

AMENDED IN ASSEMBLY SEPTEMBER 10, 2009

AMENDED IN ASSEMBLY APRIL 20, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 621

Introduced by Assembly Member Saldana

February 25, 2009

~~An act to amend Sections 29000 and 29001 of the Government Code, relating to local government.~~ *An act to amend Sections 425.17 and 1281.2 of the Code of Civil Procedure, relating to civil actions.*

LEGISLATIVE COUNSEL'S DIGEST

AB 621, as amended, Saldana. ~~County Budget Act.~~ *Civil actions: minors; anti-SLAPP; arbitration.*

(1) Existing law provides that a cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or California Constitution in connection with a public issue, as specified, shall be subject to a special motion to strike, unless the court, after considering the pleadings and supporting and opposing affidavits, determines that there is a probability that the plaintiff will prevail on the claim, subject to specific exceptions. These provisions do not apply to any action brought in the name of the people of the State of California by certain state and local prosecutors, and require all discovery proceedings to be stayed upon the filing of a notice of this special motion, except as specified.

This bill would provide that these provisions do not apply to specified civil rights actions if the person bringing the action, or the person on

whose behalf the action is brought, was a minor at the time the activity that gave rise to the civil action occurred.

(2) Under existing law, on petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party thereto refuses to arbitrate that controversy, the court is required to order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists, unless certain other determinations are made.

This bill would provide that a court may set aside an arbitration agreement in a civil action that is based on a violation of certain civil rights provisions if a party to the arbitration was a minor at the time the agreement was entered, as specified.

~~Existing law specifies the procedures for establishing the annual budget for each county, and defines the terms “administrative officer,” “auditor,” “board,” and “controller” for purposes of those provisions.~~

~~This bill would establish those provisions as the County Budget Act and would additionally define the terms “adopted budget,” “budget year,” “final budget,” and “recommended budget” for purposes of that act.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

- 1 SECTION. 1 Section 425.17 of the Code of Civil Procedure is
- 2 amended to read:
- 3 425.17. (a) The Legislature finds and declares that there has
- 4 been a disturbing abuse of Section 425.16, the California
- 5 Anti-SLAPP Law, which has undermined the exercise of the
- 6 constitutional rights of freedom of speech and petition for the
- 7 redress of grievances, contrary to the purpose and intent of Section
- 8 425.16. The Legislature finds and declares that it is in the public
- 9 interest to encourage continued participation in matters of public
- 10 significance, and that this participation should not be chilled
- 11 through abuse of the judicial process or Section 425.16.
- 12 (b) Section 425.16 does not apply to any action brought solely
- 13 in the public interest or on behalf of the general public if all of the
- 14 following conditions exist:

1 (1) The plaintiff does not seek any relief greater than or different
2 from the relief sought for the general public or a class of which
3 the plaintiff is a member. A claim for attorney’s fees, costs, or
4 penalties does not constitute greater or different relief for purposes
5 of this subdivision.

6 (2) The action, if successful, would enforce an important right
7 affecting the public interest, and would confer a significant benefit,
8 whether pecuniary or nonpecuniary, on the general public or a
9 large class of persons.

10 (3) Private enforcement is necessary and places a
11 disproportionate financial burden on the plaintiff in relation to the
12 plaintiff’s stake in the matter.

13 (c) Section 425.16 does not apply to any cause of action brought
14 against a person primarily engaged in the business of selling or
15 leasing goods or services, including, but not limited to, insurance,
16 securities, or financial instruments, arising from any statement or
17 conduct by that person if both of the following conditions exist:

18 (1) The statement or conduct consists of representations of fact
19 about that person’s or a business competitor’s business operations,
20 goods, or services, that is made for the purpose of obtaining
21 approval for, promoting, or securing sales or leases of, or
22 commercial transactions in, the person’s goods or services, or the
23 statement or conduct was made in the course of delivering the
24 person’s goods or services.

25 (2) The intended audience is an actual or potential buyer or
26 customer, or a person likely to repeat the statement to, or otherwise
27 influence, an actual or potential buyer or customer, or the statement
28 or conduct arose out of or within the context of a regulatory
29 approval process, proceeding, or investigation, except where the
30 statement or conduct was made by a telephone corporation in the
31 course of a proceeding before the California Public Utilities
32 Commission and is the subject of a lawsuit brought by a competitor,
33 notwithstanding that the conduct or statement concerns an
34 important public issue.

35 (d) Subdivisions (b) and (c) do not apply to any of the following:

36 (1) Any person enumerated in subdivision (b) of Section 2 of
37 Article I of the California Constitution or Section 1070 of the
38 Evidence Code, or any person engaged in the dissemination of
39 ideas or expression in any book or academic journal, while engaged

1 in the gathering, receiving, or processing of information for
2 communication to the public.

3 (2) Any action against any person or entity based upon the
4 creation, dissemination, exhibition, advertisement, or other similar
5 promotion of any dramatic, literary, musical, political, or artistic
6 work, including, but not limited to, a motion picture or television
7 program, or an article published in a newspaper or magazine of
8 general circulation.

9 (3) Any nonprofit organization that receives more than 50
10 percent of its annual revenues from federal, state, or local
11 government grants, awards, programs, or reimbursements for
12 services rendered.

13 (e) *Section 425.16 does not apply to any action authorized by*
14 *either Section 51.7 or Section 52.1 of the Civil Code, if the person*
15 *bringing the action, or the person on whose behalf the action is*
16 *brought, was a minor at the time the activity occurred that gave*
17 *rise to the civil action.*

18 (f) If any trial court denies a special motion to strike on the
19 grounds that the action or cause of action is exempt pursuant to
20 this section, the appeal provisions in subdivision (j) of Section
21 425.16 and paragraph (13) of subdivision (a) of Section 904.1 do
22 not apply to that action or cause of action.

23 *SEC. 2 Section 1281.2 of the Code of Civil Procedure is*
24 *amended to read:*

25 1281.2. (a) On petition of a party to an arbitration agreement
26 alleging the existence of a written agreement to arbitrate a
27 controversy and that a party thereto refuses to arbitrate such
28 controversy, the court shall order the petitioner and the respondent
29 to arbitrate the controversy if it determines that an agreement to
30 arbitrate the controversy exists, unless it determines that:

31 (a)

32 (1) The right to compel arbitration has been waived by the
33 petitioner; ~~or.~~

34 (b)

35 (2) Grounds exist for the revocation of the agreement.

36 (c)

37 (3) A party to the arbitration agreement is also a party to a
38 pending court action or special proceeding with a third party,
39 arising out of the same transaction or series of related transactions
40 and there is a possibility of conflicting rulings on a common issue

1 of law or fact. For purposes of this section, a pending court action
2 or special proceeding includes an action or proceeding initiated
3 by the party refusing to arbitrate after the petition to compel
4 arbitration has been filed, but on or before the date of the hearing
5 on the petition. This subdivision shall not be applicable to an
6 agreement to arbitrate disputes as to the professional negligence
7 of a health care provider made pursuant to Section 1295.

8 ¶

9 *(b) If the court determines that a written agreement to arbitrate*
10 *a controversy exists, an order to arbitrate such controversy may*
11 *not be refused on the ground that the petitioner's contentions lack*
12 *substantive merit.*

13 ¶

14 *(c) If the court determines that there are other issues between*
15 *the petitioner and the respondent which are not subject to*
16 *arbitration and which are the subject of a pending action or special*
17 *proceeding between the petitioner and the respondent and that a*
18 *determination of such issues may make the arbitration unnecessary,*
19 *the court may delay its order to arbitrate until the determination*
20 *of such other issues or until such earlier time as the court specifies.*

21 ¶

22 *(d) If the court determines that a party to the arbitration is also*
23 *a party to litigation in a pending court action or special proceeding*
24 *with a third party as set forth under ~~subdivision (e) herein~~*
25 *paragraph (3) of subdivision (a), the court (1) may refuse to*
26 *enforce the arbitration agreement and may order intervention or*
27 *joinder of all parties in a single action or special proceeding;*
28 *(2) may order intervention or joinder as to all or only certain*
29 *issues; (3) may order arbitration among the parties who have*
30 *agreed to arbitration and stay the pending court action or special*
31 *proceeding pending the outcome of the arbitration proceeding; or*
32 *(4) may stay arbitration pending the outcome of the court action*
33 *or special proceeding.*

34 *(e) In the case of an action authorized by either Section 51.7 or*
35 *Section 52.1 of the Civil Code, if the court determines that a party*
36 *to the arbitration was a minor at the time the arbitration agreement*
37 *was entered into by the minor's parent or legal guardian, the court*
38 *may set aside the arbitration agreement.*

39 ~~SECTION 1. Section 29000 of the Government Code is~~
40 ~~amended to read:~~

1 ~~29000. This chapter shall be known, and may be cited, as the~~
 2 ~~County Budget Act. Unless the context otherwise requires or~~
 3 ~~provides, the general provisions set forth in this article, and the~~
 4 ~~requirements concerning county budget matters prescribed by the~~
 5 ~~Controller under Section 30200, govern the construction of this~~
 6 ~~chapter.~~

7 ~~SEC. 2. Section 29001 of the Government Code is amended~~
 8 ~~to read:~~

9 ~~29001. Except as otherwise defined in this section, the meaning~~
 10 ~~of terms used in this chapter shall be as defined in the Accounting~~
 11 ~~Standards and Procedures for Counties prescribed by the Controller~~
 12 ~~pursuant to Section 30200.~~

13 ~~As used in this chapter:~~

14 ~~(a) "Administrative officer," means the chief administrative~~
 15 ~~officer, county administrator, county executive, county manager,~~
 16 ~~or other officials employed in the several counties under various~~
 17 ~~titles whose duties and responsibilities are comparable to the~~
 18 ~~officials named herein.~~

19 ~~(b) "Adopted budget" means the budget document formally~~
 20 ~~approved by the board of supervisors after the required public~~
 21 ~~hearings and deliberations on the recommended budget.~~

22 ~~(c) "Auditor" means the county auditor or that officer whose~~
 23 ~~responsibilities include those designated in Chapter 4 (commencing~~
 24 ~~with Section 26900) of Division 2.~~

25 ~~(d) "Board" means the board of supervisors of the county, or~~
 26 ~~the same body acting as the governing board of a special district~~
 27 ~~whose affairs and finances are under its supervision and control.~~

28 ~~(e) "Budget year" means the fiscal year for which the budget is~~
 29 ~~being prepared.~~

30 ~~(f) "Controller" means the State Controller.~~

31 ~~(g) "Final budget" means the adopted budget adjusted by all~~
 32 ~~revisions throughout the fiscal years, as of June 30.~~

33 ~~(h) "Recommended budget" means the budget document~~
 34 ~~recommended to the board of supervisors by the designated county~~
 35 ~~official.~~