudication of issues is an important procedure for streamlining trials and establishing important issues in a case which are not "causes of action, affirmative defenses, or claims for damages." For example, the determination of conflict of laws issues, such as choice of law, is appropriate for summary adjudication, but would not be allowed under the proposed amendment. Summary adjudication of issues such as "duty" or "reliance" would also be prevented. Determination of such issues does not establish the entire cause of action, but the establishment of essential elements of a claim by summary adjudication results in shorter trials, and savings of resources for the parties, witnesses and the courts. The Committee believes that most judges know the difference between ultimate issues and evidentiary issues, and

that parties who abuse the 437c(f) procedure by seeking rulings on evidentiary issues are appropriately sanctioned.

3. The Committee supports the requirement that the courts specify the reasons for their determinations, whether summary judgment motions are granted or denied. Subsection (g) should be enacted.

JJ:bh

cc: John M. Seitman
Peter K. Shack
Monroe Baer ✓



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DATE: July 9, 1990
FROM: Patricia M. Sayre
For the Committee
on Rules and Procedures of Court
TO: David C. Long
Director of Research
SUBJECT: Secretary Referral
Proposed New Rules and Guidelines
for Motions for Summary Judgment
and Motions for Summary Adjudication of Issues

1. Proposed Amendment to Rules of Court

The Committee on Rules and Procedures of Court supports the proposed amendment to the rules for motions for summary judgment and motions for summary adjudication of issues. The Committee believes that a uniform rule in the detail set forth in the proposed rules will provide one comprehensive, uniform procedure with respect to these motions to the benefit of counsel practicing in all jurisdictions in California.

The appendix should be modified in the following respect:

Section 6 (f) should be modified by substituting the following language in place of the third paragraph of 6(f):

"Following this procedure avoids delay during the hearing but it does not excuse production of the original at the hearing except when the documents' existence and contents are admitted by verified pleadings, answers to interrogatories, or responses or an order of the court that the documents' existence and contents are deemed admitted following a failure to respond to request for admissions. If the documents' existence and contents have been admitted, the moving papers should refer to the pleadings, discovery or court order which contains the admission."

The foregoing change is necessary so that the rule is consistent with California Code of Civil Procedure Section 2033(k). It would not be wise for the rule to imply that a matter is deemed admitted by the mere failure to respond to requests for admissions when the statute has been amended to provide that the matter is

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PATRIGIA M. SAYRE

**Committee on Rules and
Procedures of Court
Response/July 9, 1990**

only "deemed admitted" as a result of an order by the court on a noticed motion.

2. SB 2594

The Committee opposes Senate Bill 2594. SB 2594 would allow the parties to make evidentiary objections orally at the hearing on the motion for summary judgment rather than making them at least two court days prior to the hearing. In light of the importance of a motion for summary judgment in conclusively determining issues between the parties, the Committee believes that it is more appropriate to continue to require written objections at least two court days prior to the hearing on a motion for summary judgment.

The Committee believes that it is inappropriate to delete C.C.P. Section 437(c)(f). The parties should be able to move to adjudicate issues which may not dispose of an entire cause of action. Summary adjudication of issues is an effective way to limit the scope of discovery and provide greater predictability to the outcome of the litigation. If the outcome of the litigation is more predictable, the chances of settlement are greatly enhanced. Although the proponents of SB 2594 indicate that motions for summary adjudication of issues can be a source of abuse, courts are provided with other mechanisms to limit and deter abuses without depriving parties of their rights to seek summary adjudication of issues.

cc: Committee Members



LITIGATION SECTION
THE STATE BAR OF CALIFORNIA



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July 18, 1990

Monroe Baer
Office of Research
The State Bar of California
555 Franklin Street
San Francisco, CA. 94102

Re: Proposed Rules and Guidelines
for Motions for Summary Judgment and Motion for
Summary Adjudication of Issues

Dear Mr. Baer:

The Litigation Section has reviewed Secretary Referral containing the proposed new rules and guidelines for summary judgment proposed by the Superior Court Committee of the Judicial Council.

Motions for Summary Judgment, etc.

The Litigation Section opposes the elimination of summary adjudication of issues. These motions resolve issues which streamline cases for trial and often assist the parties in evaluation cases for settlement negotiations.

We recommend that objections to evidence produced in support of, or in opposition to, motions for summary judgment, be deemed waived, unless made in writing before the hearing or orally at the hearing on the motion.

We recommend that the burden of proof on motions for summary judgment be the same as the burden of proof at trial.

Monroe Baer
July 18, 1990

Proposed Rules and Guidelines

The Litigation Section supports the proposed rules and guidelines in principle, particularly in light of the difficulties caused by the lack of uniformity in local rules. We believe that the rules should include a statement that these rules supersede all local rules concerning motions for summary judgment and summary adjudication of issues. Such a statement might be included in Section 1, "General Considerations" in the Appendix on page 9.

During our consideration of this proposal we noted that some rules were ambiguous and may create unnecessary burdens, particularly for smaller law offices. The potential problem areas are listed below:

Column format: This may result in statements of undisputed facts that are much longer than necessary (and wasting paper). (See pp. 4-5, Rules 343 (b), 343.1 (b); pp. 16-18, Example A and B.)

Statement of Undisputed Facts: This statement is called a Statement of Undisputed Facts in 343.1 (a) (1) but it seems that it should be called a Statement of Disputed Facts. (p.5)

Statement of Disputed Facts (In Opposition to Motion for Summary Judgment, etc): The requirement that the moving party's statement of undisputed facts, including recitation of evidence cited by moving party may be burdensome and unnecessary. (p.5, Rule 343.1 (b))

Adjudication of Issues: A separate statement of facts is required if an alternate motion for adjudication of issues is filed (i. e. two statements). (p.6, Rule 343.2) One statement may be sufficient for both motions.

Order: This section should also provide that the order be submitted to opposing counsel for approval prior to submission to the court. Some procedure should be set forth if the parties disagree concerning the proposed order.

Exhibits: Section 6 of the Appendix (pp. 11-15) states that "[i]f 10 or more items of evidence are submitted" the evidence should be contained in a separate



Monroe Baer
July 18, 1990

document. This rule, if adopted, should contain a definition of an "item" of evidence.

This section may require modification concerning the method of labeling, marking and indexing exhibits. For example, the name of the deponent must be included on each page of the transcript which is included. (p.14) Maybe a rule should be adopted requiring court reporters to include this on each page before these rules affecting motions for summary judgment are adopted. The method of "highlighting" depositions (p.15) should be clarified. Yellow highlighting must be done manually because copying machines cannot pick up highlighting. Thus, we suggest that alternative methods of highlighting be permitted.

We have made suggestions concerning sections of the proposed rules which should be considered before the rules and guidelines are adopted. We do support the standardization of rules and request a clear statement that these rules supersede local rules affecting motions for summary judgment and motions for adjudication of issues.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Helen S. Beardsworth

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cc: Michael Whelan
Janet Carver



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July 27, 1990

Administrative Office of the Courts
Attn: Arline S. Tyler, Attorney
595 Market Street, 30th Floor
San Francisco, California 94105

Re: **Comment on Proposed New Rules and Guidelines
For Motions For Summary Judgment and Motions
For Summary Adjudication of Issues**

Dear Ms. Tyler:

This letter is written in response to your invitation to comment on the proposed new rules and guidelines for Motions for Summary Judgment and Motions for Summary Adjudication of Issues. As a civil litigation law firm, we are definitely interested in the proposal. We send this letter to voice our strong ~~opposition~~ in particular to ~~Senate Bill 2594~~, which would eliminate summary adjudication of issues unless an entire cause of action, affirmative defense or claim for punitive damages can be resolved.

Our experience has demonstrated that Motions for Summary Adjudication of Issues are particularly useful for conserving trial time and expense, reducing the complexity of litigation, and promoting settlement without the necessity of trial. As you know, summary adjudication was



Administrative Office of the Courts
Attn: Arline S. Tyler, Attorney
July 26, 1990
Page 2

designed to "adjudicat[e] issues in advance of trial so as to save . . . time and expense." Beech Aircraft Corp. v. Superior Court, 61 Cal. App. 3d 501, 516, 132 Cal. Rptr. 541 (1976). "Since the length of trial is directly related to the number of issues which must be argued, any procedure which can get major issues adjudicated in advance of the actual trial should result in saving considerable time and expense." Id.

Summary resolution of significant disputed issues has also been shown to promote settlement without the necessity of trial by resolving significant and disputed issues beforehand. "[I]t is the policy of the law to discourage litigation and to favor compromise of doubtful rights and controversies" Imen v. Glassford, 201 Cal. App. 3d 898, 912, 247 Cal. Rptr. 514 (1988); see, LaBordi v. McKesson & Robins, Inc., 264 Cal. App. 2d 363, 370, 70 Cal. Rptr. 726 (1968); Central Basin Water Dist. v. Fossette, 235 Cal. App. 2d 689, 705, 45 Cal. Rptr. 651 (1965).

Proposed Senate Bill 2594 would preclude the resolution of significant questions of law which can presently be summarily disposed of by way of a Motion for Summary Adjudication of Issues. The following cases demonstrate that summary adjudication of an issue as opposed to an entire cause of action, can significantly impact litigation and promote more efficient handling.

For example, summary adjudication of issues is appropriate where a single cause of action is premised on the existence of multiple alleged duties - and at least some of the alleged duties are non-existent as a matter of law. State Farm Fire & Casualty Co. v. Superior Court, 215 Cal. App. 3d 1455, 1461-62, 263 Cal. Rptr. 337 (1989) (court summarily adjudicates that one of two claimed statutory duties is non-existent).

Where a single cause of action is premised on multiple alleged breaches of duties, and at least some of the alleged breaches cannot give rise to liability as a matter of law, summary adjudication is appropriate. King v. State of California, 11 Cal. App. 3d 307, 309, 89 Cal. Rptr. 715 (1970) (plaintiff alleged that defendant negligently constructed bridge, highway and levee; court summarily adjudicated that construction of levee did not give rise to liability).



Administrative Office of the Courts
Attn: Arline S. Tyler, Attorney
July 26, 1990
Page 3

Summary adjudication is appropriate where there is an issue regarding the choice of law to be applied in resolving the litigation, e.g., Beech Aircraft Corp. v. Superior Court, 61 Cal. App. 3d 501, 132 Cal. Rptr. 541 (1976) (trial court may summarily adjudicate whether California or New Mexico tort law applies in resolving wrongful death litigation).

Similarly amenable to summary adjudication is the issue of "Whether in a breach of contract action, there is a contract, a breach, or [a release]. . . ." Beech Aircraft Corp. v. Superior Court, supra, 61 Cal. App. 3d at 516; see, Niederer v. Ferreira, 150 Cal. App. 3d 219, 197 Cal. Rptr. 685 (1983) (court summarily adjudicates breach of written guaranty by defendant; validity of "lack of consideration" affirmative defense left as the only remaining issue for trial); Carma Developers, Inc. v. Marathon Development, 211 Cal. App. 3d 1360, 256 Cal. Rptr. 112 (1989) (court summarily adjudicates breach of contract by defendant; proximate cause and damages are left as the only remaining issues for trial); Cal-Veda Aircraft, Inc. v. Superior Court, 179 Cal. App. 3d 435, 224 Cal. Rptr. 809 (1986) (court summarily adjudicates that an insurance claimant was not a named insured; issue of whether coverage existed by virtue of insurance company agent's conversations with claimant left for resolution at trial).

The resolution of any of the above-described issues would not have disposed of an entire cause of action. However, their resolution nevertheless did simplify the causes of action and reduced the complexity of the litigation.

Conversely, Senate Bill 2594, which proposes to eliminate Motions for Summary Adjudication of Issues unless an entire cause of action is resolved, would increase costs and delay and would hamper the efficient handling of cases. Nor would the bill promote the settlement possibilities which arise as a result of resolving significant and disputed issues prior to trial.

As a firm familiar with the very useful purpose served by a summary adjudication of issues, we strongly oppose Senate Bill 2594, which we believe unnecessarily



AUTHOR'S COPY

AUTHOR'S COPY

THIRD READING

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1100 J Street, Suite 120 445-6614	Bill No.	SB 2594
	Author:	Robbins (D)
	Amended:	5/7/90
	Vote Required:	Majority

Committee Votes:

Senate Floor Vote:

COMMITTEE: JUDICIARY		
BILL NO.: SB 2594		
DATE OF HEARING: 5-15-90		
SENATORS:	AYE	NO
Doolittle		
Keene	/	
Marks	/	
Petris	/	
Presley	/	
Roberti	/	
Royce		
Torres	/	
Watson	/	
Davis (VC)	/	
Lockyer (Ch)	/	
TOTAL:	8	0

Assembly Floor Vote:

SUBJECT: Civil procedure: summary judgment and summary adjudication

SOURCE: California Judges Association

DIGEST: This bill provides that motions for summary adjudication be limited to resolving causes of action, affirmative defenses and/or claims for punitive damages.

This bill also makes other specified changes in summary adjudication procedures.

ANALYSIS: Existing law permits a court to grant summary judgment where an action has no merit or where there is no defense to an action. A litigant is permitted to seek summary adjudication of issues as part of, or in lieu of, a motion for summary judgment.

Existing law requires a court to determine whether there exists a material triable controversy as to each particular issue and to specify the evidence which establishes a triable issue of fact. The court is also required to identify those issues which are without substantial controversy.

This bill would instead require a court to determine:

1. whether there is a triable issue of fact as to the case as a whole,
2. whether there is a triable issue of fact as to particular causes of action and/or affirmative defenses, and

CONTINUED

3. whether there is a triable issue of fact as to punitive damages.

Existing case law permits an objection to the competency of a witness to be raised for the first time on appeal or by the appellate court itself.

This bill would expressly overrule case law and require that evidentiary objections and objections to the form and substance of pleadings are waived unless made at the court hearing on the motion for summary judgment.

Existing law permits the entire court file to be incorporated by reference for the purpose of resolving a motion for summary judgment.

The bill would instead provide that any incorporation by reference of matter in the court's file shall set forth with specificity the exact document to which reference is made and shall not incorporate the entire file.

The purpose of this bill is to make the summary judgment procedure more efficient and to reduce the opportunity for abuse of the procedure.

FISCAL EFFECT: Appropriation: No Fiscal Committee: No Local: No

SUPPORT: (Verified 5/17/90)

California Judges Association (source)
California Trial Lawyers Association

OPPOSITION: (Verified 5/17/90)

California Association of Insurance Companies

ARGUMENTS IN SUPPORT: According to the sponsor, it is a waste of court time to attempt to resolve issues if the resolution of those issues will not result in summary adjudication of a cause of action or affirmative defense. Since the cause of action must still be tried, much of the same evidence will be reconsidered by the court at the time of trial. This bill would instead require summary adjudication of issues only where an entire cause of action, affirmative defense or claim for punitive damages can be resolved.

The sponsor also states that existing law can be abused by litigant attempts to engage in a paper war by bringing motions to resolve numerous minute issues. The sponsor states that many of these issues could be more efficiently resolved through requests for admission and other discovery procedures.

The sponsor believes that the bill will save court time, reduce the cost of litigation for plaintiffs and defendants, and reduce the opportunity for abuse of the summary judgment procedure.

ARGUMENTS IN OPPOSITION: Opponents also object because they believe the bill would prevent summary adjudication of important issues in situations such as the following:

1. Where there is an important issue as to the legal or fiduciary relationship of the plaintiff and one or more defendants.

CONTINUED

2. Where there are allegations that a defendant owed a special duty of care to the plaintiff.
3. Where there is an issue as to the appropriate burden of proof.

Opponents state that the above examples represent question of law that can be disposed of by motion for summary adjudication. Though resolution of any of the issues would not dispose of the entire cause of action, opponents believe it would nonetheless simplify the cause of action and reduce the complexity of the litigation. Opponents state that the bill, as introduced, would increase cost and delay.

RJG:lm 5/17/90 Senate Floor Analyses



SENATE COMMITTEE ON JUDICIARY
Bill Lockyer, Chairman
1989-90 Regular session

S
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SB 2594 (Robbins)
As amended May 7
Hearing date: May 15, 1990
Code of Civil Procedure
JRP/lhm

SUMMARY JUDGMENT

HISTORY

Source: California Judges Association

Prior Legislation: None

Support: California Trial Lawyers Association

Opposition: California Association of Insurance Companies
(unless amended)

KEY ISSUES

SHOULD MOTIONS FOR SUMMARY ADJUDICATION BE LIMITED TO RESOLVING CAUSES OF ACTION, AFFIRMATIVE DEFENSES AND/OR CLAIMS FOR PUNITIVE DAMAGES?

SHOULD OTHER SPECIFIED CHANGES IN SUMMARY ADJUDICATION PROCEDURES BE MADE?

PURPOSE

1. Scope of motion for summary judgment

Existing law permits a court to grant summary judgment where an action has no merit or where there is no defense to an action. A litigant is permitted to seek summary adjudication of issues as part of, or in lieu of, a motion for summary judgment.

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Existing law requires a court to determine whether there exists a material triable controversy as to each particular issue and to specify the evidence which establishes a triable issue of fact. The court is also required to identify those issues which are without substantial controversy.

This bill would instead require a court to determine:

- (a) whether there is a triable issue of fact as to the case as a whole,
- (b) whether there is a triable issue of fact as to particular causes of action and/or affirmative defenses, and
- (c) whether there is a triable issue of fact as to punitive damages.

2. Objections to the form and substance of moving and opposing papers

Existing case law permits an objection to the competency of a witness to be raised for the first time on appeal or by the appellate court itself.

This bill would expressly overrule case law and require that evidentiary objections and objections to the form and substance of pleadings are waived unless made at the court hearing on the motion for summary judgment.

3. Incorporation by reference of documents contained in the court file

Existing law permits the entire court file to be incorporated by reference for the purpose of resolving a motion for summary judgment.

The bill would instead provide that any incorporation by reference of matter in the court's file shall set forth with specificity the exact document to which reference is made and shall not incorporate the entire file.

The purpose of this bill is to make the summary judgment procedure more efficient and to reduce the opportunity for abuse of the procedure.

COMMENT

1. Adjudication of causes of action rather than issues

According to the sponsor, it is a waste of court time to attempt to resolve issues if the resolution of those issues will not result in summary adjudication of a cause of action or



affirmative defense. Since the cause of action must still be tried, much of the same evidence will be reconsidered by the court at the time of trial. This bill would instead require summary adjudication of issues only where an entire cause of action, affirmative defense or claim for punitive damages can be resolved.

The sponsor also states that existing law can be abused by litigant attempts to engage in a paper war by bringing motions to resolve numerous minute issues. The sponsor states that many of these issues could be more efficiently resolved through requests for admission and other discovery procedures.

The sponsor believes that the bill will save court time, reduce the cost of litigation for plaintiffs and defendants, and reduce the opportunity for abuse of the summary judgment procedure.

2. Objections to evidence

The California Court of Appeal has held that objections to the competency of a witness are not waived even if a party fails to make those objections at the hearing. Witchell v. De Korne 179 Cal.App.3d 965 and Zukerman v. Pacific Savings Bank 187 Cal.App.3d 1394.

This bill would re-enact language providing that evidentiary objections not made at the hearing are waived and would specifically provide that objections based on the failure to comply with the requirements of the statute are waived unless made at the hearing.

The bill also contains a statement of legislative intent that the rules stated in the Witchell and Zukerman cases be overturned.

The sponsor believes it is necessary to overturn the above cases to prevent relitigation and trial de novo of summary judgments in appellate court. All evidentiary issues, except those relating to the competency of a witness, are waived unless first raised in the summary judgment hearing. The sponsor believes that this should also be the rule for objections related to witness competency.

3. Incorporation of the file

Currently, an entire court file may be incorporated for the purpose of deciding a motion for summary judgment. This bill requires that only material specifically identified may be so incorporated. According to the sponsor, this prevents relitigation of the motion for summary judgment in appellate court based on a document not considered by the lower court in



granting or denying the motion.

4. Statement of decision

Under existing law a court must state the reasons for its decision and specify the evidence relied upon only where it denies a motion for summary judgment.

The bill would also require that a court, upon granting a motion for summary judgment, to specify the reasons for the decision and the evidence relied upon in making the determination.

The sponsor believes that the above language will provide a more equitable balance between plaintiffs and defendants.

5. Opposition

A major objection to the bill raised by the opposition, the elimination of the ability to resolve punitive damages claims by summary adjudication, has been resolved by the author's amendments.

Opponents also object because they believe the bill would prevent summary adjudication of important issues in situations such as the following:

- (a) Where there is an important issue as to the legal or fiduciary relationship of the plaintiff and one or more defendants.
- (b) Where there are allegations that a defendant owed a special duty of care to the plaintiff.
- (c) Where there is an issue as to the appropriate burden of proof.

Opponents state that the above examples represent question of law that can be disposed of by motion for summary adjudication. Though resolution of any of the issues would not dispose of the entire cause of action, opponents believe it would nonetheless simplify the cause of action and reduce the complexity of the litigation. Opponents state that the bill, as introduced, would increase cost and delay.

Opponents have suggested amendments that would allow resolution of the issues such as those listed above.



MAY 24 '90 07:17 CALIFORNIA ADVOCATES

P.2

SENATE BILL 2594 HIGHLIGHTS

Amends Section 437c of the Code of Civil Procedure dealing with summary resolution to:

- o eliminate summary adjudication of issues, retaining summary adjudication of causes of action; in response to a suggestion from the insurance industry permits summary adjudication of the single issue of punitive damages.
- o require papers filed with the court relating to summary resolution which incorporate material in the court's file to specify the matter being incorporated with specificity, thereby eliminating the incentive to incorporate generally to maintain the broadest possible appeal rights.
- o provide that objections based upon competency are waived unless raised at the hearing.
- o require the court to provide specific reasons for granting summary judgment in addition to current law requiring reasons for denying summary judgment.

Extensive meetings have:

- o crafted a bill achieving CTLA support.
- o resulted in an amendment to address insurance industry concerns.
- o identified other insurance concerns currently being evaluated; we believe that these concerns revolve around motions which actually dispose of causes of action, but are studying them and working with ACIC.



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Associate Legislative Counsel
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May 3, 1990

Senator Alan Robbins
State Capitol, Room 5114
Sacramento, Ca. 95814

RE: SB 2594 (Robbins) SUPPORT

Dear Senator Robbins:

The California Trial Lawyers Association supports SB 2594, which is scheduled to be heard before the Senate Judiciary Committee on May 8, 1990.

SB 2594 would eliminate summary adjudication of issues and replace it with summary adjudication of causes of action.

This change will simplify summary adjudication and make it more efficient. Summary adjudication of issues was originally intended to reduce the cost of litigation by eliminating issues from a case at an early stage, but it rarely serves that purpose. Summary adjudication of issues often does not eliminate a cause of action and therefore saves little time but uses enormous judicial resources. Also, SB 2594 will help correct the abuses of summary adjudication. These motions are often used by the defense to run up more billable hours regardless of merit; the motions are costly to bring and costly to defend.

If you or a member of your staff would like to discuss this issue further, please feel free to contact me or one of our legislative representatives in Sacramento.

Sincerely,



Larry Drivon
President

cc: Senate Judiciary Committee



LEGISLATIVE INTENT SERVICE (800) 666-1917



DATE: July 23, 1990
TO: Pam Pierson, Jim Pokorny, Ed Poll, Janean Stadler
FROM: Ruthe Ashley
SUBJECT: First draft of "THE LAW AND MR. FINNEGAN"

I received the first draft on Saturday at home and it looks good. Dave went to work on it. Unfortunately, there wasn't time to send you a copy before our conference call scheduled today. Therefore, copies are being fed ex'ed to each of you today for arrival tomorrow. I am postponing our conference call until Wednesday, July 25, at 3:00 p.m.

In the meantime, I will give Dave the green light to finalize the script. The substantive content looks terrific and, in my opinion, only minor changes may be necessary. Dave thinks the script may be longer than the 30 minutes designated for the video and some cutting may be necessary. Keep that in mind.

I think it's important to have diversity in the casting of the actors and actresses by including women and minorities. One of the clients is now a woman, so concentration on including minorities would be appropriate.

Thanks for all your time and cooperation. I think all is set for our Friday program. If I don't hear from you by today, I will assume you don't need assistance on anything else, such as cue cards, etc.

You have reservations at the Stockton Hilton for Thursday night. Remember, the five of you (including Cherie) meet at 7:00 p.m. at the Hilton for dress rehearsal. Remember your list of tasks to do.

See you Friday morning.

cc: Gus Lee
Cherie Kerr
Dave Morgasen



aba: 8/20/90

SB 2594

SENATE THIRD READING

SB 2594 (Robbins) - As Amended: August 15, 1990

SENATE VOTE: 22-12

ASSEMBLY ACTIONS:

COMMITTEE JUD. VOTE 10-0 COMMITTEE _____ VOTE _____

DIGEST

Existing law:

- 1) Permits a court to grant summary judgment where an action has no merit or where there is no defense to an action. A party may move for summary adjudication of issues as part of, or in lieu of, a motion for summary judgment.
- 2) Requires a court to determine whether a material triable controversy exists as to each particular issue and to specify the evidence which establishes a triable issue of fact. The court is also required to identify those issues which are without substantial controversy.
- 3) Permits in case law, an objection to the competency of a witness to be raised for the first time on appeal or by the appellate court itself.
- 4) Permits the entire court file to be incorporated by reference for the purpose of resolving a motion for summary judgment.

This bill:

- 1) Requires a court to determine:
 - a) Whether there is a triable issue of fact as to the case as a whole.
 - b) Whether there is a triable issue of fact as to particular causes of action and/or affirmative defenses.
 - c) Whether there is a triable issue of fact as to punitive damages.
- 2) Specifies that a cause of action has no merit if one or more of the elements cannot be established.
- 3) Abrogates case law by requiring that evidentiary objections and objections to the form and substance of pleadings are waived unless made at the court hearing on the motion for summary judgment.
- 4) Provides that any incorporation by reference of matter in the court's file shall set forth with specificity the exact document to which

- continued -

LEGISLATIVE INTENT SERVICE (800) 666-1917

reference is made and shall not incorporate the entire file.

FISCAL EFFECT

No significant fiscal impact anticipated.

COMMENTS

- 1) A party to an action may move for summary judgment by contending that the action has no merit or that there is no defense thereto. A motion for summary judgment must be supported or opposed by admissible evidence (i.e. affidavits, declarations, admissions, answers to interrogatories, depositions and matters of which judicial notice may be taken.) The motion shall be granted if the court finds that there is no triable issue as to any material fact. If an issue of fact is presented the court must permit trial thereof. The purpose of the summary procedure is to provide a method for prompt disposition of actions in which there is no triable, material issue of fact on which evidence shall be taken. The motion is not intended to test the sufficiency of the pleadings, but rather to determine whether the issues apparently raised are merely the result of sham or adept pleading.

Generally the granting of a motion for summary judgment disposes of the whole case (although in multiple party litigation, summary judgment may be granted as to one party, leaving the others to litigate.) Even if the court determines that there are some triable issues in the case as a whole, it may find that certain other issues "are without substantial controversy" and grant summary adjudication as to those issues. A decision that certain issues are without substantial controversy does not end the action, but it does reduce the scope of trial by eliminating the need to prove or disprove those issues at trial. The court cannot summarily adjudicate issues if it is presented only with a motion for summary judgment. When the moving party wants the court to adjudicate issues a motion for summary adjudication of issues must be made. At trial any issues which have been summarily adjudicated are deemed established and the trial proceeds on the remaining issues.

- 2) Sponsor's Statement. The California Judges Association (CJA) is the source of this bill. According to CJA, it is a waste of court time to attempt to resolve issues if the resolution of those issues will not result in summary adjudication of a cause of action or affirmative defense. Since the cause of action must still be tried, much of the same evidence will be reconsidered by the court at the time of trial. This bill would instead require summary adjudication of issues only where an entire cause of action, affirmative defense or claim for punitive damages can be resolved.

CJA also states that existing law can be abused by litigant attempts to engage in a paper war by bringing motions to resolve numerous minute issues. The sponsor states that many of these issues could be more

- continued -

efficiently resolved through requests for admission and other discovery procedures.

CJA states that the bill will save court time, reduce the cost of litigation for plaintiffs and defendants, and reduce the opportunity for abuse of the summary judgment procedure.

- 3) The California Court of Appeal has held that objections to the competency of a witness are not waived even if a party fails to make those objections at the hearing. Witchell v. De Korne 179 Cal.App.3d 965 and Zukerman v. Pacific Savings Bank 179 Cal.App.3d 1394.

This bill would re-enact language providing that evidentiary objections not made at the hearing are waived and would specifically provide that objections based on the failure to comply with the requirements of the statute are waived unless made at the hearing.

The bill also contains a statement of legislative intent that the rules stated in the Witchell and Zukerman cases be overturned.

CJA states that it is necessary to overturn the above cases to prevent relitigation and trial de novo of summary judgments in appellate court. All evidentiary issues, except those relating to the competency of a witness, are waived unless first raised in the summary judgment hearing. The sponsor believes that this should also be the rule for objections related to witness competency.

- 4) Currently, an entire court file may be incorporated for the purpose of deciding a motion for summary judgment. This bill requires that only material specifically identified may be so incorporated. According to the sponsor, this prevents relitigation of the motion for summary judgment in appellate court based on a document not considered by the lower court in granting or denying the motion.





ADDITIONAL AMENDMENTS TO SENATE BILL 2594**AS AMENDED ON MAY 7, 1990**

On page 5, after Code," insert:

or that one or more defendants either owed or did not
owe a duty to the plaintiff or plaintiffs,



SENATE COMMITTEE ON JUDICIARY
Bill Lockyer, Chairman
1989-90 Regular session

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SB 2594 (Robbins)
As amended May 7
Hearing date: May 15, 1990
Code of Civil Procedure
JRP/lhm

SUMMARY JUDGMENT

HISTORY

Source: California Judges Association

Prior Legislation: None

Support: California Trial Lawyers Association

Opposition: California Association of Insurance Companies
(unless amended)

KEY ISSUES

SHOULD MOTIONS FOR SUMMARY ADJUDICATION BE LIMITED TO RESOLVING CAUSES OF ACTION, AFFIRMATIVE DEFENSES AND/OR CLAIMS FOR PUNITIVE DAMAGES?

SHOULD OTHER SPECIFIED CHANGES IN SUMMARY ADJUDICATION PROCEDURES BE MADE?

PURPOSE

1. Scope of motion for summary judgment

Existing law [permits a court to grant summary judgment where an action has no merit or where there is no defense to an action. A litigant is ~~permitted to seek summary adjudication of issues as part of, or in lieu of, a motion for summary judgment.~~]

May

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B Existing law [requires a court to determine whether there exists a material triable controversy as to each particular issue and to specify the evidence which establishes a triable issue of fact. The court is also required to identify those issues which are without substantial controversy.]

This bill would instead [require] a court to determine:

- E
- (a) whether there is a triable issue of fact as to the case as a whole,
 - (b) whether there is a triable issue of fact as to particular causes of action and/or affirmative defenses, and
 - (c) whether there is a triable issue of fact as to punitive damages.]

2. Objections to the form and substance of moving and opposing papers

C Existing case law [permits an objection to the competency of a witness to be raised for the first time on appeal or by the appellate court itself.]

F This bill would expressly overrule case law and [require] that evidentiary objections and objections to the form and substance of pleadings are waived unless made at the court hearing on the motion for summary judgment.]

3. Incorporation by reference of documents contained in the court file

D Existing law [permits the entire court file to be incorporated by reference for the purpose of resolving a motion for summary judgment.]

G The bill would instead [provide] that any incorporation by reference of matter in the court's file shall set forth with specificity the exact document to which reference is made and shall not incorporate the entire file.]

The purpose of this bill is to make the summary judgment procedure more efficient and to reduce the opportunity for abuse of the procedure.

COMMENT

1. Adjudication of causes of action rather than issues

H According to the sponsor, [it is a waste of court time to attempt to resolve issues if the resolution of those issues will not result in summary adjudication of a cause of action or

affirmative defense. Since the cause of action must still be tried, much of the same evidence will be reconsidered by the court at the time of trial. This bill would instead require summary adjudication of issues only where an entire cause of action, affirmative defense or claim for punitive damages can be resolved.

H- ^{CSA}
~~The sponsor~~ also states that existing law can be abused by litigant attempts to engage in a paper war by bringing motions to resolve numerous minute issues. The sponsor states that many of these issues could be more efficiently resolved through requests for admission and other discovery procedures.

^{CSA states}
~~The sponsor~~ believes that the bill will save court time, reduce the cost of litigation for plaintiffs and defendants, and reduce the opportunity for abuse of the summary judgment procedure.

2. Objections to evidence

I
The California Court of Appeal has held that objections to the competency of a witness are not waived even if a party fails to make those objections at the hearing. Witchell v. De Korne 179 Cal.App.3d 965 and Zukerman v. Pacific Savings Bank 187 Cal.App.3d 1394.

This bill would re-enact language providing that evidentiary objections not made at the hearing are waived and would specifically provide that objections based on the failure to comply with the requirements of the statute are waived unless made at the hearing.

The bill also contains a statement of legislative intent that the rules stated in the Witchell and Zukerman cases be overturned.

^{CSA states}
~~The sponsor~~ believes it is necessary to overturn the above cases to prevent relitigation and trial de novo of summary judgments in appellate court. All evidentiary issues, except those relating to the competency of a witness, are waived unless first raised in the summary judgment hearing. The sponsor believes that this should also be the rule for objections related to witness competency.

3. Incorporation of the file

J
Currently, an entire court file may be incorporated for the purpose of deciding a motion for summary judgment. This bill requires that only material specifically identified may be so incorporated. According to the sponsor, this prevents relitigation of the motion for summary judgment in appellate court based on a document not considered by the lower court in

granting or denying the motion. J

4. Statement of decision

Under existing law a court must state the reasons for its decision and specify the evidence relied upon only where it denies a motion for summary judgment.

The bill would also require that a court, upon granting a motion for summary judgment, to specify the reasons for the decision and the evidence relied upon in making the determination.

The sponsor believes that the above language will provide a more equitable balance between plaintiffs and defendants.

5. Opposition

A major objection to the bill raised by the opposition, the elimination of the ability to resolve punitive damages claims by summary adjudication, has been resolved by the author's amendments.

Opponents also object because they believe the bill would prevent summary adjudication of important issues in situations such as the following:

- (a) Where there is an important issue as to the legal or fiduciary relationship of the plaintiff and one or more defendants.
- (b) Where there are allegations that a defendant owed a special duty of care to the plaintiff.
- (c) Where there is an issue as to the appropriate burden of proof.

Opponents state that the above examples represent question of law that can be disposed of by motion for summary adjudication. Though resolution of any of the issues would not dispose of the entire cause of action, opponents believe it would nonetheless simplify the cause of action and reduce the complexity of the litigation. Opponents state that the bill, as introduced, would increase cost and delay.

Opponents have suggested amendments that would allow resolution of the issues such as those listed above.



AMENDMENTS TO SENATE BILL 2594

AS AMENDED MAY 7, 1990

AMENDMENT #1

On page 5, line 28 after "damages." insert:

A cause of action has no merit if one or more of the elements of the cause of action, even if not separately pleaded, cannot be established.



CALIFORNIA TRIAL LAWYERS ASSOCIATION

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Executive Director
Leonard Esquina, Jr.

Legislative Counsel
Nancy Drabble

Legal Analyst
Will Glennon

Associate Legislative
Counsel
Nancy Peverini

July 27, 1990

Senator Alan Robbins
State Capitol, Room 5114
Sacramento, Ca. 95814

RE: SB 2594 (Robbins) SUPPORT

Dear Senator Robbins:

The California Trial Lawyers Association supports SB 2594, which is scheduled to be heard before the Assembly Judiciary Committee on August 8, 1990.

SB 2594 would eliminate summary adjudication of issues and replace it with summary adjudication of causes of action.

This change will simplify summary adjudication and make it more efficient. Summary adjudication of issues was originally intended to reduce the cost of litigation by eliminating issues from a case at an early stage, but it rarely serves that purpose. Summary adjudication of issues often does not eliminate a cause of action and therefore saves little time but uses enormous judicial resources. Also, SB 2594 will help correct the abuses of summary adjudication. These motions are often used by the defense to run up more billable hours regardless of merit; the motions are costly to bring and costly to defend.

If you or a member of your staff would like to discuss this issue further, please feel free to contact me or one of our legislative representatives in Sacramento.

Sincerely,



Larry Drivon
President

cc: Assembly Judiciary Committee

(2)REPORTS OF STANDING COMMITTEES<c2>

(2)Committee on JUDICIARY

Date of Hearing: 08/08/90 [_]<r>

r. Speaker: Your Committee on JUDICIARY reports:

[REDACTED]

Senate Bill [REDACTED] (10-0)

Senate Bill No. 2339 (10-0)

[REDACTED]

Senate Bill No. 2594 (10-0)

Senate Bill No. 2606 (10-0)

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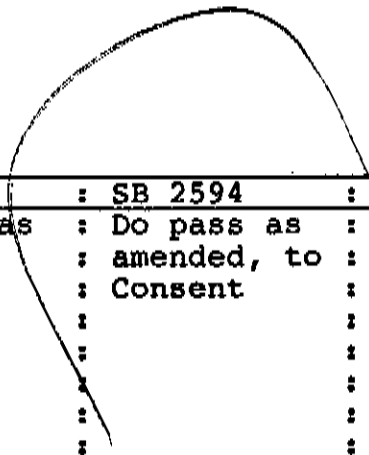
1)With the recommendation: Do pass, as amended.

[z6]Pursuant to the provisions of Joint Rules Nos. 22.1, 22.2, and 22.3, the committee recommends that the above bill(s) be placed on the Consent Calendar. <1>

Isenberg, Chair [_]
Isenberg

5)Above bill ordered to second reading.

JUDICIARY



Date of Hearing: 08/08/90

BILL NO.	SB 2547	SB 2588	SB 2594	SB 2606
ACTION VOTED ON	Do pass, to Consent	Do pass as amended	Do pass as amended, to Consent	Do pass as amended, to Consent
	Aye	No	Aye	No
Connelly	X		X	
Friedman	X		X	
Harris	X		X	
Johnston	X		X	
Leslie	X	N.V.	X	
McClintock	X	Ab.	X	
Mojonnier	X		X	
Speier	X		X	
Statham	X		X	
Maxine Waters	Ab.		Ab.	
Isenberg(Chair)	X		X	
	Ayes: 10	Noes: 0	Ayes: 8	Noes: 0
	Ayes: 10	Noes: 0	Ayes: 10	Noes: 0

N.V. - Not voting
 Ab. - Absent

Abst - Abstain

RECEIVED: _____

_____, Chair

LEGISLATIVE INTENT SERVICE (800) 666-1917



BILL NUMBER: SB 2594

REFER TO: JUDICIARY

AUTHOR: ROBBINS

DATE REFERRED: 05/31/90

RELATING TO: Civil procedure: summary judgment and summary adjudication.

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

LEGISLATIVE COUNSEL DIGEST

SB 2594, as amended, Robbins. Civil procedure: summary judgment and summary adjudication.

Existing law sets forth the grounds for and effects of summary judgment and summary adjudication. Existing law, among other things, provides evidentiary objections not made either in writing or orally at the hearing shall be deemed waived.

This bill would revise existing law and provide all of the following: (1) evidentiary objections to a motion for summary judgment not made ~~in writing~~ at ~~least 7 court days prior to~~ the hearing shall be deemed waived; (2) any incorporation by reference of matter in the court's file shall set forth with specificity the exact reference to which reference is being made and shall not incorporate the entire file; (3) any objections based on the failure to comply with provisions governing supporting and opposing affidavits or declarations shall be made ~~in writing~~ at ~~least 7 court days prior to~~ the hearing or shall be deemed waived; ~~and~~ (4) if it is contended that one or more causes of action within an action has no merit or that there is no defense thereto, as specified, any party may move for a summary adjudication as to that cause of action ~~or~~ causes of action, claim for damages or ~~any~~ affirmative defense; and (5) that upon the grant of a motion for summary judgment, on the ground that there is no triable issue of material fact, the court shall make an oral or written order, as specified.

This bill would also delete specified provisions allowing a party to move for summary adjudication of issues, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

Date of Hearing: August 8, 1990

ASSEMBLY COMMITTEE ON JUDICIARY
Phillip Isenberg, Chair

SB 2594 (Robbins) - As Amended: August 15, 1990

PRIOR ACTION

Sen. Com. on JUD. 8-0

Sen. Floor 22-12

SUBJECT: This bill revises the laws relating to summary judgments and summary adjudication.

BACKGROUND

A party to an action may move for summary judgment by contending that the action has no merit or that there is no defense thereto. A motion for summary judgment must be supported or opposed by admissible evidence (i.e. affidavits, declarations, admissions, answers to interrogatories, depositions and matters of which judicial notice may be taken.) The motion shall be granted if the court finds that there is no triable issue as to any material fact. If an issue of fact is presented the court must permit trial thereof. The purpose of the summary procedure is to provide a method for prompt disposition of actions in which there is no triable, material issue of fact on which evidence shall be taken. The motion is not intended to test the sufficiency of the pleadings, but rather to determine whether the issues apparently raised are merely the result of sham or adept pleading.

Generally the granting of a motion for summary judgment disposes of the whole case (although in multiple party litigation, summary judgment may be granted as to one party, leaving the others to litigate.) Even if the court determines that there are some triable issues in the case as a whole, it may find that certain other issues "are without substantial controversy" and grant summary adjudication as to those issues. A decision that certain issues are without substantial controversy does not end the action, but it does reduce the scope of trial by eliminating the need to prove or disprove those issues at trial. The court cannot summarily adjudicate issues if it is presented only with a motion for summary judgment. When the moving party wants the court to adjudicate issues a motion for summary adjudication of issues must be made. At trial any issues which have been summarily adjudicated are deemed established and the trial proceeds on the remaining issues.

DIGEST

Existing law:

- 1) Permits a court to grant summary judgment where an action has no merit or

- continued -

where there is no defense to an action. A party may move for summary adjudication of issues as part of, or in lieu of, a motion for summary judgment.

- 2) Requires a court to determine whether a material triable controversy exists as to each particular issue and to specify the evidence which establishes a triable issue of fact. The court is also required to identify those issues which are without substantial controversy.
- 3) Permits in case law, an objection to the competency of a witness to be raised for the first time on appeal or by the appellate court itself.
- 4) Permits the entire court file to be incorporated by reference for the purpose of resolving a motion for summary judgment.

This bill:

- 1) Requires a court to determine:
 - a) Whether there is a triable issue of fact as to the case as a whole.
 - b) Whether there is a triable issue of fact as to particular causes of action and/or affirmative defenses.
 - c) Whether there is a triable issue of fact as to punitive damages.
- 2) Specifies that a cause of action has no merit if one or more of the elements cannot be established.
- 3) Abrogates case law by requiring that evidentiary objections and objections to the form and substance of pleadings are waived unless made at the court hearing on the motion for summary judgment.
- 4) Provides that any incorporation by reference of matter in the court's file shall set forth with specificity the exact document to which reference is made and shall not incorporate the entire file.

FISCAL EFFECT

No significant fiscal impact anticipated. This bill will not be referred to the Committee on Ways and Means.

COMMENTS

- 1) Sponsor's Statement. The California Judges Association (CJA) is the source of this bill. According to CJA, it is a waste of court time to attempt to resolve issues if the resolution of those issues will not result in summary adjudication of a cause of action or affirmative defense. Since the cause of action must still be tried, much of the same evidence will be reconsidered by the court at the time of trial. This

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bill would instead require summary adjudication of issues only where an entire cause of action, affirmative defense or claim for punitive damages can be resolved.

CJA also states that existing law can be abused by litigant attempts to engage in a paper war by bringing motions to resolve numerous minute issues. The sponsor states that many of these issues could be more efficiently resolved through requests for admission and other discovery procedures.

CJA states that the bill will save court time, reduce the cost of litigation for plaintiffs and defendants, and reduce the opportunity for abuse of the summary judgment procedure.

- 2) The California Court of Appeal has held that objections to the competency of a witness are not waived even if a party fails to make those objections at the hearing. Witchell v. De Korne 179 Cal.App.3d 965 and Zukerman v. Pacific Savings Bank 179 Cal.App.3d 1394.

This bill would re-enact language providing that evidentiary objections not made at the hearing are waived and would specifically provide that objections based on the failure to comply with the requirements of the statute are waived unless made at the hearing.

The bill also contains a statement of legislative intent that the rules stated in the Witchell and Zukerman cases be overturned.

CJA states that it is necessary to overturn the above cases to prevent relitigation and trial de novo of summary judgments in appellate court. All evidentiary issues, except those relating to the competency of a witness, are waived unless first raised in the summary judgment hearing. The sponsor believes that this should also be the rule for objections related to witness competency.

- 3) Currently, an entire court file may be incorporated for the purpose of deciding a motion for summary judgment. This bill requires that only material specifically identified may be so incorporated. According to the sponsor, this prevents relitigation of the motion for summary judgment in appellate court based on a document not considered by the lower court in granting or denying the motion.

SUPPORT

California Judges Association (source)
California Trial Lawyers Association

OPPOSITION

Unknown



Date of Hearing: August 8, 1990

ASSEMBLY COMMITTEE ON JUDICIARY
Phillip Isenberg, Chair

SB 2594 (Robbins) - As Amended: August 6, 1990

PRIOR ACTION

Sen. Com. on JUD. 8-0

Sen. Floor 22-12

SUBJECT: This bill revises the laws relating to summary judgments and summary adjudication.

BACKGROUND

A party to an action may move for summary judgment by contending that the action has no merit or that there is no defense thereto. A motion for summary judgment must be supported or opposed by admissible evidence (i.e. affidavits, declarations, admissions, answers to interrogatories, depositions and matters of which judicial notice may be taken.) The motion shall be granted if the court finds that there is no triable issue as to any material fact. If an issue of fact is presented the court must permit trial thereof. The purpose of the summary procedure is to provide a method for prompt disposition of actions in which there is no triable, material issue of fact on which evidence shall be taken. The motion is not intended to test the sufficiency of the pleadings, but rather to determine whether the issues apparently raised are merely the result of sham or adept pleading.

Generally the granting of a motion for summary judgment disposes of the whole case (although in multiple party litigation, summary judgment may be granted as to one party, leaving the others to litigate. Even if the court determines that there are some triable issues in the case as a whole, it may find that certain other issues "are without substantial controversy" and grant summary adjudication as to those issues. A decision that certain issues are without substantial controversy does not end the action, but it does reduce the scope of trial by eliminating the need to prove or disprove those issues at trial. The court cannot summarily adjudicate issues if it is presented only with a motion for summary judgment. When the moving party wants the court to adjudicate issues a motion for summary adjudication of issues must be made. At trial any issues which have been summarily adjudicated are deemed established and the trial proceeds on the remaining issues.

DIGEST

Existing law:

- 1) Permits a court to grant summary judgment where an action has no merit or

- continued -

where there is no defense to an action. A party may move for summary adjudication of issues as part of, or in lieu of, a motion for summary judgment.

- 2) Requires a court to determine whether a material triable controversy exists as to each particular issue and to specify the evidence which establishes a triable issue of fact. The court is also required to identify those issues which are without substantial controversy.
- 3) Permits in case law, an objection to the competency of a witness to be raised for the first time on appeal or by the appellate court itself.
- 4) Permits the entire court file to be incorporated by reference for the purpose of resolving a motion for summary judgment.

This bill:

- 1) Requires a court to determine:
 - a) Whether there is a triable issue of fact as to the case as a whole.
 - b) Whether there is a triable issue of fact as to particular causes of action and/or affirmative defenses.
 - c) Whether there is a triable issue of fact as to punitive damages.
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- 3) Provides that any incorporation by reference of matter in the court's file shall set forth with specificity the exact document to which reference is made and shall not incorporate the entire file.

FISCAL EFFECT

No significant fiscal impact anticipated. This bill will not be referred to the Committee on Ways and Means.

COMMENTS

- 1) Sponsor's Statement. The California Judges Association (CJA) is the source of this bill. According to CJA, it is a waste of court time to attempt to resolve issues if the resolution of those issues will not result in summary adjudication of a cause of action or affirmative defense. Since the cause of action must still be tried, much of the same evidence will be reconsidered by the court at the time of trial. This bill would instead require summary adjudication of issues only where an entire cause of action, affirmative defense or claim for punitive damages can be resolved.

- continued -



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CJA states that the bill will save court time, reduce the cost of litigation for plaintiffs and defendants, and reduce the opportunity for abuse of the summary judgment procedure.

- 2) The California Court of Appeal has held that objections to the competency of a witness are not waived even if a party fails to make those objections at the hearing. Witchell v. De Korne 179 Cal.App.3d 965 and Zukerman v. Pacific Savings Bank 179 Cal.App.3d 1394.

This bill would re-enact language providing that evidentiary objections not made at the hearing are waived and would specifically provide that objections based on the failure to comply with the requirements of the statute are waived unless made at the hearing.

The bill also contains a statement of legislative intent that the rules stated in the Witchell and Zukerman cases be overturned.

CJA states that it is necessary to overturn the above cases to prevent relitigation and trial de novo of summary judgments in appellate court. All evidentiary issues, except those relating to the competency of a witness, are waived unless first raised in the summary judgment hearing. The sponsor believes that this should also be the rule for objections related to witness competency.

- 3) Currently, an entire court file may be incorporated for the purpose of deciding a motion for summary judgment. This bill requires that only material specifically identified may be so incorporated. According to the sponsor, this prevents relitigation of the motion for summary judgment in appellate court based on a document not considered by the lower court in granting or denying the motion.

SUPPORT

California Judges Association (source)
California Trial Lawyers Association

OPPOSITION

Unknown

R. LeBov
445-4560
ajud

SB 2594
Page 3



ota: 8-20-90

SB 2594

SENATE THIRD READING

SB 2594 (Robbins) - As Amended: August 15, 1990

SENATE VOTE: 22-12

ASSEMBLY ACTIONS:

COMMITTEE _____ JUD. _____ VOTE 10-0 COMMITTEE _____ VOTE _____

DIGEST

Existing law:

- 1) Permits a court to grant summary judgment where an action has no merit or where there is no defense to an action. A party may move for summary adjudication of issues as part of, or in lieu of, a motion for summary judgment.
- 2) Requires a court to determine whether a material triable controversy exists as to each particular issue and to specify the evidence which establishes a triable issue of fact. The court is also required to identify those issues which are without substantial controversy.
- 3) Permits in case law, an objection to the competency of a witness to be raised for the first time on appeal or by the appellate court itself.
- 4) Permits the entire court file to be incorporated by reference for the purpose of resolving a motion for summary judgment.

This bill:

- 1) Requires a court to determine:
 - a) Whether there is a triable issue of fact as to the case as a whole.
 - b) Whether there is a triable issue of fact as to particular causes of action and/or affirmative defenses.
 - c) Whether there is a triable issue of fact as to punitive damages.
- 2) Specifies that a cause of action has no merit if one or more of the elements cannot be established.
- 3) Abrogates case law by requiring that evidentiary objections and objections to the form and substance of pleadings are waived unless made at the court hearing on the motion for summary judgment.
- 4) Provides that any incorporation by reference of matter in the court's file shall set forth with specificity the exact document to which

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reference is made and shall not incorporate the entire file.

FISCAL EFFECT

No significant fiscal impact anticipated.

COMMENTS

- 1) A party to an action may move for summary judgment by contending that the action has no merit or that there is no defense thereto. A motion for summary judgment must be supported or opposed by admissible evidence (i.e. affidavits, declarations, admissions, answers to interrogatories, depositions and matters of which judicial notice may be taken.) The motion shall be granted if the court finds that there is no triable issue as to any material fact. If an issue of fact is presented the court must permit trial thereof. The purpose of the summary procedure is to provide a method for prompt disposition of actions in which there is no triable, material issue of fact on which evidence shall be taken. The motion is not intended to test the sufficiency of the pleadings, but rather to determine whether the issues apparently raised are merely the result of sham or adept pleading.

Generally the granting of a motion for summary judgment disposes of the whole case (although in multiple party litigation, summary judgment may be granted as to one party, leaving the others to litigate.) Even if the court determines that there are some triable issues in the case as a whole, it may find that certain other issues "are without substantial controversy" and grant summary adjudication as to those issues. A decision that certain issues are without substantial controversy does not end the action, but it does reduce the scope of trial by eliminating the need to prove or disprove those issues at trial. The court cannot summarily adjudicate issues if it is presented only with a motion for summary judgment. When the moving party wants the court to adjudicate issues a motion for summary adjudication of issues must be made. At trial any issues which have been summarily adjudicated are deemed established and the trial proceeds on the remaining issues.

- 2) Sponsor's Statement. The California Judges Association (CJA) is the source of this bill. According to CJA, it is a waste of court time to attempt to resolve issues if the resolution of those issues will not result in summary adjudication of a cause of action or affirmative defense. Since the cause of action must still be tried, much of the same evidence will be reconsidered by the court at the time of trial. This bill would instead require summary adjudication of issues only where an entire cause of action, affirmative defense or claim for punitive damages can be resolved.

CJA also states that existing law can be abused by litigant attempts to engage in a paper war by bringing motions to resolve numerous minute issues. The sponsor states that many of these issues could be more

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efficiently resolved through requests for admission and other discovery procedures.

CJA states that the bill will save court time, reduce the cost of litigation for plaintiffs and defendants, and reduce the opportunity for abuse of the summary judgment procedure.

- 3) The California Court of Appeal has held that objections to the competency of a witness are not waived even if a party fails to make those objections at the hearing. Witchell v. De Korne 179 Cal.App.3d 965 and Zukerman v. Pacific Savings Bank 179 Cal.App.3d 1394.

This bill would re-enact language providing that evidentiary objections not made at the hearing are waived and would specifically provide that objections based on the failure to comply with the requirements of the statute are waived unless made at the hearing.

The bill also contains a statement of legislative intent that the rules stated in the Witchell and Zukerman cases be overturned.

CJA states that it is necessary to overturn the above cases to prevent relitigation and trial de novo of summary judgments in appellate court. All evidentiary issues, except those relating to the competency of a witness, are waived unless first raised in the summary judgment hearing. The sponsor believes that this should also be the rule for objections related to witness competency.

- 4) Currently, an entire court file may be incorporated for the purpose of deciding a motion for summary judgment. This bill requires that only material specifically identified may be so incorporated. According to the sponsor, this prevents relitigation of the motion for summary judgment in appellate court based on a document not considered by the lower court in granting or denying the motion.



SENATE THIRD READING

SB 2594 (Robbins) - As Amended: August 15, 1990

SENATE VOTE: 22-12

ASSEMBLY ACTIONS:

COMMITTEE _____ JUD. _____ VOTE 10-0 COMMITTEE _____ VOTE _____DIGESTExisting law:

- 1) Permits a court to grant summary judgment where an action has no merit or where there is no defense to an action. A party may move for summary adjudication of issues as part of, or in lieu of, a motion for summary judgment.
- 2) Requires a court to determine whether a material triable controversy exists as to each particular issue and to specify the evidence which establishes a triable issue of fact. The court is also required to identify those issues which are without substantial controversy.
- 3) Permits in case law, an objection to the competency of a witness to be raised for the first time on appeal or by the appellate court itself.
- 4) Permits the entire court file to be incorporated by reference for the purpose of resolving a motion for summary judgment.

This bill:

- 1) Requires a court to determine:
 - a) Whether there is a triable issue of fact as to the case as a whole.
 - b) Whether there is a triable issue of fact as to particular causes of action and/or affirmative defenses.
 - c) Whether there is a triable issue of fact as to punitive damages.
- 2) Specifies that a cause of action has no merit if one or more of the elements cannot be established.
- 3) Abrogates case law by requiring that evidentiary objections and objections to the form and substance of pleadings are waived unless made at the court hearing on the motion for summary judgment.

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- 4) Provides that any incorporation by reference of matter in the court's file shall set forth with specificity the exact document to which reference is made and shall not incorporate the entire file.

FISCAL EFFECT

No significant fiscal impact anticipated.

COMMENTS

- 1) According to the California Judges Association (CJA), the source of this bill, it is a waste of court time to attempt to resolve issues if the resolution of those issues will not result in summary adjudication of a cause of action or affirmative defense. Since the cause of action must still be tried, much of the same evidence will be reconsidered by the court at the time of trial. This bill would, instead, require summary adjudication of issues only where an entire cause of action, affirmative defense or claim for punitive damages can be resolved.

CJA also states that existing law can be abused by litigant attempts to engage in a paper war by bringing motions to resolve numerous minute issues. The sponsor states that many of these issues could be more efficiently resolved through requests for admission and other discovery procedures.

CJA states that the bill will save court time, reduce the cost of litigation for plaintiffs and defendants, and reduce the opportunity for abuse of the summary judgment procedure.

- 2) The California Court of Appeal has held that objections to the competency of a witness are not waived even if a party fails to make those objections at the hearing. Witchell v. De Korne 179 Cal.App.3d 965 and Zukerman v. Pacific Savings Bank 179 Cal.App.3d 1394.

This bill would re-enact language providing that evidentiary objections not made at the hearing are waived and would specifically provide that objections based on the failure to comply with the requirements of the statute are waived unless made at the hearing.

The bill also contains a statement of legislative intent that the rules stated in the Witchell and Zukerman cases be overturned.

CJA states that it is necessary to overturn the above cases to prevent relitigation and trial de novo of summary judgments in appellate court. All evidentiary issues, except those relating to the competency of a witness, are waived unless first raised in the summary judgment hearing. The sponsor believes that this should also be the rule for objections related to witness competency.

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- 3) Currently, an entire court file may be incorporated for the purpose of deciding a motion for summary judgment. This bill requires that only material specifically identified may be so incorporated. According to the sponsor, this prevents relitigation of the motion for summary judgment in appellate court based on a document not considered by the lower court in granting or denying the motion.



SENATE THIRD READING

SB 2594 (Robbins) - As Amended: August 22, 1990

SENATE VOTE: 22-12

ASSEMBLY ACTIONS:

COMMITTEE _____ JUD. _____ VOTE 10-0 COMMITTEE _____ VOTE _____DIGESTExisting law:

- 1) Permits a court to grant summary judgment where an action has no merit or where there is no defense to an action. A party may move for summary adjudication of issues as part of, or in lieu of, a motion for summary judgment.
- 2) Requires a court to determine whether a material triable controversy exists as to each particular issue and to specify the evidence which establishes a triable issue of fact. The court is also required to identify those issues which are without substantial controversy.
- 3) Permits in case law, an objection to the competency of a witness to be raised for the first time on appeal or by the appellate court itself.
- 4) Permits the entire court file to be incorporated by reference for the purpose of resolving a motion for summary judgment.

This bill:

- 1) Requires a court to determine:
 - a) Whether there is a triable issue of fact as to the case as a whole.
 - b) Whether there is a triable issue of fact as to particular causes of action and/or affirmative defenses.
 - c) Whether there is a triable issue of fact as to punitive damages.
- 2) Specifies that a cause of action has no merit if one or more of the elements cannot be established.
- 3) Abrogates case law by requiring that evidentiary objections and objections to the form and substance of pleadings are waived unless made at the court hearing on the motion for summary judgment.

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- 4) Provides that any incorporation by reference of matter in the court's file shall set forth with specificity the exact document to which reference is made and shall not incorporate the entire file.
- 5) Provides that a party may not move for summary judgment based on issues asserted in a prior motion for summary adjudication and denied by the court, unless that party establishes to the satisfaction of the court, newly discovered facts or circumstances supporting the issues reasserted in the summary judgment motion.

FISCAL EFFECT

No significant fiscal impact anticipated.

COMMENTS

- 1) According to the source of the bill, the California Judges Association (CJA), it is a waste of court time to attempt to resolve issues if the resolution of those issues will not result in summary adjudication of a cause of action or affirmative defense. Since the cause of action must still be tried, much of the same evidence will be reconsidered by the court at the time of trial. This bill would, instead, require summary adjudication of issues only where an entire cause of action, affirmative defense or claim for punitive damages can be resolved.

CJA also states that existing law can be abused by litigant attempts to engage in a paper war by bringing motions to resolve numerous minute issues. The sponsor states that many of these issues could be more efficiently resolved through requests for admission and other discovery procedures.

CJA states that the bill will save court time, reduce the cost of litigation for plaintiffs and defendants, and reduce the opportunity for abuse of the summary judgment procedure.

- 2) The California Court of Appeal has held that objections to the competency of a witness are not waived even if a party fails to make those objections at the hearing. Witchell v. De Korne 179 Cal.App.3d 965 and Zukerman v. Pacific Savings Bank 179 Cal.App.3d 1394.

This bill would re-enact language providing that evidentiary objections not made at the hearing are waived and would specifically provide that objections based on the failure to comply with the requirements of the statute are waived unless made at the hearing.

The bill also contains a statement of legislative intent that the rules stated in the Witchell and Zukerman cases be overturned.

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CJA states that it is necessary to overturn the above cases to prevent relitigation and trial de novo of summary judgments in appellate court. All evidentiary issues, except those relating to the competency of a witness, are waived unless first raised in the summary judgment hearing. The sponsor believes that this should also be the rule for objections related to witness competency.

- 3) Currently, an entire court file may be incorporated for the purpose of deciding a motion for summary judgment. This bill requires that only material specifically identified may be so incorporated. According to the sponsor, this prevents relitigation of the motion for summary judgment in appellate court based on a document not considered by the lower court in granting or denying the motion.



aba! 8-22-90

SB 2594

Revised - as amended 021562

SENATE THIRD READING

SB 2594 (Robbins)

SENATE VOTE: 22-12

ASSEMBLY ACTIONS:

COMMITTEE _____ JUD. _____ VOTE 10-0 COMMITTEE _____ VOTE _____

DIGEST

Existing law:

- 1) Permits a court to grant summary judgment where an action has no merit or where there is no defense to an action. A party may move for summary adjudication of issues as part of, or in lieu of, a motion for summary judgment.
- 2) Requires a court to determine whether a material triable controversy exists as to each particular issue and to specify the evidence which establishes a triable issue of fact. The court is also required to identify those issues which are without substantial controversy.
- 3) Permits in case law, an objection to the competency of a witness to be raised for the first time on appeal or by the appellate court itself.
- 4) Permits the entire court file to be incorporated by reference for the purpose of resolving a motion for summary judgment.

This bill:

- 1) Requires a court to determine:
 - a) Whether there is a triable issue of fact as to the case as a whole.
 - b) Whether there is a triable issue of fact as to particular causes of action and/or affirmative defenses.
 - c) Whether there is a triable issue of fact as to punitive damages.
- 2) Specifies that a cause of action has no merit if one or more of the elements cannot be established.
- 3) Abrogates case law by requiring that evidentiary objections and objections to the form and substance of pleadings are waived unless made at the court hearing on the motion for summary judgment.

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- 4) Provides that any incorporation by reference of matter in the court's file shall set forth with specificity the exact document to which reference is made and shall not incorporate the entire file.
- 5) Provides that a party may not move for summary judgment based on issues asserted in a prior motion for summary adjudication and denied by the court, unless that party establishes to the satisfaction of the court, newly discovered facts or circumstances supporting the issues reasserted in the summary judgment motion.

FISCAL EFFECT

No significant fiscal impact anticipated.

COMMENTS

- 1) A party to an action may move for summary judgment by contending that the action has no merit or that there is no defense thereto. A motion for summary judgment must be supported or opposed by admissible evidence (i.e. affidavits, declarations, admissions, answers to interrogatories, depositions and matters of which judicial notice may be taken.) The motion shall be granted if the court finds that there is no triable issue as to any material fact. If an issue of fact is presented the court must permit trial thereof. The purpose of the summary procedure is to provide a method for prompt disposition of actions in which there is no triable, material issue of fact on which evidence shall be taken. The motion is not intended to test the sufficiency of the pleadings, but rather to determine whether the issues apparently raised are merely the result of sham or adept pleading.

Generally the granting of a motion for summary judgment disposes of the whole case (although in multiple party litigation, summary judgment may be granted as to one party, leaving the others to litigate.) Even if the court determines that there are some triable issues in the case as a whole, it may find that certain other issues "are without substantial controversy" and grant summary adjudication as to those issues. A decision that certain issues are without substantial controversy does not end the action, but it does reduce the scope of trial by eliminating the need to prove or disprove those issues at trial. The court cannot summarily adjudicate issues if it is presented only with a motion for summary judgment. When the moving party wants the court to adjudicate issues a motion for summary adjudication of issues must be made. At trial any issues which have been summarily adjudicated are deemed established and the trial proceeds on the remaining issues.

- 2) Sponsor's Statement. The California Judges Association (CJA) is the source of this bill. According to CJA, it is a waste of court time to attempt to resolve issues if the resolution of those issues will not result in summary adjudication of a cause of action or affirmative defense. Since the cause of action must still be tried, much of the same evidence will be reconsidered by the court at the time of trial. This

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bill would instead require summary adjudication of issues only where an entire cause of action, affirmative defense or claim for punitive damages can be resolved.

CJA also states that existing law can be abused by litigant attempts to engage in a paper war by bringing motions to resolve numerous minute issues. The sponsor states that many of these issues could be more efficiently resolved through requests for admission and other discovery procedures.

CJA states that the bill will save court time, reduce the cost of litigation for plaintiffs and defendants, and reduce the opportunity for abuse of the summary judgment procedure.

- 3) The California Court of Appeal has held that objections to the competency of a witness are not waived even if a party fails to make those objections at the hearing. Witchell v. De Korne 179 Cal.App.3d 965 and Zukerman v. Pacific Savings Bank 179 Cal.App.3d 1394.

This bill would re-enact language providing that evidentiary objections not made at the hearing are waived and would specifically provide that objections based on the failure to comply with the requirements of the statute are waived unless made at the hearing.

The bill also contains a statement of legislative intent that the rules stated in the Witchell and Zukerman cases be overturned.

CJA states that it is necessary to overturn the above cases to prevent relitigation and trial de novo of summary judgments in appellate court. All evidentiary issues, except those relating to the competency of a witness, are waived unless first raised in the summary judgment hearing. The sponsor believes that this should also be the rule for objections related to witness competency.

- 4) Currently, an entire court file may be incorporated for the purpose of deciding a motion for summary judgment. This bill requires that only material specifically identified may be so incorporated. According to the sponsor, this prevents relitigation of the motion for summary judgment in appellate court based on a document not considered by the lower court in granting or denying the motion.



PROPOSED AMENDMENTS TO SENATE BILL NO. 2594

Legislative Counsel No. 021562

(Friedman)

The proposed amendments provide that a party may not move for summary judgment based on issues asserted in a prior motion for summary adjudication and denied by the court, unless that party establishes to the satisfaction of the court, newly discovered facts or circumstances supporting the issues reasserted in the summary judgment motion.



(2)AUTHOR'S AMENDMENTS<c2>

(2)Committee on JUDICIARY

Assembly Chamber, 08/02/90 [1]<r>

Mr. Speaker: The Chairman of your Committee on JUDICIARY reports:

Senate Bill No. 2594

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(1)With author's amendments with the recommendation: Amend, and re-refer to the committee. <1>

Isenberg, Chair [1]

ADDITIONAL AMENDMENTS TO SENATE BILL 2594

AS AMENDED ON MAY 7, 1990

On page 5, after Code," insert:

or that one or more defendants either owed or did not
owe a duty to the plaintiff or plaintiffs,



AMENDMENTS TO SENATE BILL 2594

AS AMENDED MAY 7, 1990

AMENDMENT #1

On page 5, line 28 after "damages." insert:

A cause of action has no merit if one or more of the elements of the cause of action, even if not separately pleaded, cannot be established.



ASSEMBLY COMMITTEE ON JUDICIARY REPUBLICAN ANALYSIS

SB 2594 (Robbins) -- CIVIL PROCEDURE: SUMMARY JUDGMENT AND SUMMARY
ADJUDICATION

Version: 8/22/90

Vice-chairman: Tom McClintock

Recommendation: Support

Vote: Majority

Summary: Revises the law relating to summary judgments of cases and summary adjudication of some issues in cases. Existing law permits a court to grant summary judgment where an action is without merit or where there is no defense to an action. This bill revises summary judgment law to require a court to determine whether there is a triable issue of fact as to: (1) the case as a whole; (2) particular causes of action and/or affirmative defenses, including whether a defendant owed a duty or not to a plaintiff; (3) punitive damages. The bill further provides that any incorporation by reference of matter in the court's file shall set forth with specificity the exact document to which the reference is made and shall not incorporate the entire file. Amended on 8/22/90 to permit a party to move for summary judgment on issues similar to those in a previously-denied motion based upon newly-discovered facts or circumstances to support the reasserted issues. Fiscal Impact: None.

Supported by: Calif. Judges Assn. (sponsor), Calif. Trial Lawyers Assn. (CTLA). Opposed by: Unknown.
Governor's position: Unknown.

Comments: A Calif. Judges Association bill to expedite procedure on motions for summary judgment. The sponsor states that it is a waste of court time to attempt to resolve issues if the resolution of those issues will not result in summary adjudication of a cause of action or affirmative defense. CJA concludes that since the cause of action would still be tried, much of the same evidence would be reconsidered by the court at the time of trial. Therefore CJA promotes this bill as instead requiring summary adjudication of issues only where an entire cause of action, affirmative defense or claim for punitive damages can be resolved.

Proponents state that the bill will save court time, reduce the cost of litigation for plaintiffs and defendants, and reduce the opportunity for abuse of summary judgment procedure by litigants bringing numerous motions regarding minor issues.

The file reference provision is designed to prevent frivolous relitigation of the motion for summary judgment in appellate court based on a document not considered by the lower court in granting or denying the motion.

Senate Republican Floor vote -- 5/24/90
(22-12) Ayes: Davis



Noes: All other Republicans (12)
Ab/NV: Bergeson
Assembly Republican Committee Vote
Judiciary -- 8/8/90
(10-0) Ayes: All Republicans
Consultant: Mark Redmond

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SENATE COMMITTEE ON JUDICIARY
Bill Lockyer, Chairman
1989-90 Regular session

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SB 2594 (Robbins)
As amended May 7
Hearing date: May 15, 1990
Code of Civil Procedure
JRP/lhm

SUMMARY JUDGMENT

HISTORY

Source: California Judges Association

Prior Legislation: None

Support: California Trial Lawyers Association

Opposition: California Association of Insurance Companies
(unless amended)

KEY ISSUES

SHOULD MOTIONS FOR SUMMARY ADJUDICATION BE LIMITED TO RESOLVING CAUSES OF ACTION, AFFIRMATIVE DEFENSES AND/OR CLAIMS FOR PUNITIVE DAMAGES?

SHOULD OTHER SPECIFIED CHANGES IN SUMMARY ADJUDICATION PROCEDURES BE MADE?

PURPOSE

1. Scope of motion for summary judgment

Existing law permits a court to grant summary judgment where an action has no merit or where there is no defense to an action. A litigant is permitted to seek summary adjudication of issues as part of, or in lieu of, a motion for summary judgment.

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Existing law requires a court to determine whether there exists a material triable controversy as to each particular issue and to specify the evidence which establishes a triable issue of fact. The court is also required to identify those issues which are without substantial controversy.

This bill would instead require a court to determine:

- (a) whether there is a triable issue of fact as to the case as a whole,
- (b) whether there is a triable issue of fact as to particular causes of action and/or affirmative defenses, and
- (c) whether there is a triable issue of fact as to punitive damages.

2. Objections to the form and substance of moving and opposing papers

Existing case law permits an objection to the competency of a witness to be raised for the first time on appeal or by the appellate court itself.

This bill would expressly overrule case law and require that evidentiary objections and objections to the form and substance of pleadings are waived unless made at the court hearing on the motion for summary judgment.

3. Incorporation by reference of documents contained in the court file

Existing law permits the entire court file to be incorporated by reference for the purpose of resolving a motion for summary judgment.

The bill would instead provide that any incorporation by reference of matter in the court's file shall set forth with specificity the exact document to which reference is made and shall not incorporate the entire file.

The purpose of this bill is to make the summary judgment procedure more efficient and to reduce the opportunity for abuse of the procedure.

COMMENT

1. Adjudication of causes of action rather than issues

According to the sponsor, it is a waste of court time to attempt to resolve issues if the resolution of those issues will not result in summary adjudication of a cause of action or



affirmative defense. Since the cause of action must still be tried, much of the same evidence will be reconsidered by the court at the time of trial. This bill would instead require summary adjudication of issues only where an entire cause of action, affirmative defense or claim for punitive damages can be resolved.

The sponsor also states that existing law can be abused by litigant attempts to engage in a paper war by bringing motions to resolve numerous minute issues. The sponsor states that many of these issues could be more efficiently resolved through requests for admission and other discovery procedures.

The sponsor believes that the bill will save court time, reduce the cost of litigation for plaintiffs and defendants, and reduce the opportunity for abuse of the summary judgment procedure.

2. Objections to evidence

The California Court of Appeal has held that objections to the competency of a witness are not waived even if a party fails to make those objections at the hearing. Witchell v. De Korne 179 Cal.App.3d 965 and Zukerman v. Pacific Savings Bank 187 Cal.App.3d 1394.

This bill would re-enact language providing that evidentiary objections not made at the hearing are waived and would specifically provide that objections based on the failure to comply with the requirements of the statute are waived unless made at the hearing.

The bill also contains a statement of legislative intent that the rules stated in the Witchell and Zukerman cases be overturned.

The sponsor believes it is necessary to overturn the above cases to prevent relitigation and trial de novo of summary judgments in appellate court. All evidentiary issues, except those relating to the competency of a witness, are waived unless first raised in the summary judgment hearing. The sponsor believes that this should also be the rule for objections related to witness competency.

3. Incorporation of the file

Currently, an entire court file may be incorporated for the purpose of deciding a motion for summary judgment. This bill requires that only material specifically identified may be so incorporated. According to the sponsor, this prevents relitigation of the motion for summary judgment in appellate court based on a document not considered by the lower court in



granting or denying the motion.

4. Statement of decision

Under existing law a court must state the reasons for its decision and specify the evidence relied upon only where it denies a motion for summary judgment.

The bill would also require that a court, upon granting a motion for summary judgment, to specify the reasons for the decision and the evidence relied upon in making the determination.

The sponsor believes that the above language will provide a more equitable balance between plaintiffs and defendants.

5. Opposition

A major objection to the bill raised by the opposition, the elimination of the ability to resolve punitive damages claims by summary adjudication, has been resolved by the author's amendments.

Opponents also object because they believe the bill would prevent summary adjudication of important issues in situations such as the following:

- (a) Where there is an important issue as to the legal or fiduciary relationship of the plaintiff and one or more defendants.
- (b) Where there are allegations that a defendant owed a special duty of care to the plaintiff.
- (c) Where there is an issue as to the appropriate burden of proof.

Opponents state that the above examples represent question of law that can be disposed of by motion for summary adjudication. Though resolution of any of the issues would not dispose of the entire cause of action, opponents believe it would nonetheless simplify the cause of action and reduce the complexity of the litigation. Opponents state that the bill, as introduced, would increase cost and delay.

Opponents have suggested amendments that would allow resolution of the issues such as those listed above.



Date of Hearing: August 8, 1990

ASSEMBLY COMMITTEE ON JUDICIARY
Phillip Isenberg, Chair

SB 2594 (Robbins) - As Amended: August 6, 1990

PRIOR ACTION

Sen. Com. on JUD. 8-0

Sen. Floor 22-12

SUBJECT: This bill revises the laws relating to summary judgments and summary adjudication.BACKGROUND

A party to an action may move for summary judgment by contending that the action has no merit or that there is no defense thereto. A motion for summary judgment must be supported or opposed by admissible evidence (i.e. affidavits, declarations, admissions, answers to interrogatories, depositions and matters of which judicial notice may be taken.) The motion shall be granted if the court finds that there is no triable issue as to any material fact. If an issue of fact is presented the court must permit trial thereof. The purpose of the summary procedure is to provide a method for prompt disposition of actions in which there is no triable, material issue of fact on which evidence shall be taken. The motion is not intended to test the sufficiency of the pleadings, but rather to determine whether the issues apparently raised are merely the result of sham or adept pleading.

Generally the granting of a motion for summary judgment disposes of the whole case (although in multiple party litigation, summary judgment may be granted as to one party, leaving the others to litigate. Even if the court determines that there are some triable issues in the case as a whole, it may find that certain other issues "are without substantial controversy" and grant summary adjudication as to those issues. A decision that certain issues are without substantial controversy does not end the action, but it does reduce the scope of trial by eliminating the need to prove or disprove those issues at trial. The court cannot summarily adjudicate issues if it is presented only with a motion for summary judgment. When the moving party wants the court to adjudicate issues a motion for summary adjudication of issues must be made. At trial any issues which have been summarily adjudicated are deemed established and the trial proceeds on the remaining issues.

DIGESTExisting Law:

- 1) Permits a court to grant summary judgment where an action has no merit or

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where there is no defense to an action. A party may move for summary adjudication of issues as part of, or in lieu of, a motion for summary judgment.

- 2) Requires a court to determine whether a material triable controversy exists as to each particular issue and to specify the evidence which establishes a triable issue of fact. The court is also required to identify those issues which are without substantial controversy.
- 3) Permits in case law, an objection to the competency of a witness to be raised for the first time on appeal or by the appellate court itself.
- 4) Permits the entire court file to be incorporated by reference for the purpose of resolving a motion for summary judgment.

This bill:

- 1) Requires a court to determine:
 - a) Whether there is a triable issue of fact as to the case as a whole.
 - b) Whether there is a triable issue of fact as to particular causes of action and/or affirmative defenses.
 - c) Whether there is a triable issue of fact as to punitive damages.
- 2) Abrogates case law by requiring that evidentiary objections and objections to the form and substance of pleadings are waived unless made at the court hearing on the motion for summary judgment.
- 3) Provides that any incorporation by reference of matter in the court's file shall set forth with specificity the exact document to which reference is made and shall not incorporate the entire file.

FISCAL EFFECT

No significant fiscal impact anticipated. This bill will not be referred to the Committee on Ways and Means.

COMMENTS

- 1) Sponsor's Statement. The California Judges Association (CJA) is the source of this bill. According to CJA, it is a waste of court time to attempt to resolve issues if the resolution of those issues will not result in summary adjudication of a cause of action or affirmative defense. Since the cause of action must still be tried, much of the same evidence will be reconsidered by the court at the time of trial. This bill would instead require summary adjudication of issues only where an entire cause of action, affirmative defense or claim for punitive damages can be resolved.

- continued -



CJA also states that existing law can be abused by litigant attempts to engage in a paper war by bringing motions to resolve numerous minute issues. The sponsor states that many of these issues could be more efficiently resolved through requests for admission and other discovery procedures.

CJA states that the bill will save court time, reduce the cost of litigation for plaintiffs and defendants, and reduce the opportunity for abuse of the summary judgment procedure.

- 2) The California Court of Appeal has held that objections to the competency of a witness are not waived even if a party fails to make those objections at the hearing. Witchell v. De Korne 179 Cal.App.3d 965 and Zukerman v. Pacific Savings Bank 179 Cal.App.3d 1394.

This bill would re-enact language providing that evidentiary objections not made at the hearing are waived and would specifically provide that objections based on the failure to comply with the requirements of the statute are waived unless made at the hearing.

The bill also contains a statement of legislative intent that the rules stated in the Witchell and Zukerman cases be overturned.

CJA states that it is necessary to overturn the above cases to prevent relitigation and trial de novo of summary judgments in appellate court. All evidentiary issues, except those relating to the competency of a witness, are waived unless first raised in the summary judgment hearing. The sponsor believes that this should also be the rule for objections related to witness competency.

- 3) Currently, an entire court file may be incorporated for the purpose of deciding a motion for summary judgment. This bill requires that only material specifically identified may be so incorporated. According to the sponsor, this prevents relitigation of the motion for summary judgment in appellate court based on a document not considered by the lower court in granting or denying the motion.

SUPPORT

California Judges Association (source)
California Trial Lawyers Association

OPPOSITION

Unknown



SB 2594 (Robbins)
Analyzed: 8/22/90

ASSEMBLY COMMITTEE ON JUDICIARY REPUBLICAN ANALYSIS

SB 2594 (Robbins) -- CIVIL PROCEDURE: SUMMARY JUDGMENT AND SUMMARY
ADJUDICATION

Version: 8/22/90

Vice-chairman: Tom McClintock

Recommendation: Support

Vote: Majority

Summary: Revises the law relating to summary judgments of cases and summary adjudication of some issues in cases. Existing law permits a court to grant summary judgment where an action is without merit or where there is no defense to an action. This bill revises summary judgment law to require a court to determine whether there is a triable issue of fact as to: (1) the case as a whole; (2) particular causes of action and/or affirmative defenses, including whether a defendant owed a duty or not to a plaintiff; (3) punitive damages. The bill further provides that any incorporation by reference of matter in the court's file shall set forth with specificity the exact document to which the reference is made and shall not incorporate the entire file. Amended on 8/22/90 to permit a party to move for summary judgment on issues similar to those in a previously-denied motion based upon newly-discovered facts or circumstances to support the reasserted issues. Fiscal Impact: None.

Supported by: Calif. Judges Assn. (sponsor), Calif. Trial Lawyers Assn. (CTLA). Opposed by: Unknown.
Governor's position: Unknown.

Comments: A Calif. Judges Association bill to expedite procedure on motions for summary judgment. The sponsor states that it is a waste of court time to attempt to resolve issues if the resolution of those issues will not result in summary adjudication of a cause of action or affirmative defense. CJA concludes that since the cause of action would still be tried, much of the same evidence would be reconsidered by the court at the time of trial. Therefore CJA promotes this bill as instead requiring summary adjudication of issues only where an entire cause of action, affirmative defense or claim for punitive damages can be resolved.

Proponents state that the bill will save court time, reduce the cost of litigation for plaintiffs and defendants, and reduce the opportunity for abuse of summary judgment procedure by litigants bringing numerous motions regarding minor issues.

The file reference provision is designed to prevent frivolous relitigation of the motion for summary judgment in appellate court based on a document not considered by the lower court in granting or denying the motion.

Senate Republican Floor vote -- 5/24/90
(22-12) Ayes: Davis



Moes: All other Republicans (12)
Ab/NV: Bergeson
Assembly Republican Committee Vote
Judiciary -- 8/8/90
(10-0) Ayes: All Republicans
Consultant: Mark Redmond

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SENATE THIRD READING

SB 2594 (Robbins) - As Amended: August 15, 1990

SENATE VOTE: 22-12

ASSEMBLY ACTIONS:

COMMITTEE _____ JUD. _____ VOTE 10-0 COMMITTEE _____ VOTE _____

DIGEST

Existing law:

- 1) Permits a court to grant summary judgment where an action has no merit or where there is no defense to an action. A party may move for summary adjudication of issues as part of, or in lieu of, a motion for summary judgment.
- 2) Requires a court to determine whether a material triable controversy exists as to each particular issue and to specify the evidence which establishes a triable issue of fact. The court is also required to identify those issues which are without substantial controversy.
- 3) Permits in case law, an objection to the competency of a witness to be raised for the first time on appeal or by the appellate court itself.
- 4) Permits the entire court file to be incorporated by reference for the purpose of resolving a motion for summary judgment.

This bill:

- 1) Requires a court to determine:
 - a) Whether there is a triable issue of fact as to the case as a whole.
 - b) Whether there is a triable issue of fact as to particular causes of action and/or affirmative defenses.
 - c) Whether there is a triable issue of fact as to punitive damages.
- 2) Specifies that a cause of action has no merit if one or more of the elements cannot be established.
- 3) Abrogates case law by requiring that evidentiary objections and objections to the form and substance of pleadings are waived unless made at the court hearing on the motion for summary judgment.

- continued -



- 4) Provides that any incorporation by reference of matter in the court's file shall set forth with specificity the exact document to which reference is made and shall not incorporate the entire file.

FISCAL EFFECT

No significant fiscal impact anticipated.

COMMENTS

- 1) According to the California Judges Association (CJA), the source of this bill, it is a waste of court time to attempt to resolve issues if the resolution of those issues will not result in summary adjudication of a cause of action or affirmative defense. Since the cause of action must still be tried, much of the same evidence will be reconsidered by the court at the time of trial. This bill would, instead, require summary adjudication of issues only where an entire cause of action, affirmative defense or claim for punitive damages can be resolved.

CJA also states that existing law can be abused by litigant attempts to engage in a paper war by bringing motions to resolve numerous minute issues. The sponsor states that many of these issues could be more efficiently resolved through requests for admission and other discovery procedures.

CJA states that the bill will save court time, reduce the cost of litigation for plaintiffs and defendants, and reduce the opportunity for abuse of the summary judgment procedure.

- 2) The California Court of Appeal has held that objections to the competency of a witness are not waived even if a party fails to make those objections at the hearing. Witchell v. De Korne 179 Cal.App.3d 965 and Zukerman v. Pacific Savings Bank 179 Cal.App.3d 1394.

This bill would re-enact language providing that evidentiary objections not made at the hearing are waived and would specifically provide that objections based on the failure to comply with the requirements of the statute are waived unless made at the hearing.

The bill also contains a statement of legislative intent that the rules stated in the Witchell and Zukerman cases be overturned.

CJA states that it is necessary to overturn the above cases to prevent relitigation and trial de novo of summary judgments in appellate court. All evidentiary issues, except those relating to the competency of a witness, are waived unless first raised in the summary judgment hearing. The sponsor believes that this should also be the rule for objections related to witness competency.

- continued -

- 3) Currently, an entire court file may be incorporated for the purpose of deciding a motion for summary judgment. This bill requires that only material specifically identified may be so incorporated. According to the sponsor, this prevents relitigation of the motion for summary judgment in appellate court based on a document not considered by the lower court in granting or denying the motion.



AUTHOR'S COPY

AUTHOR'S COPY

UNFINISHED BUSINESS

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1100 J Street, Suite 120 445-6614	Bill No.	SB 2594
	Author:	Robbins (D)
	Amended:	8/22/90
	Vote Required:	Majority

Committee Votes:

Senate Floor Vote: p. 6008, 5/24/90

COMMITTEE: JUDICIARY		
BILL NO.:	SB 2594	
DATE OF HEARING:	5-15-90	
SENATORS:	AYE	NO
Doolittle	✓	
Keene	✓	
Marks	✓	
Petris	✓	
Presley	✓	
Roberti	✓	
Royce	✓	
Torres	✓	
Watson	✓	
Davis (VC)	✓	
Lockyer (Ch)	✓	
TOTAL:	8	0

Senate Bill 2594—An act to amend Section 437c of the Code of Civil Procedure, relating to civil procedure.
Bill read third time and presented by Senator Robbins.

Roll Call

The roll was called and the bill was passed by the following vote:
AYES (22)—Senators Alquist, Ayala, Boatwright, Davis, Dills, Garamendi, Cecil Green, Leroy Greene, Hart, Keene, Kopp, Lockyer, Marks, McCorquodale, Mello, Petris, Presley, Robbins, Roberti, Rosenthal, Torres, and Watson.
NOES (12)—Senators Beverly, Craven, Doolittle, Hill, Leonard, Maddy, Morgan, Nielsen, Rogers, Royce, Russell, and Seymour.
Bill ordered transmitted to the Assembly.

Assembly Floor Vote: NOT AVAILABLE

SUBJECT: Civil procedure: summary judgment and summary adjudication

SOURCE: California Judges Association

DIGEST: This bill provides that motions for summary adjudication be limited to resolving causes of action, affirmative defenses and/or claims for punitive damages

This bill also makes other specified changes in summary adjudication procedures.

Assembly Amendments (1) specify when a cause of action has no merit, and (2) specify when a party may not move for a summary judgement.

ANALYSIS: Existing law permits a court to grant summary judgment where an action no merit or where there is no defense to an action. A litigant is permitted to seek summary adjudication of issues as part of, or in lieu of, a motion for summary judgment.

Existing law requires a court to determine whether there exists a material triable controversy as to each particular issue and to specify the evidence which establishes a triable issue of fact. The court is also required to identify those issues which are without substantial controversy.

This bill would instead require a court to determine:

1. whether there is a triable issue of fact as to the case as a whole,

CONTINUED

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2. whether there is a triable issue of fact as to particular causes of action and/or affirmative defenses, and
3. whether there is a triable issue of fact as to punitive damages.

The bill specifies that a cause of action has no merit if one or more of the elements cannot be established.

Existing case law permits an objection to the competency of a witness to be raised for the first time on appeal or by the appellate court itself.

This bill would expressly overrule case law and require that evidentiary objections and objections to the form and substance of pleadings are waived unless made at the court hearing on the motion for summary judgment.

Existing law permits the entire court file to be incorporated by reference for the purpose of resolving a motion for summary judgment.

The bill would instead provide that any incorporation by reference of matter in the court's file shall set forth with specificity the exact document to which reference is made and shall not incorporate the entire file.

This bill provides that a party may not move for summary judgement based on issues asserted in a prior motion for summary adjudication and denied by the court, unless that party establishes to the satisfaction of the court, newly discovered facts or circumstances supporting the issues reasserted in the summary judgement motion.

The purpose of this bill is to make the summary judgment procedure more efficient and to reduce the opportunity for abuse of the procedure.

FISCAL EFFECT: Appropriation: No Fiscal Committee: No Local: No

SUPPORT: (Unable to reverify support and opposition due to time limitation.)

California Judges Association (source)
California Trial Lawyers Association

ARGUMENTS IN SUPPORT: According to the sponsor, it is a waste of court time to attempt to resolve issues if the resolution of those issues will not result in summary adjudication of a cause of action or affirmative defense. Since the cause action must still be tried, much of the same evidence will be reconsidered by the court at the time of trial. This bill would instead require summary adjudication of issues only where an entire cause of action, affirmative defense or claim for punitive damages can be resolved.

The sponsor also states that existing law can be abused by litigant attempts to engage in a paper war by bringing motions to resolve numerous minute issues. The sponsor states that many of these issues could be more efficiently resolved through requests for admission and other discovery procedures.

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The sponsor believes that the bill will save court time, reduce the cost of litigation for plaintiffs and defendants, and reduce the opportunity for abuse of the summary judgment procedure.

RJG:lm 8/23/90 Senate Floor Analyses



SENATE BILL 2594 HIGHLIGHTS

Amends Section 437c of the Code of Civil Procedure dealing with summary resolution to:

- o eliminate summary adjudication of **issues**, retaining summary adjudication of **causes of action**; in response to a suggestion from the insurance industry permits summary adjudication of the single issue of punitive damages.
- o require papers filed with the court relating to summary resolution which incorporate material in the court's file to specify the matter being incorporated **with specificity**, thereby eliminating the incentive to incorporate generally to maintain the broadest possible appeal rights.
- o provide that objections based upon competency are waived unless raised at the hearing.
- o require the court to provide specific reasons for **granting** summary judgment in addition to current law requiring reasons for **denying** summary judgment.

Extensive meetings have:

- o crafted a bill achieving CTLA support.
- o resulted in an amendment to address insurance industry concerns.
- o identified other insurance concerns currently being evaluated; we **believe** that these concerns revolve around motions which actually dispose of **causes of action**, but are studying them and working with ACIC.



*Friedman bill
controversial
Want to bring
judicial Council &
Trial lawyers
together*

California Judges Association

Summary Judgement

To: CJA Executive Board
From: Civil Law and Procedure Committee

1/16/90



301 Howard Street
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California 94105

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(415) 974 1209 Fax

1989-90
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- Hon. Noel Watkins
- Hon. Barbara A. Zuniga

Constance Dove

The following amendments to Code of Civil Procedure Section 437c are recommended for inclusion in CJA's program of affirmative legislation. They were considered separately by the Civil Law and Procedure Committee and could be reviewed piecemeal by the Executive Board. The accompanying arguments in support of these amendments were drafted by Judge Philip M. Saeta and were considered by the Committee at its January 13 meeting. Current full text of 437c follows those arguments.

A. Amend the 4th paragraph of CCP 437c to read as follows:

Evidentiary objections not made [either] in writing [or orally] at least two court days prior to the hearing shall be deemed waived.

B. Amend subparagraph (d) of CCP 437c to add:

Any objections based on failure to comply with the requirements of this subsection must be made in writing at least two court days prior to the hearing or be deemed waived.

E. Amend CCP Section 437c subdivision (b) by adding a fourth paragraph reading as follows:

Any incorporation by reference of matter in the court's file shall set forth with specificity the exact matter being referred to and shall not incorporate the entire file.

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(D) **PROPOSED AMENDED CODE OF CIVIL PROCEDURE**

SECTION 437c(f)

If it is contended that one or more causes of action within an action has no merit or that there is no defense thereto, or that there is no merit to an affirmative defense as to any cause of action, any party may move for summary adjudication as to such cause or causes of action or such affirmative defense. Such a motion may be made by itself or as an alternative to a motion for summary judgment and it shall proceed in all procedural respects as a motion for summary judgment.



In addition, any bill should have an "intent" section to spell out the reasons for these changes, as follows:

As to proposals A and B: "It is the intent of this legislation to provide that all objections to form and substance of the moving and opposing papers shall be first made in the trial court and not on appeal by the parties or the appellate court and to expressly overrule the rules stated in Witchell v. DeKorne (1986) 179 CA3d 965 and Zuckerman v. Pacific Savings Bank (1986) 187 CA3d 1394."

As to Proposal D: "It is the intent of this legislation to stop the practice of adjudication of facts or adjudication of such issues that do not completely dispose of a cause of action or a defense.

...for the above.





**Association of
California
Insurance
Companies**

915 L Street, Suite 1160
Sacramento, CA 95814
(916) 442-4581
FAX # (916) 444-3872

May 3, 1990

The Honorable Alan Robbins
Member of the Senate
State Capitol, Room 5114
Sacramento, CA 95814

RE: **SB 2594, As Introduced March 1, 1990 (Robbins)**
ACIC POSITION: OPPOSE UNLESS AMENDED

Dear Senator Robbins:

The Association of California Insurance Companies, representing 32 property and casualty insurers doing business in California, opposes your Senate Bill 2594, which is scheduled to be heard in the Senate Judiciary Committee on Tuesday, May 8, 1990, unless it is amended to alleviate our concerns.

This bill would, among other things, eliminate any party's opportunity in civil actions to partially adjudicate issues that, while not disposing of complete causes of action, would nonetheless dispose of pleaded or alleged legal questions that would otherwise complicate and extend preparation for trial. Our members rely on current law to simplify and speed the course of litigation, rather than complicate it. Examples include --

- o Elements of damage alleged (particularly since the passage of Senate Bill 241 two years ago, affecting punitive damages);
- o Allegations that claimant and one or more defendants stood in a particular legal or fiduciary relationship;
- o Allegations that one or more defendants owed a special duty of care to the claimant; and
- o Allegations made that would establish a lower burden of proof for the claimant against one or more defendants.

All of these examples represent questions of law that can be disposed of by motion for summary adjudication. Though resolution of any of them would not dispose of the entire "cause of action," it would nonetheless simplify the cause of action and reduce the complexity of the litigation. This bill, as introduced, would remove any opportunity to do so and, in our opinion, would increase cost and delay. ACIC has been involved in discussions of this measure with its sponsors and other interested parties. Attached are amendments to SB 2594 as introduced that would remove our opposition to the measure; the sponsors are still evaluating them and others that have been offered.

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The Honorable Alan Robbins
May 3, 1990
page two

For these reasons, the Association of California Insurance Companies must respectfully oppose Assembly Bill 2594 as introduced, unless it is amended to alleviate our concerns. We will be happy to continue to work with your office, the sponsors and others to attempt to reach some accommodation.

Very truly yours,



Tim Hart
Legislative Counsel

TH:sah

Attachment

cc: Members, Senate Judiciary Committee
Jim Provenza, Counsel



CALIFORNIA TRIAL LAWYERS ASSOCIATION

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Legal Analyst
Will Glennon

Associate Legislative Counsel
Nancy Peverini

May 3, 1990

Senator Alan Robbins
State Capitol, Room 5114
Sacramento, Ca. 95814

RE: SB 2594 (Robbins) SUPPORT

Dear Senator Robbins:

The California Trial Lawyers Association supports SB 2594, which is scheduled to be heard before the Senate Judiciary Committee on May 8, 1990.

SB 2594 would eliminate summary adjudication of issues and replace it with summary adjudication of causes of action.

This change will simplify summary adjudication and make it more efficient. Summary adjudication of issues was originally intended to reduce the cost of litigation by eliminating issues from a case at an early stage, but it rarely serves that purpose. Summary adjudication of issues often does not eliminate a cause of action and therefore saves little time but uses enormous judicial resources. Also, SB 2594 will help correct the abuses of summary adjudication. These motions are often used by the defense to run up more billable hours regardless of merit; the motions are costly to bring and costly to defend.

If you or a member of your staff would like to discuss this issue further, please feel free to contact me or one of our legislative representatives in Sacramento.

Sincerely,



Larry Drivon
President

cc: Senate Judiciary Committee

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THE COMMITTEE ON ADMINISTRATION OF JUSTICE
THE STATE BAR OF CALIFORNIA

555 FRANKLIN STREET
SAN FRANCISCO, CA 94102-4400
(415) 561-8277

BILL REPORT

DATE: June 18, 1990

TO: Larry D. Doyle
Office of Governmental Affairs
Sacramento

Bill No. S.B. 2594
Bill Author: Robbins
Date Last Amended: May 7, 1990

CAJ POSITION: OPPOSE AMENDMENT TO SECTION 437c(f) (Priority II)
SUPPORT AMENDMENTS TO SECTIONS 437c(b), (d) [IF
AMENDED] AND (g) (PRIORITY II)

1. The Committee supports the bill in the amended version, which returns to bill to the existing state of the law on the timing of making evidentiary objections. However, the language in subsection (d) at lines 26 and 27 of page 4 should be amended to conform to the language in subsection (b) at lines 37 and 38 on page 2. The language should be amended to provide in subsection (d):

"Any objections not made at the hearing shall be deemed waived."

The present language of subsection (d) seems to prevent the making of any evidentiary objections in papers filed prior to the hearing, which is a frequently used and appropriate way to raise such objections.

2. The Committee opposes the proposed change to subsection (f) of Section 437c. Summary adjudication of issues is an important procedure for streamlining trials and establishing important issues in an case which are not "causes of action, affirmative defenses, or claims for damages." For example, the determination of conflict of laws issues, such as choice of law, is appropriate for summary adjudication, but would not be allowed under the proposed amendment. Summary adjudication of issues such as "duty" or "reliance" would also be prevented. Determination of such issues does not establish the entire cause of action, but the establishment of essential elements of a claim by summary adjudication results in shorter trials, and savings of resources for the parties, witnesses and the courts. The Committee believes that most judges know the difference between ultimate issues and evidentiary issues, and

Attachment 1

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that parties who abuse the 437c(f) procedure by seeking rulings on evidentiary issues are appropriately sanctioned.

3. The Committee supports the requirement that the courts specify the reasons for their determinations, whether summary judgment motions are granted or denied. Subsection (g) should be enacted.

JJ:bh

cc: John M. Seitman
Peter K. Shack
Monroe Baer ✓



LAW OFFICES

PATRICIA M. SAYRE

A PROFESSIONAL CORPORATION

2851 CAMINO DEL RIO SOUTH, SUITE 400

SAN DIEGO, CALIFORNIA 92108

TELEPHONE: (619) 297-0101

FAX: (619) 297-7956

DATE: July 9, 1990

FROM: Patricia M. Sayre
For the Committee
on Rules and Procedures of Court

TO: David C. Long
Director of Research

SUBJECT: Secretary Referral
Proposed New Rules and Guidelines
for Motions for Summary Judgment
and Motions for Summary Adjudication of Issues

1. Proposed Amendment to Rules of Court

The Committee on Rules and Procedures of Court supports the proposed amendment to the rules for motions for summary judgment and motions for summary adjudication of issues. The Committee believes that a uniform rule in the detail set forth in the proposed rules will provide one comprehensive, uniform procedure with respect to these motions to the benefit of counsel practicing in all jurisdictions in California.

The appendix should be modified in the following respect:

Section 6 (f) should be modified by substituting the following language in place of the third paragraph of 6(f):

"Following this procedure avoids delay during the hearing but it does not excuse production of the original at the hearing except when the documents' existence and contents are admitted by verified pleadings, answers to interrogatories, or responses or an order of the court that the documents' existence and contents are deemed admitted following a failure to respond to request for admissions. If the documents' existence and contents have been admitted, the moving papers should refer to the pleadings, discovery or court order which contains the admission."

The foregoing change is necessary so that the rule is consistent with California Code of Civil Procedure Section 2033(k). It would not be wise for the rule to imply that a matter is deemed admitted by the mere failure to respond to requests for admissions when the statute has been amended to provide that the matter is

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LAW OFFICES

PATRICIA M. SAYRE

**Committee on Rules and
Procedures of Court
Response/July 9, 1990**

only "deemed admitted" as a result of an order by the court on a noticed motion.

2. SB 2594

The Committee opposes Senate Bill 2594. SB 2594 would allow the parties to make evidentiary objections orally at the hearing on the motion for summary judgment rather than making them at least two court days prior to the hearing. In light of the importance of a motion for summary judgment in conclusively determining issues between the parties, the Committee believes that it is more appropriate to continue to require written objections at least two court days prior to the hearing on a motion for summary judgment.

The Committee believes that it is inappropriate to delete C.C.P. Section 437(c)(f). The parties should be able to move to adjudicate issues which may not dispose of an entire cause of action. Summary adjudication of issues is an effective way to limit the scope of discovery and provide greater predictability to the outcome of the litigation. If the outcome of the litigation is more predictable, the chances of settlement are greatly enhanced. Although the proponents of SB 2594 indicate that motions for summary adjudication of issues can be a source of abuse, courts are provided with other mechanisms to limit and deter abuses without depriving parties of their rights to seek summary adjudication of issues.

cc: Committee Members

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THE STATE BAR OF CALIFORNIA



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MICHAEL D. WHELAN, *San Francisco*
JOSEPH R. ZAMORA, *Los Angeles*

July 18, 1990

Monroe Baer
Office of Research
The State Bar of California
555 Franklin Street
San Francisco, CA. 94102

Re: Proposed Rules and Guidelines
for Motions for Summary Judgment and Motion for
Summary Adjudication of Issues

Dear Mr. Baer:

The Litigation Section has reviewed Secretary Referral containing the proposed new rules and guidelines for summary judgment proposed by the Superior Court Committee of the Judicial Council.

Motions for Summary Judgment, etc.

The Litigation Section opposes the elimination of summary adjudication of issues. These motions resolve issues which streamline cases for trial and often assist the parties in evaluation cases for settlement negotiations.

We recommend that objections to evidence produced in support of, or in opposition to, motions for summary judgment, be deemed waived, unless made in writing before the hearing or orally at the hearing on the motion.

We recommend that the burden of proof on motions for summary judgment be the same as the burden of proof at trial.



Monroe Baer
July 18, 1990

Proposed Rules and Guidelines

The Litigation Section supports the proposed rules and guidelines in principle, particularly in light of the difficulties caused by the lack of uniformity in local rules. We believe that the rules should include a statement that these rules supersede all local rules concerning motions for summary judgment and summary adjudication of issues. Such a statement might be included in Section 1, "General Considerations" in the Appendix on page 9.

During our consideration of this proposal we noted that some rules were ambiguous and may create unnecessary burdens, particularly for smaller law offices. The potential problem areas are listed below:

Column format: This may result in statements of undisputed facts that are much longer than necessary (and wasting paper). (See pp. 4-5, Rules 343 (b), 343.1 (b); pp. 16-18, Example A and B.)

Statement of Undisputed Facts: This statement is called a Statement of Undisputed Facts in 343.1 (a) (1) but it seems that it should be called a Statement of Disputed Facts. (p.5)

Statement of Disputed Facts (In Opposition to Motion for Summary Judgment, etc): The requirement that the moving party's statement of undisputed facts, including recitation of evidence cited by moving party may be burdensome and unnecessary. (p.5, Rule 343.1 (b))

Adjudication of Issues: A separate statement of facts is required if an alternate motion for adjudication of issues is filed (i. e. two statements). (p.6, Rule 343.2) One statement may be sufficient for both motions.

Order: This section should also provide that the order be submitted to opposing counsel for approval prior to submission to the court. Some procedure should be set forth if the parties disagree concerning the proposed order.

Exhibits: Section 6 of the Appendix (pp. 11-15) states that "[i]f 10 or more items of evidence are submitted" the evidence should be contained in a separate



Monroe Baer
July 18, 1990

document. This rule, if adopted, should contain a definition of an "item" of evidence.

This section may require modification concerning the method of labeling, marking and indexing exhibits. For example, the name of the deponent must be included on each page of the transcript which is included. (p.14) Maybe a rule should be adopted requiring court reporters to include this on each page before these rules affecting motions for summary judgment are adopted. The method of "highlighting" depositions (p.15) should be clarified. Yellow highlighting must be done manually because copying machines cannot pick up highlighting. Thus, we suggest that alternative methods of highlighting be permitted.

We have made suggestions concerning sections of the proposed rules which should be considered before the rules and guidelines are adopted. We do support the standardization of rules and request a clear statement that these rules supersede local rules affecting motions for summary judgment and motions for adjudication of issues.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Helen S. Beardsworth

HELEN SWEENEY BEARDSWORTH
455 Golden Gate Ave. #6200
San Francisco, CA. 94102
(415) 557-0215

cc: Michael Whelan
Janet Carver





THE STATE BAR OF CALIFORNIA

OFFICE OF GOVERNMENTAL AFFAIRS

LARRY DOYLE, *Director*

915 L STREET, SUITE 1260, SACRAMENTO, CALIFORNIA 95814

TELEPHONE: (916) 444-2762 FAX: (916) 443-0562

July 21, 1990

The Honorable Alan Robbins
Senator, 20th District
State Capitol, Room 5114
Sacramento, CA 95814

SB 2594 -- OPPOSE UNLESS AMENDED

Dear Senator Robbins,

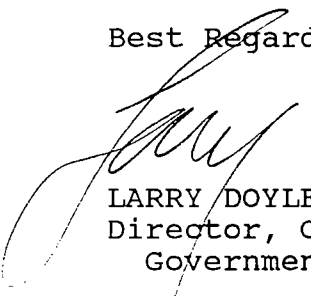
The Board of Governors of the State Bar of California regrets to oppose your Senate Bill 2594, unless it is amended to reinstate the provisions permitting motions for summary adjudication of issues (CCP Section 437c(f)).

The Board of Governors took this position by unanimous vote at its July 21, 1990, meeting, upon recommendation of the State Bar's Committee on the Administration of Justice, the Committee on Rules & Procedures of Court, and the Executive Committee of the Litigation Section. In the opinion of the board, and of the three committees and sections mentioned, motions for summary adjudication of issues are valuable and should be permitted because they can streamline and simplify litigation, and because they can aid settlement by permitting a more accurate assessment of the merits of a case.

Full reports from the State Bar committees and sections mentioned are attached for your consideration.

If you or your staff would like to discuss this issue further, please contact David Long, Director of the State Bar's Office of Research, at (415) 561-8373. Thank you.

Best Regards,


LARRY DOYLE
Director, Office of
Governmental Affairs

Attachments

cc: Chair and Counsel, Assembly Committee on Judiciary
Chuck Vogel, President-elect, State Bar of California
David Long, Director of Research
Patricia M. Sayre, Committee on Rules & Procedures of Court
Monroe Baer, Committee on the Administration of Justice
Helen Sweeny Beardsworth, Litigation Section

LEGISLATIVE INTENT SERVICE (800) 666-1917



DATE: July 23, 1990
TO: Pam Pierson, Jim Pokorny, Ed Poll, Janean Stadler
FROM: Ruthe Ashley
SUBJECT: First draft of "THE LAW AND MR. FINNEGAN"

I received the first draft on Saturday at home and it looks good. Dave went to work on it. Unfortunately, there wasn't time to send you a copy before our conference call scheduled today. Therefore, copies are being fed ex'ed to each of you today for arrival tomorrow. I am postponing our conference call until Wednesday, July 25, at 3:00 p.m.

In the meantime, I will give Dave the green light to finalize the script. The substantive content looks terrific and, in my opinion, only minor changes may be necessary. Dave thinks the script may be longer than the 30 minutes designated for the video and some cutting may be necessary. Keep that in mind.

I think it's important to have diversity in the casting of the actors and actresses by including women and minorities. One of the clients is now a woman, so concentration on including minorities would be appropriate.

Thanks for all your time and cooperation. I think all is set for our Friday program. If I don't hear from you by today, I will assume you don't need assistance on anything else, such as cue cards, etc.

You have reservations at the Stockton Hilton for Thursday night. Remember, the five of you (including Cherie) meet at 7:00 p.m. at the Hilton for dress rehearsal. Remember your list of tasks to do.

See you Friday morning.

cc: Gus Lee
Cherie Kerr
Dave Morgasen



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SAN FRANCISCO, CALIFORNIA 94105-4510
(415) 546-3939
FAX (415) 546-6171

July 27, 1990

Administrative Office of the Courts
Attn: Arline S. Tyler, Attorney
595 Market Street, 30th Floor
San Francisco, California 94105

Re: **Comment on Proposed New Rules and Guidelines
For Motions For Summary Judgment and Motions
For Summary Adjudication of Issues**

Dear Ms. Tyler:

This letter is written in response to your invitation to comment on the proposed new rules and guidelines for Motions for Summary Judgment and Motions for Summary Adjudication of Issues. As a civil litigation law firm, we are definitely interested in the proposal. We send this letter to voice our strong opposition in particular to Senate Bill 2594, which would eliminate summary adjudication of issues unless an entire cause of action, affirmative defense or claim for punitive damages can be resolved.

Our experience has demonstrated that Motions for Summary Adjudication of Issues are particularly useful for conserving trial time and expense, reducing the complexity of litigation, and promoting settlement without the necessity of trial. As you know, summary adjudication was

LEGISLATIVE INTENT SERVICE (800) 666-1917



Administrative Office of the Courts
Attn: Arline S. Tyler, Attorney
July 26, 1990
Page 2

designed to "adjudicat[e] issues in advance of trial so as to save . . . time and expense." Beech Aircraft Corp. v. Superior Court, 61 Cal. App. 3d 501, 516, 132 Cal. Rptr. 541 (1976). "Since the length of trial is directly related to the number of issues which must be argued, any procedure which can get major issues adjudicated in advance of the actual trial should result in saving considerable time and expense." Id.

Summary resolution of significant disputed issues has also been shown to promote settlement without the necessity of trial by resolving significant and disputed issues beforehand. "[I]t is the policy of the law to discourage litigation and to favor compromise of doubtful rights and controversies" Imen v. Glassford, 201 Cal. App. 3d 898, 912, 247 Cal. Rptr. 514 (1988); see, LaBordi v. McKesson & Robins, Inc., 264 Cal. App. 2d 363, 370, 70 Cal. Rptr. 726 (1968); Central Basin Water Dist. v. Fossette, 235 Cal. App. 2d 689, 705, 45 Cal. Rptr. 651 (1965).

Proposed Senate Bill 2594 would preclude the resolution of significant questions of law which can presently be summarily disposed of by way of a Motion for Summary Adjudication of Issues. The following cases demonstrate that summary adjudication of an issue as opposed to an entire cause of action, can significantly impact litigation and promote more efficient handling.

For example, summary adjudication of issues is appropriate where a single cause of action is premised on the existence of multiple alleged duties - and at least some of the alleged duties are non-existent as a matter of law. State Farm Fire & Casualty Co. v. Superior Court, 215 Cal. App. 3d 1455, 1461-62, 263 Cal. Rptr. 337 (1989) (court summarily adjudicates that one of two claimed statutory duties is non-existent).

Where a single cause of action is premised on multiple alleged breaches of duties, and at least some of the alleged breaches cannot give rise to liability as a matter of law, summary adjudication is appropriate. King v. State of California, 11 Cal. App. 3d 307, 309, 89 Cal. Rptr. 715 (1970) (plaintiff alleged that defendant negligently constructed bridge, highway and levee; court summarily adjudicated that construction of levee did not give rise to liability).



Administrative Office of the Courts
Attn: Arline S. Tyler, Attorney
July 26, 1990
Page 3

Summary adjudication is appropriate where there is an issue regarding the choice of law to be applied in resolving the litigation, e.g., Beech Aircraft Corp. v. Superior Court, 61 Cal. App. 3d 501, 132 Cal. Rptr. 541 (1976) (trial court may summarily adjudicate whether California or New Mexico tort law applies in resolving wrongful death litigation).

Similarly amenable to summary adjudication is the issue of "Whether in a breach of contract action, there is a contract, a breach, or [a release]. . . ." Beech Aircraft Corp. v. Superior Court, *supra*, 61 Cal. App. 3d at 516; *see*, Niederer v. Ferreira, 150 Cal. App. 3d 219, 197 Cal. Rptr. 685 (1983) (court summarily adjudicates breach of written guaranty by defendant; validity of "lack of consideration" affirmative defense left as the only remaining issue for trial); Carma Developers, Inc. v. Marathon Development, 211 Cal. App. 3d 1360, 256 Cal. Rptr. 112 (1989) (court summarily adjudicates breach of contract by defendant; proximate cause and damages are left as the only remaining issues for trial); Cal-Veda Aircraft, Inc. v. Superior Court, 179 Cal. App. 3d 435, 224 Cal. Rptr. 809 (1986) (court summarily adjudicates that an insurance claimant was not a named insured; issue of whether coverage existed by virtue of insurance company agent's conversations with claimant left for resolution at trial).

The resolution of any of the above-described issues would not have disposed of an entire cause of action. However, their resolution nevertheless did simplify the causes of action and reduced the complexity of the litigation.

Conversely, Senate Bill 2594, which proposes to eliminate Motions for Summary Adjudication of Issues unless an entire cause of action is resolved, would increase costs and delay and would hamper the efficient handling of cases. Nor would the bill promote the settlement possibilities which arise as a result of resolving significant and disputed issues prior to trial.

As a firm familiar with the very useful purpose served by a summary adjudication of issues, we strongly oppose Senate Bill 2594, which we believe unnecessarily

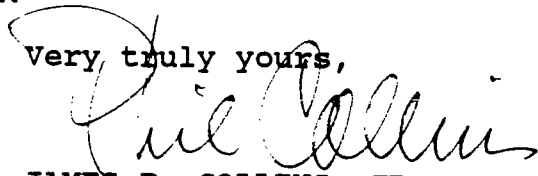


Administrative Office of the Courts
Attn: Arline S. Tyler, Attorney
July 26, 1990
Page 4

complicates litigation and deprives the litigants themselves of possibilities for early resolution of disputed matters.

Should you require any further comment, we would certainly be happy to respond.

Very truly yours,



JAMES P. COLLINS, JR.

JPC/DBA/em
cc: Assembly Judiciary Committee
State Capitol

Senator Alan Robbins
State Capitol



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Will Glennon

Associate Legislative Counsel
Nancy Peverini

July 27, 1990

Senator Alan Robbins
State Capitol, Room 5114
Sacramento, Ca. 95814

RE: SB 2594 (Robbins) SUPPORT

Dear Senator Robbins:

The California Trial Lawyers Association supports SB 2594, which is scheduled to be heard before the Assembly Judiciary Committee on August 8, 1990.

SB 2594 would eliminate summary adjudication of issues and replace it with summary adjudication of causes of action.

This change will simplify summary adjudication and make it more efficient. Summary adjudication of issues was originally intended to reduce the cost of litigation by eliminating issues from a case at an early stage, but it rarely serves that purpose. Summary adjudication of issues often does not eliminate a cause of action and therefore saves little time but uses enormous judicial resources. Also, SB 2594 will help correct the abuses of summary adjudication. These motions are often used by the defense to run up more billable hours regardless of merit; the motions are costly to bring and costly to defend.

If you or a member of your staff would like to discuss this issue further, please feel free to contact me or one of our legislative representatives in Sacramento.

Sincerely,



Larry Drivon
President

cc: Assembly Judiciary Committee

LEGISLATIVE INTENT SERVICE (800) 666-1917



SENATE FLOOR STATEMENT - SENATE BILL 2594

CONCURRENCE IN SENATE AMENDMENTS

MR. PRESIDENT AND MEMBERS:

SENATE BILL 2594 DEALS WITH A VERY TECHNICAL AREA OF CIVIL PROCEDURE, THAT OF SUMMARY JUDGMENT AND SUMMARY ADJUDICATION. THE BILL ATTEMPTS TO STREAMLINE THE SUMMARY ADJUDICATION PROCESS TO THOSE MOTIONS WHICH WILL ENTIRELY DISPOSE OF A CAUSE OF ACTION. EXCEPTIONS ARE PROVIDED FOR PUNITIVE DAMAGES AND THE ISSUE OF DUTY.

THE BILL IS A CAREFULLY CRAFTED COMPROMISE BETWEEN THE JUDGES, TRIAL LAWYERS, BANKERS, INSURANCE COMPANIES AND BAR. WHEN THE BILL LEFT THE SENATE, THE INSURANCE COMPANIES WERE OPPOSED. NOW, THERE IS NO OPPOSITION WHATEVER, AND THE BILL RECEIVED A 73-1 VOTE IN THE ASSEMBLY. I ASK FOR YOUR "AYE" VOTE.



CALIFORNIA ADVOCATES, INC.

Park Executive Bldg., 925 L Street, Suite 350, Sacramento, CA 95814 (916) 441-5050

August 30, 1990

The Honorable George Deukmejian
Governor, State of California
State Capitol
Sacramento, California 95814

Re: Senate Bill 2594 (Robbins)

Dear Governor Deukmejian:

Senate Bill 2594 by Senator Robbins has recently been approved by the Legislature and will soon be to you for action. On behalf of our client, the California Judges Association, we respectfully request your approval of the bill.

Senate Bill 2594 is a very important measure promoting judicial economy and efficiency. Carefully crafted with representatives of insurance companies, banks, trial lawyers, the State Bar, and Judicial Council, the bill:

- o eliminates summary adjudication of issues, while retaining summary adjudication of causes of action.
- o at the request of insurance and banking interests, continues to permit summary adjudication of the limited issues of punitive damages and duties owed to plaintiffs by defendants.
- o provides that objections as to competency and personal knowledge are waived unless raised at hearings.
- o requires incorporations by reference to matters in the courts file to be made with specificity, rather than to the entire file.

Judges familiar with this area have contended that summary adjudication motions too often focus on fact-based issues which, even when the motion is adjudicated, must be relitigated at trial. In response, Senate Bill 2594 attempts to narrow these motions in a manner which is both fair and acceptable to the plaintiff and defense bar alike.



The Honorable George Deukmejian
August 30, 1990
Page 2

Lengthy negotiations with all interested parties removed all opposition to Senate Bill 2594 as finally enacted. Because an important civil procedure issue is treated in a balanced and fair manner, we respectfully urge your signature on Senate Bill 2594.

Sincerely,



Michael D. Belote

MDB/el

cc: The Honorable Alan Robbins ✓

LEGISLATIVE INTENT SERVICE (800) 666-1917

LEGISLATIVE INTENT SERVICE



Superior Court of the State of California

COUNTY OF SACRAMENTO
720 NINTH STREET
SACRAMENTO, CALIFORNIA 95814

RONALD B. ROBIE, JUDGE

September 5, 1990

Hon. George Deukmejian
Governor of California
State capitol
Sacramento, Ca. 95814

My dear Governor:

I respectfully request that you sign Senate Bill 2594 (Robbins) into law.

This bill would revise and streamline the provisions of the Code of Civil Procedure relating to Summary Adjudication of Issues. It is sponsored by the California Judges Association.

As a law and motion judge for nearly three years, I regularly see the misuse of the present summary adjudication procedures. The result of attempts to adjudicate 'facts' and issues which are not dispositive of causes of action or defenses is wasted time by attorneys and the court.

The enactment of this bill will improve the administration of civil justice in our state.

Respectfully yours,

RONALD B. ROBIE

Ronald B. Robie

cc: Senator Alan Robbins

*Senator - Thank you for carrying our bill
Ron*

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JUDICIAL COUNCIL OF CALIFORNIA

ADMINISTRATIVE OFFICE OF THE COURTS

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LEGISLATIVE OFFICE
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801 K STREET, SUITE 1800, SACRAMENTO 95814
TELEPHONE 916-445-7524/ATSS 485-7524
FAX NO. 916-324-5778/ATSS 454-7558

September 17, 1990

Honorable George Deukmejian
Governor of California
State Capitol
Sacramento, CA 95814

Re: Senate Bill 2594 (Robbins) - Support

Dear Governor Deukmejian:

Senate Bill 2594 has passed the Legislature and is before you for action. The bill would simplify civil proceedings by limiting the scope of summary judgment proceedings both at trial and on appeal. The Judicial Council urges your approval of this measure.

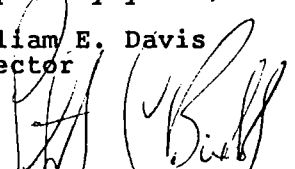
At present, motions for summary adjudication may be made with respect to various issues which comprise a cause of action, and objections to evidence need not be made at the time of hearing, but may be raised on appeal from any ruling. These provisions of the law have proved burdensome to judges and to lawyers. Substantial amounts of time must be expended in deciding summary judgment motions, without corresponding reductions in the time required to dispose of the action at trial. SB 2594 would limit summary judgment motions to situations where an entire theory of recovery can be resolved, thus making better use of resources. It would also require evidentiary objections to be raised in the trial court saving time for appellate courts.

Senate Bill 2594 is a step in the right direction and would simplify law and motion proceedings, reducing costs to the parties as well as to the court.

For the foregoing reasons we urge you to sign Senate Bill 2594.

Very truly yours,

William E. Davis
Director

By 
Stephen C. Birdlebough
Attorney

SCB:dk
2594/SB89/1

cc: Honorable Alan Robbins ✓
Member of the Senate

(800) 666-1917

LEGISLATIVE INTENT SERVICE



California
Judges
Association

October 9, 1990

Honorable Alan Robbins
State Capitol
Room 5114
Sacramento, California 95814

301 Howard Street
Suite 1040
San Francisco
California 94105

(415) 495 1999
(415) 974 1209 Fax

Dear Senator Robbins:

I am writing on behalf of the California Judges Association (CJA) to extend our thanks for your efforts during the past legislative session.

First, your authorship of SB 801 which would have provided a mechanism for counting justice court judges' past years of service when their pensions are computed by the Judges Retirement System is appreciated. We appreciate your recognition of the responsibility of the legislature to provide for retirement for all judges in courts of record. SB 801 was stopped by misunderstanding about its purpose on the Assembly side. Next year, CJA, working with the JRS and, we hope, your office, intends to push for a similar bill to implement equal service credit computation rights for justice court judges.

We also appreciate your efforts to rationalize the Judges Retirement System benefits structure. CJA understands that your bill, SB 2002, to extend the same survivor's benefit to permanently disabled children of judges as is granted under the Public Employees Retirement System, was derailed by hostility in the Executive Branch and among some legislators that had nothing to do with the bill's merits. Your support of simple equity in the treatment of chronically disabled adult children of judges that apply to the handful of judges directly affected by this legislation.

-
- 1990-91
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Constance Dove
Executive Director

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Honorable Alan Robbins
October 5, 1990
Page 2

SB 1993 was an example of a legislator stepping into a leadership vacuum in a controversial area (in this case, division of JRS pension rights on dissolution of a judge's marriage) while once again little help was forthcoming from the administrative agency responsible for the problem. CJA greatly appreciates your willingness to try to craft a compromise that preserved the community property rights of spouses under the Judges Retirement Act. All of these issues remain to be addressed, and we certainly hope to work with you on their resolution again during the next session of the legislature.

Lastly, we want to thank you for your authorship of SB 2594, the bill reforming summary adjudication of issues. Streamlining the subsection of California Code of Civil Procedure section 437(c) will be a significant reform in the handling of suits in California. SB 2594 generated considerable controversy among members of the bar and interested businesses, and CJA appreciates your determination to address those, while preserving the basic integrity of those objectives. The bill has now been chaptered and we look forward to its implementation.

I intend to be in Sacramento as often as possible, and I look forward to meeting with you either later this year or early in the next legislative session.

Sincerely,



Warren C. Conklin
President

WCC/gw



UNFINISHED BUSINESS

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1100 J Street, Suite 120 445-6614	Bill No.	SB 2594
	Author:	Robbins (D)
	Amended:	8/22/90
	Vote Required:	Majority
	Committee Votes:	Senate Floor Vote: p. 6008, 5/24/90

COMMITTEE: JUDICIARY		
BILL NO.: SB 2594		
DATE OF HEARING: 5-15-90		
SENATORS:	AYE	NO
Doolittle		
Keene	/	
Marks	/	
Petris	/	
Presley	/	
Roberti	/	
Royce	/	
Torres	/	
Watson	/	
Davis (VC)	/	
Lockyer (Ch)	/	
TOTAL:	8	0

Senate Bill 2594—An act to amend Section 437c of the Code of Civil Procedure, relating to civil procedure.
Bill read third time and presented by Senator Robbins.

Roll Call

The roll was called and the bill was passed by the following vote:
AYES (22)—Senators Alquist, Ayala, Boatwright, Davis, Dills, Garamendi, Cecil Green, Leroy Greene, Hart, Keene, Kopp, Lockyer, Marks, McCorquodale, Mello, Petris, Presley, Robbins, Roberti, Rosenthal, Torres, and Watson.
NOES (12)—Senators Beverly, Craven, Doolittle, Hill, Leonard, Maddy, Morgan, Nielsen, Rogers, Royce, Russell, and Seymour.
Bill ordered transmitted to the Assembly.

Assembly Floor Vote: NOT AVAILABLE

SUBJECT: Civil procedure: summary judgment and summary adjudication

SOURCE: California Judges Association

DIGEST: This bill provides that motions for summary adjudication be limited to resolving causes of action, affirmative defenses and/or claims for punitive damages.

This bill also makes other specified changes in summary adjudication procedures.

Assembly Amendments (1) specify when a cause of action has no merit, and (2) specify when a party may not move for a summary judgement.

ANALYSIS: Existing law permits a court to grant summary judgment where an action has no merit or where there is no defense to an action. A litigant is permitted to seek summary adjudication of issues as part of, or in lieu of, a motion for summary judgment.

Existing law requires a court to determine whether there exists a material triable controversy as to each particular issue and to specify the evidence which establishes a triable issue of fact. The court is also required to identify those issues which are without substantial controversy.

This bill would instead require a court to determine:

1. whether there is a triable issue of fact as to the case as a whole,

CONTINUED

2. whether there is a triable issue of fact as to particular causes of action and/or affirmative defenses, and
3. whether there is a triable issue of fact as to punitive damages.

The bill specifies that a cause of action has no merit if one or more of the elements cannot be established.

Existing case law permits an objection to the competency of a witness to be raised for the first time on appeal or by the appellate court itself.

This bill would expressly overrule case law and require that evidentiary objections and objections to the form and substance of pleadings are waived unless made at the court hearing on the motion for summary judgment.

Existing law permits the entire court file to be incorporated by reference for the purpose of resolving a motion for summary judgment.

The bill would instead provide that any incorporation by reference of matter in the court's file shall set forth with specificity the exact document to which reference is made and shall not incorporate the entire file.

This bill provides that a party may not move for summary judgment based on issues asserted in a prior motion for summary adjudication and denied by the court, unless that party establishes to the satisfaction of the court, newly discovered facts or circumstances supporting the issues reasserted in the summary judgment motion.

The purpose of this bill is to make the summary judgment procedure more efficient to reduce the opportunity for abuse of the procedure.

FISCAL EFFECT: Appropriation: No Fiscal Committee: No Local: No

SUPPORT: (Unable to reverify support and opposition due to time limitation.)

California Judges Association (source)
California Trial Lawyers Association

ARGUMENTS IN SUPPORT: According to the sponsor, it is a waste of court time to attempt to resolve issues if the resolution of those issues will not result in summary adjudication of a cause of action or affirmative defense. Since the cause of action must still be tried, much of the same evidence will be reconsidered by the court at the time of trial. This bill would instead require summary adjudication of issues only where an entire cause of action, affirmative defense or claim for punitive damages can be resolved.

The sponsor also states that existing law can be abused by litigant attempts to engage in a paper war by bringing motions to resolve numerous minute issues. The sponsor states that many of these issues could be more efficiently resolved through requests for admission and other discovery procedures.

CONTINUED

AUTHOR'S COPY

AUTHOR'S COPY

THIRD READING

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1100 J Street, Suite 120 445-6614	Bill No.	SB 2594
	Author:	Robbins (D)
	Amended:	5/7/90
	Vote Required:	Majority

Committee Votes:

Senate Floor Vote:

COMMITTEE: JUDICIARY		
BILL NO.:	SB 2594	
DATE OF HEARING:	5-15-90	
SENATORS:	AYE	NO
Doolittle		
Keene	/	
Marks	/	
Petris	/	
Presley	/	
Roberti	/	
Royce	/	
Torres	/	
Watson	/	
Davis (VC)	/	
Lockyer (CH)	/	
TOTAL:	8	0

Assembly Floor Vote:

SUBJECT: Civil procedure: summary judgment and summary adjudication

SOURCE: California Judges Association

DIGEST: This bill provides that motions for summary adjudication be limited to resolving causes of action, affirmative defenses and/or claims for punitive damages.

This bill also makes other specified changes in summary adjudication procedures.

ANALYSIS: Existing law permits a court to grant summary judgment where an action has no merit or where there is no defense to an action. A litigant is permitted to seek summary adjudication of issues as part of, or in lieu of, a motion for summary judgment.

Existing law requires a court to determine whether there exists a material triable controversy as to each particular issue and to specify the evidence which establishes a triable issue of fact. The court is also required to identify those issues which are without substantial controversy.

This bill would instead require a court to determine:

1. whether there is a triable issue of fact as to the case as a whole,
2. whether there is a triable issue of fact as to particular causes of action and/or affirmative defenses, and

CONTINUED



3. whether there is a triable issue of fact as to punitive damages.

Existing case law permits an objection to the competency of a witness to be raised for the first time on appeal or by the appellate court itself.

This bill would expressly overrule case law and require that evidentiary objections and objections to the form and substance of pleadings are waived unless made at the court hearing on the motion for summary judgment.

Existing law permits the entire court file to be incorporated by reference for the purpose of resolving a motion for summary judgment.

The bill would instead provide that any incorporation by reference of matter in the court's file shall set forth with specificity the exact document to which reference is made and shall not incorporate the entire file.

The purpose of this bill is to make the summary judgment procedure more efficient and to reduce the opportunity for abuse of the procedure.

FISCAL EFFECT: Appropriation: No Fiscal Committee: No Local: No

SUPPORT: (Verified 5/17/90)

California Judges Association (source)
California Trial Lawyers Association

OPPOSITION: (Verified 5/17/90)

California Association of Insurance Companies

ARGUMENTS IN SUPPORT: According to the sponsor, it is a waste of court time to attempt to resolve issues if the resolution of those issues will not result in summary adjudication of a cause of action or affirmative defense. Since the cause of action must still be tried, much of the same evidence will be reconsidered by the court at the time of trial. This bill would instead require summary adjudication of issues only where an entire cause of action, affirmative defense or claim for punitive damages can be resolved.

The sponsor also states that existing law can be abused by litigant attempts to engage in a paper war by bringing motions to resolve numerous minute issues. The sponsor states that many of these issues could be more efficiently resolved through requests for admission and other discovery procedures.

The sponsor believes that the bill will save court time, reduce the cost of litigation for plaintiffs and defendants, and reduce the opportunity for abuse of the summary judgment procedure.

ARGUMENTS IN OPPOSITION: Opponents also object because they believe the bill would prevent summary adjudication of important issues in situations such as the following:

1. Where there is an important issue as to the legal or fiduciary relationship of the plaintiff and one or more defendants.

CONTINUED

The sponsor believes that the bill will save court time, reduce the cost of litigation for plaintiffs and defendants, and reduce the opportunity for abuse of the summary judgment procedure.

RJG:lm 8/23/90 Senate Floor Analyses



Date of Hearing: August 8, 1990

ASSEMBLY COMMITTEE ON JUDICIARY
Phillip Isenberg, Chair

SB 2594 (Robbins) - As Amended: August 6, 1990

PRIOR ACTION

Sen. Com. on JUD. 8-0

Sen. Floor 22-12

SUBJECT: This bill revises the laws relating to summary judgments and summary adjudication.

BACKGROUND

A party to an action may move for summary judgment by contending that the action has no merit or that there is no defense thereto. A motion for summary judgment must be supported or opposed by admissible evidence (i.e. affidavits, declarations, admissions, answers to interrogatories, depositions and matters of which judicial notice may be taken.) The motion shall be granted if the court finds that there is no triable issue as to any material fact. If an issue of fact is presented the court must permit trial thereof. The purpose of the summary procedure is to provide a method for prompt disposition of actions in which there is no triable, material issue of fact on which evidence shall be taken. The motion is not intended to test the sufficiency of the pleadings, but rather to determine whether the issues apparently raised are merely the result of sham or adept pleading.

Generally the granting of a motion for summary judgment disposes of the whole case (although in multiple party litigation, summary judgment may be granted as to one party, leaving the others to litigate. Even if the court determines that there are some triable issues in the case as a whole, it may find that certain other issues "are without substantial controversy" and grant summary adjudication as to those issues. A decision that certain issues are without substantial controversy does not end the action, but it does reduce the scope of trial by eliminating the need to prove or disprove those issues at trial. The court cannot summarily adjudicate issues if it is presented only with a motion for summary judgment. When the moving party wants the court to adjudicate issues a motion for summary adjudication of issues must be made. At trial any issues which have been summarily adjudicated are deemed established and the trial proceeds on the remaining issues.

DIGEST

Existing law:

- 1) Permits a court to grant summary judgment where an action has no merit or

- continued -

where there is no defense to an action. A party may move for summary adjudication of issues as part of, or in lieu of, a motion for summary judgment.

- 2) Requires a court to determine whether a material triable controversy exists as to each particular issue and to specify the evidence which establishes a triable issue of fact. The court is also required to identify those issues which are without substantial controversy.
- 3) Permits in case law, an objection to the competency of a witness to be raised for the first time on appeal or by the appellate court itself.
- 4) Permits the entire court file to be incorporated by reference for the purpose of resolving a motion for summary judgment.

This bill:

- 1) Requires a court to determine:
 - a) Whether there is a triable issue of fact as to the case as a whole.
 - b) Whether there is a triable issue of fact as to particular causes of action and/or affirmative defenses.
 - c) Whether there is a triable issue of fact as to punitive damages.
- 2) Abrogates case law by requiring that evidentiary objections and objections to the form and substance of pleadings are waived unless made at the court hearing on the motion for summary judgment.
- 3) Provides that any incorporation by reference of matter in the court's file shall set forth with specificity the exact document to which reference is made and shall not incorporate the entire file.

FISCAL EFFECT

No significant fiscal impact anticipated. This bill will not be referred to the Committee on Ways and Means.

COMMENTS

- 1) Sponsor's Statement. The California Judges Association (CJA) is the source of this bill. According to CJA, it is a waste of court time to attempt to resolve issues if the resolution of those issues will not result in summary adjudication of a cause of action or affirmative defense. Since the cause of action must still be tried, much of the same evidence will be reconsidered by the court at the time of trial. This bill would instead require summary adjudication of issues only where an entire cause of action, affirmative defense or claim for punitive damages can be resolved.

- continued -

CJA also states that existing law can be abused by litigant attempts to engage in a paper war by bringing motions to resolve numerous minute issues. The sponsor states that many of these issues could be more efficiently resolved through requests for admission and other discovery procedures.

CJA states that the bill will save court time, reduce the cost of litigation for plaintiffs and defendants, and reduce the opportunity for abuse of the summary judgment procedure.

- 2) The California Court of Appeal has held that objections to the competency of a witness are not waived even if a party fails to make those objections at the hearing. Witchell v. De Korne 179 Cal.App.3d 965 and Zukerman v. Pacific Savings Bank 179 Cal.App.3d 1394.

This bill would re-enact language providing that evidentiary objections not made at the hearing are waived and would specifically provide that objections based on the failure to comply with the requirements of the statute are waived unless made at the hearing.

The bill also contains a statement of legislative intent that the rules stated in the Witchell and Zukerman cases be overturned.

CJA states that it is necessary to overturn the above cases to prevent relitigation and trial de novo of summary judgments in appellate court. All evidentiary issues, except those relating to the competency of a witness, are waived unless first raised in the summary judgment hearing. The sponsor believes that this should also be the rule for objections related to witness competency.

- 3) Currently, an entire court file may be incorporated for the purpose of deciding a motion for summary judgment. This bill requires that only material specifically identified may be so incorporated. According to the sponsor, this prevents relitigation of the motion for summary judgment in appellate court based on a document not considered by the lower court in granting or denying the motion.

SUPPORT

California Judges Association (source)
California Trial Lawyers Association

OPPOSITION

Unknown

R. LeBov
445-4560
ajud

2. Where there are allegations that a defendant owed a special duty of care to the plaintiff.
3. Where there is an issue as to the appropriate burden of proof.

Opponents state that the above examples represent question of law that can be disposed of by motion for summary adjudication. Though resolution of any of the issues would not dispose of the entire cause of action, opponents believe it would nonetheless simplify the cause of action and reduce the complexity of the litigation. Opponents state that the bill, as introduced, would increase cost and delay.

RJG:lm 5/17/90 Senate Floor Analyses



SENATE COMMITTEE ON JUDICIARY
Bill Lockyer, Chairman
1989-90 Regular session

S
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SB 2594 (Robbins)
As amended May 7
Hearing date: May 15, 1990
Code of Civil Procedure
JRP/lhm

SUMMARY JUDGMENT

HISTORY

Source: California Judges Association

Prior Legislation: None

Support: California Trial Lawyers Association

Opposition: California Association of Insurance Companies
(unless amended)

KEY ISSUES

SHOULD MOTIONS FOR SUMMARY ADJUDICATION BE LIMITED TO RESOLVING
CAUSES OF ACTION, AFFIRMATIVE DEFENSES AND/OR CLAIMS FOR PUNITIVE
DAMAGES?

SHOULD OTHER SPECIFIED CHANGES IN SUMMARY ADJUDICATION PROCEDURES
BE MADE?

PURPOSE

1. Scope of motion for summary judgment

Existing law permits a court to grant summary judgment where an
action has no merit or where there is no defense to an action.
A litigant is permitted to seek summary adjudication of issues
as part of, or in lieu of, a motion for summary judgment.

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Existing law requires a court to determine whether there exists a material triable controversy as to each particular issue and to specify the evidence which establishes a triable issue of fact. The court is also required to identify those issues which are without substantial controversy.

This bill would instead require a court to determine:

- (a) whether there is a triable issue of fact as to the case as a whole,
 - (b) whether there is a triable issue of fact as to particular causes of action and/or affirmative defenses, and
 - (c) whether there is a triable issue of fact as to punitive damages.
2. Objections to the form and substance of moving and opposing papers

Existing case law permits an objection to the competency of a witness to be raised for the first time on appeal or by the appellate court itself.

This bill would expressly overrule case law and require that evidentiary objections and objections to the form and substance of pleadings are waived unless made at the court hearing on the motion for summary judgment.

3. Incorporation by reference of documents contained in the court file

Existing law permits the entire court file to be incorporated by reference for the purpose of resolving a motion for summary judgment.

The bill would instead provide that any incorporation by reference of matter in the court's file shall set forth with specificity the exact document to which reference is made and shall not incorporate the entire file.

The purpose of this bill is to make the summary judgment procedure more efficient and to reduce the opportunity for abuse of the procedure.

COMMENT

1. Adjudication of causes of action rather than issues

According to the sponsor, it is a waste of court time to attempt to resolve issues if the resolution of those issues will not result in summary adjudication of a cause of action or



affirmative defense. Since the cause of action must still be tried, much of the same evidence will be reconsidered by the court at the time of trial. This bill would instead require summary adjudication of issues only where an entire cause of action, affirmative defense or claim for punitive damages can be resolved.

The sponsor also states that existing law can be abused by litigant attempts to engage in a paper war by bringing motions to resolve numerous minute issues. The sponsor states that many of these issues could be more efficiently resolved through requests for admission and other discovery procedures.

The sponsor believes that the bill will save court time, reduce the cost of litigation for plaintiffs and defendants, and reduce the opportunity for abuse of the summary judgment procedure.

2. Objections to evidence

The California Court of Appeal has held that objections to the competency of a witness are not waived even if a party fails to make those objections at the hearing. Witchell v. De Korne 179 Cal.App.3d 965 and Zukerman v. Pacific Savings Bank 187 Cal.App.3d 1394.

This bill would re-enact language providing that evidentiary objections not made at the hearing are waived and would specifically provide that objections based on the failure to comply with the requirements of the statute are waived unless made at the hearing.

The bill also contains a statement of legislative intent that the rules stated in the Witchell and Zukerman cases be overturned.

The sponsor believes it is necessary to overturn the above cases to prevent relitigation and trial de novo of summary judgments in appellate court. All evidentiary issues, except those relating to the competency of a witness, are waived unless first raised in the summary judgment hearing. The sponsor believes that this should also be the rule for objections related to witness competency.

3. Incorporation of the file

Currently, an entire court file may be incorporated for the purpose of deciding a motion for summary judgment. This bill requires that only material specifically identified may be so incorporated. According to the sponsor, this prevents relitigation of the motion for summary judgment in appellate court based on a document not considered by the lower court in

granting or denying the motion.

4. Statement of decision

Under existing law a court must state the reasons for its decision and specify the evidence relied upon only where it denies a motion for summary judgment.

The bill would also require that a court, upon granting a motion for summary judgment, to specify the reasons for the decision and the evidence relied upon in making the determination.

The sponsor believes that the above language will provide a more equitable balance between plaintiffs and defendants.

5. Opposition

A major objection to the bill raised by the opposition, the elimination of the ability to resolve punitive damages claims by summary adjudication, has been resolved by the author's amendments.

Opponents also object because they believe the bill would prevent summary adjudication of important issues in situations such as the following:

- (a) Where there is an important issue as to the legal or fiduciary relationship of the plaintiff and one or more defendants.
- (b) Where there are allegations that a defendant owed a special duty of care to the plaintiff.
- (c) Where there is an issue as to the appropriate burden of proof.

Opponents state that the above examples represent question of law that can be disposed of by motion for summary adjudication. Though resolution of any of the issues would not dispose of the entire cause of action, opponents believe it would nonetheless simplify the cause of action and reduce the complexity of the litigation. Opponents state that the bill, as introduced, would increase cost and delay.

Opponents have suggested amendments that would allow resolution of the issues such as those listed above.

SENATE BILL NO. 2594 1990 REGULAR SESSION CHAPTER 1561

5-3121 V

J

Robbins

LC	IR	PUC
RTH	LEGAL	DPA
EO	OLGA	ED
FIN	RES	CAIP VMK
F&A	SCS	
H&W	YAC	

AUTHOR

DATE RECEIVED 9-10 1990

LAST DAY TO ACT 9-30 1990

ACTION OF GOVERNOR 9-29 1990

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Ann Mackey
Chief Deputies
James L. Ashford
Jerry L. Bassett
John T. Studebaker
Jimmie Wing
David D. Alves
John A. Corzine
C. David Dickerson
Robert Cullen Duffy
Robert D. Gronke
Robert G. Miller
Verne L. Oliver
Tracy O. Powell II
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Ellen Sward
Mark Franklin Terry
Jeff Thom
Elizabeth M. Warf
Richard B. Weisberg
Thomas D. Whelan
Belinda Whitsett
Debra J. Zidich

Sacramento, California
September 6, 1990

Honorable George Deukmejian
Governor of California
Sacramento, CA 95814

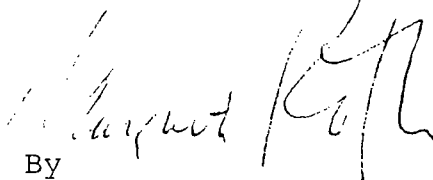
Senate Bill No. 2594

Dear Governor Deukmejian:

Pursuant to your request, we have reviewed the above-numbered bill authored by Senator Robbins and, in our opinion, the title and form are sufficient and the bill, if chaptered, will be constitutional. The digest on the printed bill as adopted correctly reflects the views of this office.

Very truly yours,

Bion M. Gregory
Legislative Counsel


By
Marguerite Roth
Principal Deputy

MRR:ls1

Two copies to Honorable Alan Robbins,
pursuant to Joint Rule 34.

LEGISLATIVE INTENT SERVICE (800) 666-1917



UNFINISHED BUSINESS

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1100 J Street, Suite 120 445-6614	Bill No.	SB 2594
	Author:	Robbins (D)
	Amended:	8/22/90
	Vote Required:	Majority

Committee Votes:

Senate Floor Vote: p. 6008, 5/24/90

COMMITTEE: JUDICIARY		
BILL NO.:	SB 2594	
DATE OF HEARING:	5-15-90	
SENATORS:	AYE	NO
Doolittle		
Keene	✓	
Marks	✓	
Petris	✓	
Presley	✓	
Roberti	✓	
Royce		
Torres	✓	
Watson	✓	
Davis (VC)	✓	
Lockyer (Ch)	✓	
TOTAL:	8	0

Senate Bill 2594—An act to amend Section 437c of the Code of Civil Procedure, relating to civil procedure.
 Bill read third time and presented by Senator Robbins.

Roll Call

The roll was called and the bill was passed by the following vote:
AYES (22)—Senators Alquist, Ayala, Boatwright, Davis, Dills, Garamendi, Cecil Green, Leroy Greene, Hart, Keene, Kopp, Lockyer, Marks, McCorquodale, Mello, Petris, Presley, Robbins, Roberti, Rosenthal, Torres, and Watson.
NOES (12)—Senators Beverly, Craven, Doolittle, Hill, Leonard, Maddy, Morgan, Nielsen, Rogers, Royce, Russell, and Seymour.
 Bill ordered transmitted to the Assembly.

Assembly Floor Vote: **NOT AVAILABLE**

SUBJECT: Civil procedure: summary judgment and summary adjudication

SOURCE: California Judges Association

DIGEST: This bill provides that motions for summary adjudication be limited to resolving causes of action, affirmative defenses and/or claims for punitive damages.

This bill also makes other specified changes in summary adjudication procedures.

Assembly Amendments (1) specify when a cause of action has no merit, and (2) specify when a party may not move for a summary judgement.

ANALYSIS: Existing law permits a court to grant summary judgment where an action has no merit or where there is no defense to an action. A litigant is permitted to seek summary adjudication of issues as part of, or in lieu of, a motion for summary judgment.

Existing law requires a court to determine whether there exists a material triable controversy as to each particular issue and to specify the evidence which establishes a triable issue of fact. The court is also required to identify those issues which are without substantial controversy.

This bill would instead require a court to determine:

1. whether there is a triable issue of fact as to the case as a whole,

LEGISLATIVE INTENT SERVICE (800) 666-1917

2. whether there is a triable issue of fact as to particular causes of action and/or affirmative defenses, and
3. whether there is a triable issue of fact as to punitive damages.

The bill specifies that a cause of action has no merit if one or more of the elements cannot be established.

Existing case law permits an objection to the competency of a witness to be raised for the first time on appeal or by the appellate court itself.

This bill would expressly overrule case law and require that evidentiary objections and objections to the form and substance of pleadings are waived unless made at the court hearing on the motion for summary judgment.

Existing law permits the entire court file to be incorporated by reference for the purpose of resolving a motion for summary judgment.

The bill would instead provide that any incorporation by reference of matter in the court's file shall set forth with specificity the exact document to which reference is made and shall not incorporate the entire file.

This bill provides that a party may not move for summary judgement based on issues asserted in a prior motion for summary adjudication and denied by the court, unless that party establishes to the satisfaction of the court, newly discovered facts or circumstances supporting the issues reasserted in the summary judgement motion.

The purpose of this bill is to make the summary judgment procedure more efficient and to reduce the opportunity for abuse of the procedure.

FISCAL EFFECT: Appropriation: No Fiscal Committee: No Local: No

SUPPORT: (Unable to reverify support and opposition due to time limitation.)

California Judges Association (source)
California Trial Lawyers Association

ARGUMENTS IN SUPPORT: According to the sponsor, it is a waste of court time to attempt to resolve issues if the resolution of those issues will not result in summary adjudication of a cause of action or affirmative defense. Since the cause of action must still be tried, much of the same evidence will be reconsidered by the court at the time of trial. This bill would instead require summary adjudication of issues only where an entire cause of action, affirmative defense or claim for punitive damages can be resolved.

The sponsor also states that existing law can be abused by litigant attempts to engage in a paper war by bringing motions to resolve numerous minute issues. The sponsor states that many of these issues could be more efficiently resolved through requests for admission and other discovery procedures.



The sponsor believes that the bill will save court time, reduce the cost of litigation for plaintiffs and defendants, and reduce the opportunity for abuse of the summary judgment procedure.

RJG:lm 8/23/90 Senate Floor Analyses



OFFICE OF THE GOVERNOR
Sacramento, CA 95814
Robert J. Gore, Press Secretary
Anita MacKenzie, Assistant Press Secretary
Susan Trowbridge, Assistant Press Secretary
916/445-4571 9/30/90

RELEASE: Immediate
#651

Governor George Deukmejian has signed the following bills:

AB 312 Eastin, D-Union City. Continues provisions of current state law regarding the Greater Avenues for Independence (GAIN) program which comply with federal law regarding the Job Opportunities and Basic Skills program contained in the 1988 Family Support Act. Urgency.

AB 2459 Klehs, D-San Leandro. Adds podiatrists to the list of licensees who may be reimbursed for any policy benefits they provide an insured person, as long as those services are within the scope of the practice of the licensee.

AB 2617 Felando, R-San Pedro. Authorizes the Department of Social Services to obtain criminal history information from law enforcement agencies when reviewing an applicant's request for a license or special permit to operate a community care facility, a foster family home, an adoption agency, or a certified family home.

AB 2729 Areias, D-Los Banos. Requires creditors to notify co-signers at the time they notify a primary obligor of a delinquent or defaulting obligation on a consumer credit contract.

AB 2910 Margolin, D-Los Angeles. Makes numerous changes to the workers' compensation sections of the Insurance, Unemployment Insurance and Labor Codes.

AB 3087 Hayden, D-Santa Monica. Permits the court to aggregate the value of property taken, damaged or destroyed by a person convicted of multiple felony charges to determine if an additional one or two year sentence enhancement term should be imposed.

AB 3228 Frazee, R-Carlsbad. Clarifies and expands statutes governing the imposition of development fees.

AB 3243 Lancaster, R-Covina. Enacts changes to provisions regulating vehicle-related occupational licenses in order to make these provisions consistent among the various license categories.



SB 2470 C. Green, D-Los Angeles. Authorizes PERS to add six auditors to audit reports submitted by employers; furnish the PERS Board with any third party or internal audits and requires PERS to prepare a study of the accuracy of public agency payroll reporting procedures and report to the legislature. Urgency.

SB 2494 Vuich, D-Dinuba. Prohibits a financial institution doing business in California from selling any non-federally insured security of its holding company, parent company or an affiliated company in any office at which it accepts deposits.

SB 2522 Davis, R-Chatsworth. Deletes the imposition of a fine as an alternative to state prison for a person who commits a vehicle-related offense and who has suffered a prior felony conviction for a similar offense. Urgency.

SB 2577 Kopp, I-San Francisco. Extends the requirement that county assessors and recorders provide change of ownership reports to recent homebuyers.

SB 2594 Robbins, D-Tarzana. Provides that motions for summary adjudication be limited to resolving causes of action, affirmative defenses and/or claims for punitive damages.

SB 2602 Keene, D-Benicia. Allows the Director of General Services to build, at a specified site, a library and courts annex building complex for the California State Library and related facilities. Urgency.

SB 2722 C. Green, D-Los Angeles. Requires retailers selling vehicles to meet specified advertising standards governing vehicle dealers.

SB 2808 Vuich, D-Dinuba. Makes various change sin the Horse Racing Law related to the funding of fairs.

SB 2832 Robbins, D-Tarzana. Authorizes the Department of Insurance to increase its regulatory fees once a year with 90 days prior notice.

SB 2899 C. Green, D-Los Angeles. Increases the statutory ceiling for fees which may be assessed by the Board of Landscape Architects.



FLOOR ANALYSES
OVERSIGHT COMMITTEE

MARIAN BERGESON
RALPH C. DILLS
LEROY F. GREENE
GARY HART
QUENTIN L. KOPP
BILL LEONARD
MILTON MARKS
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JOHN SEYMOUR

California Legislature

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1990 DIGEST OF SIGNIFICANT LEGISLATION

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→ SB 2594 (Robbins-D) - Summary Judgment: Adjudication

Provides that motions for summary adjudication be limited to resolving causes of action, affirmative defenses and/or claims for punitive damages. ✓

Makes other specified changes in summary adjudication procedures.

Chapter 1561, Statutes of 1990

SB 2627 (Beverly-R) - Small Claims

Reorganizes and simplifies the statutes pertaining to small claims for the benefit of non-attorney users.

Chapter 1305, Statutes of 1990

SB 2675 (Marks-D) - Courts: Vexatious Litigants

Revises the definitions of plaintiff, defendant, litigation, and vexatious litigant. Authorizes a court, upon its own motion or that of a party, to enter a pre-filing order which prohibits a vexatious litigant from filing any new litigation in the court of this state in propria persona without obtaining leave of the presiding judge of the court where the litigation is proposed to be filed. Requires the clerk of the court to provide the Judicial Council of pre-filing orders issued pursuant to the bill, and would require the Judicial Council to maintain a record of vexatious litigants.

Chapter 621, Statutes of 1990

SB 2748 (Deddeh-D) - Statutes of Limitation: Asbestos

Provides that the statute of limitations period for a public entity to bring a property damage action against a manufacturer for damages based upon the costs of treating or removing asbestos materials located in any building or facility owned by the public entity, be set at three years from the date the public entity knew or reasonably should have known that the asbestos material posed a significant health hazard for the building's occupants, as specified.

Vetoed by the Governor

SB 2766 (Royce-R) - Civil Procedure

Authorizes a court, in addition to any award, to assess punitive damages against a plaintiff as specified.

Chapter 887, Statutes of 1990

