Filed 10/15/04 (opn. on rehearing)

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

ACTION APARTMENT ASSOCIATION, INC. et al., Plaintiffs and Appellants, v. CITY OF SANTA MONICA et al., Defendants and Respondents.	B165082 (Los Angeles County Super. Ct. No. SC274036)

APPEAL from a judgment of the Superior Court of Los Angeles County. Ray L. Hart, Judge. Reversed with directions.

Law Offices of Rosario Perry and Rosario Perry for Plaintiffs and Appellants.

Marsha Jones Moutrie, City Attorney, and Adam Radinsky, Deputy City Attorney, for Defendants and Respondents.

Appellants Action Apartment Association and Doreen Dennis filed a complaint for declaratory relief and writ of mandate, on behalf of themselves and others similarly situated. They sought a declaration that portions of a Santa Monica ordinance on tenant harassment are unconstitutional, and an injunction and order against enforcement of those parts of the ordinance. More specifically, appellants challenged those portions of Santa Monica Municipal Code section 4.56.020, subdivision (i) and Santa Monica Municipal Code section 4.56.040[1] which address a landlord's efforts to terminate a tenancy through legal proceedings. Appellants contended that those provisions abridged their rights to free speech, to petition the government for redress of grievances, and to due process under the federal Constitution; violated their civil rights under 42 USC 1983; and were pre-empted by Code of Civil Procedure section 128.7 and Civil Code section 47, subdivision (b).

We find that the challenged portions of the ordinance are contradictory to Civil Code section 47, subdivision (b), in that they prohibit, and punish, what the litigation privilege protects.[2] Local law is preempted when it is contradictory to state law (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897; Cal. Const., art. XI, § 7), as this law is. We thus reverse the judgment entered in favor of respondent City of Santa Monica ("the City"), after its successful demurrer. We need not and do not consider the other contentions raised in appellants' briefs.[3]

---

[1] The text of the ordinances is appended to the end of this opinion.

[2] The demurrer challenged appellants' standing to raise the federal constitutional issues, but did not challenge standing to raise the state constitutional preemption argument.

[3] After this opinion was published, we received a petition for rehearing from the City of Santa Monica, raising new arguments. Given the importance of the issues, we granted the petition and requested a response from appellants. We also received a request for depublication from the City of San Francisco, a request from the Small Property Owners of San Francisco to appear as an amicus in opposition to the request for depublicaton, and requests to file amicus briefs in support of the City from the Tenderloin Housing Clinic and from the City of West Hollywood, all of which we denied. We have modified this opinion to include discussions of those of the City's new issues which we found relevant,

The Ordinance

Santa Monica Municipal Code sections 4.56.020 and 4.56.040 are found in a chapter titled "Tenant Harassment," adopted after the Santa Monica City Council took testimony from tenants and reviewed statistics which showed an increase in the rates at which rent controlled housing units were vacated after state vacancy decontrol laws took effect.

The tenant harassment ordinance prohibits a wide variety of malicious acts by landlords with regard to tenants in rent controlled housing. A landlord may not, for instance, abuse a tenant with offensive words (§ 4.56.020, subd. (e)), threaten a tenant with physical harm (§ 4.56.020, subd. (g)) or interfere with a tenant's right to quiet use and enjoyment. (§ 4.56.020, subd. (j).) Appellants have challenged only one portion of section 4.56.020, that which provides that "No landlord shall . . . do any of the following with malice . . . (i)(1) Take action to terminate any tenancy including service of any notice to quit or other eviction notice . . . based upon facts which the landlord has no reasonable cause to believe to be true or upon a legal theory which is untenable under the facts known to the landlord . . . ."[4]

Penalties are found in Santa Monica Municipal Code section 4.56.040: violation of section 4.56.020 is a misdemeanor. Further, its provisions may be enforced by a civil action brought by "any person, including the City," with penalties of actual damages or statutory damages of $1,000, whichever is greater, attorney's fees and costs, and, if awarded by the court, punitive damages. A violation may be asserted as an affirmative defense in an unlawful detainer action.

---

but our basic analysis, and our conclusion, are unchanged. Appellants' request for judicial notice is denied, in that matters contained therein are not germane to our task on rehearing.

[4] For purposes of convenience, we refer to the quoted portions of section 4.56.020 as "the ordinance," although of course they do not include the entire ordinance.

Section 4.56.040 also provides for injunctive relief: "Any person who commits an act, proposes to commit an act, or engages in any pattern and practice which violates Section 4.56.020 may be enjoined therefrom by any court of competent jurisdiction."

The complaint

The first amended complaint alleged that Action Apartment Association is a non-profit corporation established to protect the rights of housing providers in the ownership and maintenance of their real property in Santa Monica, and that Doreen Dennis is the owner and manager of multi-unit apartment buildings in Santa Monica, which come under Santa Monica rent control laws.

Dennis filed the action as a class action on behalf of herself and all other similarly situated housing providers who own rent controlled residential housing in Santa Monica. In the class action allegations, the complaint alleged that the City had "engaged in a custom and practice of threatening housing provider class members with criminal and civil prosecution . . . for simply talking to their tenants, and/or serving their tenants or having their attorneys serve their tenants with a Notice to Cure or Quit or Notice to Terminate Tenancy; and/or filing an unlawful detainer complaint or having their attorneys file an unlawful detainer complaint." The complaint also alleged that the City had threatened Dennis with criminal and civil prosecution for asking her attorney to serve her tenant with a notice to quit for owner occupancy possession, and asking her attorney to file an unlawful detainer lawsuit.

The City demurred, contending that appellants lacked standing to raise the constitutional arguments and that they had failed to state a cause of action, as to each cause of action.

Discussion

"[T]he litigation privilege is intended to encourage parties to feel free to exercise their fundamental right of resort to the courts for assistance in the resolution of their disputes, without being chilled from exercising this right by the fear that they may

subsequently be sued in a derivative tort action arising out of something said or done in the context of the litigation. [Citation.]" (*Edwards v. Centex Real Estate Corp.* (1997) 53 Cal.App.4th 15, 29.)

The privilege exists to protect the right to petition the government for redress of grievances, a right which includes the right to sue. "Undergirding the immunity conferred by section 47(b) is the broadly applicable policy of assuring litigants 'the utmost freedom of access to the courts to secure and defend their rights . . . .' (*Albertson v. Raboff* (1956) 46 Cal.2d [375] at p. 380.)" (*Rubin v. Green* (1993) 4 Cal.4th 1187, 1194.) To this end, our Supreme Court has "reemphasized the importance of virtually unhindered access to the courts." (*Ibid.*)

The privilege "applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action." (*Silberg v. Anderson* (1990) 50 Cal.3d 205, 211-212.) The privilege "is absolute, which means it applies regardless of the existence of malice or intent to harm. [Citations.]" (*Wise v. Thrifty Payless, Inc.* (2000) 83 Cal.App.4th 1296, 1302.) "Any doubt as to whether the privilege applies is resolved in favor of applying it. [Citations.]" (*Adams v. Superior Court* (1992) 2 Cal.App.4th 521, 529.)

Pleadings in a case are "generally viewed as privileged communications," (*Navellier v. Sletten* (2003) 106 Cal.App.4th 763, 770), but the privilege is not limited to pleadings or process. It applies not only to statements made during litigation, but to pre-litigation communications, made outside the courtroom, as long as they have a connection or relationship to an anticipated litigation.[5] (*Rubin v. Green*, *supra*, 4 Cal.4th

[5] Plaintiffs challenge, on vagueness grounds, the phrase "take action." The City's response is that the phrase clearly refers to notices to cure or quit or unlawful detainer lawsuits. We note that the standing allegations of the complaint include allegations that the City has threatened landlords with prosecution for talking to tenants. We cannot and do not here determine whether those landlord-tenant conversations were privileged pre-litigation communications, or verbal abuse or threats punishable under unchallenged portions of the ordinance.

at pp. 1194-1195.) There is no doubt that the statutory notices which are addressed by the ordinance are covered by the privilege.[6]

Notably, the litigation privilege bars a plaintiff from seeking injunctive relief against privileged communications (*Rubin v. Green*, *supra*, 4 Cal.4th at pp. 1203-1204), something which this ordinance would allow.

In sum, under the litigation privilege, a landlord serving an eviction notice or filing an unlawful detainer is immune from suit based on those notices or filings, and cannot be enjoined from that conduct, even if the motivation is malicious, the factual allegations known to be untrue, and the legal theory untenable under the true facts. Under the ordinance, that same landlord, with that same lawsuit, is subject to criminal penalties, a civil lawsuit, and an injunction. The ordinance thus punishes what the Civil Code protects, is contradictory to state law, and is preempted. (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897; Cal. Const., art. XI, § 7.)

The City makes several arguments, that the ordinance does not conflict with the privilege because it does not address communications, but acts; because malicious prosecution is an exception to the privilege; and because the litigation privilege is a defense. We find none of them persuasive.

We first discuss the question of communicative acts versus noncommunicative conduct. "As our Supreme Court has made clear, there is a distinction between injury arising from (privileged) communicative acts and injury arising from (nonprivileged) noncommunicative acts. (See, e.g., *Ribas v. Clark* (1985) 38 Cal.3d 355, 364 [eavesdropping is noncommunicative and thus not privileged, while testimony which resulted from eavesdropping is communication and therefore privileged]; *Kimmel v. Goland* (1990) 51 Cal.3d 202, 209 [acts of tape recording not privileged, while publication or broadcast of information contained in recorded conversations privileged];

---

[6] The City's position on statutory notices to quit is that those notices do not fall under the litigation privilege because they are not intended to aid litigation, but to avoid it. This simply ignores the reality of the landlord-tenant law -- indeed, of litigation itself.

see also, *Susan S. v. Israels* (1997) 55 Cal.App.4th 1290, 1299 [unauthorized reading of confidential medical records are noncommunicative acts, and thus not privileged].)" (*Wang v. Hartunian* (2003) 111 Cal.App.4th 744, 750-751.) The proper inquiry is whether the alleged acts "were communicative in their essential nature." (*Rubin v. Green*, *supra*, 4 Cal.4th at p. 1196.)

Thus, in *Wang v. Hartunian, supra,* 111 Cal.App.4th 744, we held that the act of making a citizen's arrest is not a publication or broadcast under Civil Code section 47, subdivision (b)(2). (*Id.* at p. 749.) *Drum v. Bleau, Fox & Associates* (2003) 107 Cal.App.4th 1009, found that the process of obtaining a writ of execution was essentially communicative in that the documents reflected statements about the judgment and the property, but that the act of levying on the writ was not, and was not privileged. (*Id.* at p. 1026.) In *Navellier v. Sletten*, *supra*, 106 Cal.App.4th 763, the plaintiffs sought to impose fraud liability based on counterclaims the defendants had made in an earlier lawsuit, in which the defendants sought recovery for claims which had already been released. The Court found that "plaintiffs are challenging the *content* of the counterclaims -- a classic example of communication -- not the act, or the manner [citation] of their assertion." (*Navellier v. Sletten, supra,* (2003) 106 Cal.App.4th at pp. 771 and the cases collected therein.)

The City's argument on this point is that the privilege does not apply to the "action of filing a wrongful case . . . since that action is not communication," and thus that the ordinance does not run afoul of the privilege. It is true that filing an unlawful detainer complaint or serving an eviction notice involves an act, but that fact does not save the ordinance. The "essential nature" of what the ordinance addresses is not acts, but communication. A cause of action under Santa Monica Municipal Code section 4.56.020, subdivision (i) would not be based on allegations that the landlord acted by filing a complaint or serving a statutory notice, but would instead rest on allegations concerning the *statements* made in those documents. The complaint would not say, for instance, "my landlord served an eviction notice." Such an allegation would not state a cause of action for violation of the ordinance. Instead, the complaint would allege that

"my landlord served an eviction notice stating that I had not paid my rent, although the landlord had no reasonable cause to believe that that was true."

An unlawful detainer complaint is a landlord's communication to the court that a tenant has failed to pay rent or has violated another portion of the rental agreement, and as such is privileged.

We note, too, that a landlord's need for access to the courts is an unusually vital one, in that the landlord's business relationship with his customers, the tenants, is highly regulated by law. A merchant who is, for instance, paid with a bad check may need access to the courts to recover the amount of the check, but can cut short any future damages by refusing to do business with that customer. A landlord cannot end the business relationship with a tenant without access to the courts.

We now turn to the City's claim that the ordinance does not conflict with Civil Code section 47, subdivision (b) because Civil Code section 47, subdivision (b) does not apply to malicious prosecution actions.

In furtherance of the right to petition, courts (and, by inference, the Legislature) have allowed only one exception to the litigation privilege, a malicious prosecution action.[7] (*Silberg v. Anderson*, 50 Cal.3d at p. 216 .) To establish a cause of action for malicious prosecution, "a plaintiff must plead and prove that the prior action (1) was commenced by or at the direction of the defendant and was pursued to a legal termination in his, plaintiff's, favor [citations]; (2) was brought without probable cause [citations]; and (3) was initiated with malice [citations]." (*Bertero v. National General Corp.* (1974) 13 Cal.3d 43, 50.) "The elements of the common law malicious-prosecution cause of action have evolved over time as an appropriate accommodation between the freedom of an individual to seek redress in the courts and the interest of a potential defendant in being free from unjustified litigation." (*Oren Royal Oaks Venture v. Greenberg, Bernhard, Weiss & Karma* (1986) 42 Cal.3d 1157, 1169.)

---

[7] Even that cause of action is disfavored, "because it may deter judicial resolution of differences." (*Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1131.)

The ordinance departs from this accommodation in significant ways. A defendant in a malicious prosecution action does not face minimum statutory damages which may be greater than actual damages, or an attorney fee recovery. Instead, settled law sets the components of malicious prosecution damages as the cost of defending the prior action, compensation for injury to reputation or impairment of social and business standing in the community, and mental or emotional distress. (*Citi-Wide Preferred Couriers, Inc. v. Golden Eagle Ins. Corp.* (2003), 114 Cal.App. 4th 906, 911-912.) And, unlike the ordinance, nothing in the tort of malicious prosecution allows for an injunction.[8]

The civil cause of action under the ordinance also differs from the tort of malicious prosecution in that the ordinance does not require favorable termination of the underlying action before the civil action can be commenced. This is a very important difference indeed. The favorable termination requirement is a critical part of the legal accommodation which the malicious prosecution tort represents. "The core policy protecting access to the courts underlying section 47(b) has led to the requirement that a derivative tort action seeking redress for communications within the privilege be delayed until the original suit is terminated in favor of the derivative plaintiff." (*Rubin v. Green, supra,* 4 Cal.4th at p.1196.)

Under the sole exception to the litigation privilege, a plaintiff will never have to defend the secondary lawsuit while prosecuting the first.[9] In contrast, under the

---

[8] Indeed, although appellants have not raised the point, we note that under Code of Civil Procedure section 526, subdivision (b), "an injunction cannot be granted . . . (1) to stay a judicial proceeding pending at the commencement of the action in which the injunction is demanded . . . ."

[9] This is the answer to another of the City's arguments on re-hearing, that there is no preemption because the privilege is a defense. The argument is unavailing for another reason. Under our analysis, the defense would be successful in every instance. Why, then, would the City wish to preserve the ordinance, dooming tenants and other parties to initiate litigation which is moot?

ordinance, a landlord could be forced to litigate a civil action (which may be brought by "any person, including the City"), an action for an injunction (which may be brought "by any aggrieved person, by the City Attorney, or by any person or entity who will fairly and adequately represent the interest of the protected class"), and a criminal prosecution, while the unlawful detainer action is pending, multiplying not only the number of actions but, potentially, the number of opponents.

The lack of a favorable termination requirement could easily lead to abuse of the civil cause of action created by the ordinance. There would no doubt be a great temptation for tenants to file civil and/or injunctive actions under the ordinance as a litigation or negotiating tactic, and while we would prefer to believe that tenants and their counsel would resist that temptation, such a belief would not be realistic. The malicious prosecution exception to the litigation privilege is designed with that in mind. The ordinance would "threaten free access to the courts by providing an end run around the limitations on the tort of malicious prosecution." (*Pacific Gas & Electric Co., supra,* 50 Cal.3d at p. 1137.)

On re-hearing, the City argues that in order to prevail, appellants had the burden of showing that the ordinance was invalid in the majority of its applications, citing *American Academy of Pediatrics v. Lungren* (1997) 16 Cal.4th 307 and *California Teachers Association v. State of California* (1999) 20 Cal.4th 327. Neither case concerns preemption, and for that reason neither is on point. What is more, we disagree with the City's companion arguments, that the ordinance is not preempted insofar as it allows suits by tenants who have already obtained favorable termination of the underlying case and suits by third parties, and insofar as it imposes criminal penalties.

First, as we have pointed out, tenants suing under the ordinance after first obtaining a favorable termination of the underlying action would have significant (and improper) advantages over a malicious prosecution plaintiff, including statutory penalties and attorney fees.

Next, we do not agree with the City's contention that the litigation privilege does not apply if the suit is brought by a third party, rather than by a tenant seeking redress of

his or her own grievances. The City relies on *Rubin v. Green, supra*, 4 Cal.4th 1187, in which a law firm's communications to mobilehome park residents, potential clients, were found to be privileged, so that a mobilehome park owner's suit against the firm for attorney solicitation was "not maintainable." That is surely an instance in which communications from non-parties--lawyers--to the potential litigation between tenants and owners fell within the privilege.

The City focuses on a comment in the Court's discussion of the mobilehome park owner's claim that he could sue for injunctive relief under Business and Professions Code section 17200. The Court found that he could not, noting that its conclusion was "reinforced by the fact that the policy underlying the unfair competition statute can be vindicated by multiple parties other than the plaintiff," under that law's broad standing provision. (Id. at p. 1204.) From this comment, the City argues that suits by third parties are not subject to the privilege. We find the Court's holding on the claim for injunctive relief apt: the privilege "should not evaporate merely because the plaintiff discovers a conveniently different label for pleading what is in substance an identical grievance." (Id. at p. 1203.) We see nothing in *Rubin* which indicates that the City may attempt to cause the privilege to evaporate by allowing a "conveniently different" plaintiff as a surrogate for the tenant. The Legislature may enact laws with broad standing provisions which may impinge on the litigation privilege. That does not mean that the City may do the same thing. That is the meaning of preemption.

There is a similar problem with the City's next argument, that it may impose criminal penalties under the ordinance, although those penalties are not among the remedies available to a malicious prosecution plaintiff. The City cites *Hagberg v. California Federal Bank FSB* (2004) 32 Cal.4th 350, to argue that the litigation privilege does not apply to criminal prosecutions. In *Hagberg*, the Supreme Court found that citizens' statements to law enforcement, reporting suspected criminal activity, are privileged under Civil Code section 47, subdivision (b), and can be the basis for tort liability only if the plaintiff can establish the elements of malicious prosecution. Along the way, the Court noted that "Section 47(b), of course, does not bar a criminal

prosecution that is based on a statement or communication, when the speaker's utterance encompasses the elements of a criminal offense. (See, e.g., Pen.Code, §§ 118 [perjury], 148.5 [false report of criminal offense].)" Once again, the fact that the Legislature may create exemptions to a statutory privilege does not mean that the City may also do so.

Finally, on rehearing the City reminds us that cities can enact rent control laws, in all their complexities, and enact ordinances on evictions, and asks us to find that the Legislature did not intend pre-emption, but wants cities to have the power to regulate wrongful evictions. (See, i.e., *Beeman v. Burling* (1990) 216 Cal.App.3d 1586 [residential rent control laws and the penalties for their violation has been recognized as a peculiarly local concern]; Civ. Code, § 1954.53, subd. (e).)

Cities do indeed have powers in this area, but they are not unlimited. (See *City of Santa Monica v. Yarmark* (1988) 203 Cal.App.3d 153; *Javidzad v. City of Santa Monica* (1988) 204 Cal.App.3d 524.) We hold only that those powers are subject to the limits of state law, including the litigation privilege.

In closing, we note that our holding here does not leave a tenant without remedies where a landlord attempts to use the courts for purposes of harassment, related to the vacancy decontrol law. Like any other litigant, a tenant may sue for malicious prosecution and may avail himself of the vexatious litigant law.

Disposition

The judgment is reversed and the trial court is directed to enter a judgment declaring that, as we have explained, Santa Monica Municipal Code section 4.56.020, subdivision (i) is pre-empted by state law.

Appellants to recover costs on appeal.

CERTIFIED FOR PUBLICATION

ARMSTRONG, J.

We concur:

TURNER, P.J.

MOSK, J.

Chapter 4.56 TENANT HARASSMENT

Section 4.56.020 Prohibition.

No landlord shall, with respect to property used as a rental housing unit under any rental housing agreement or other tenancy or estate at will, however created, do any of the following with malice:

(a) Interrupt, terminate or fail to provide housing services required by contract or by State, County or local housing, health or safety laws;

(b) Fail to perform repairs and maintenance required by contract or by State, County or local housing, health or safety laws;

(c) Fail to exercise due diligence in completing repairs and maintenance once undertaken;

(d) Abuse the landlord's right of access into a rental housing unit as that right is specified in California Civil Code Section 1954;

(e) Abuse the tenant with words which are offensive and inherently likely to provoke an immediate violent reaction;

(f) Influence or attempt to influence a tenant to vacate a rental housing unit through fraud, intimidation or coercion;

(g) Threaten the tenant, by word or gesture, with physical harm;

(h) Violate any law which prohibits discrimination based on race, gender, sexual preference, sexual orientation, ethnic background, nationality, religion, age, parenthood, marriage, pregnancy, disability, AIDS or occupancy by a minor child;

(i) (1) Take action to terminate any tenancy including service of any notice to quit or other eviction notice or bring any action to recover possession of a rental housing unit based upon facts which the landlord has no reasonable cause to believe to be true or upon a legal theory which is untenable under the facts known to the landlord,

(2) This subsection shall not apply to any attorney who in good faith initiates legal proceedings against a tenant on behalf of a landlord to recover possession of a rental housing unit;

(j) Interfere with a tenants right to quiet use and enjoyment of a rental housing unit as that right is defined by California law;

(k) Refuse to acknowledge receipt of a tenant's lawful rent payment;

(l) Interfere with a tenant's right to privacy. (Added by Ord. No. 1817CCS § 1 (part), adopted 10/10/95; amended by Ord. No. 1859CCS § 2 (part), adopted 7/30/96; Ord. No. 1943CCS § 2, adopted 5/25/99; Ord. No. 2005CCS § 1, adopted 4/24/01)

Section 4.56.040 Enforcement and penalties.

(a) Criminal Penalty. Any person who is convicted of violating this Chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not greater than one thousand dollars or by imprisonment in the County Jail for not more than six months, or by both such fine and imprisonment.

(b) Civil Action. Any person, including the City, may enforce the provisions of this Chapter by means of a civil action. The burden of proof in such cases shall be preponderance of the evidence. A violation of this Chapter may be asserted as an affirmative defense in an unlawful detainer action.

(c) Injunction. Any person who commits an act, proposes to commit an act, or engages in any pattern and practice which violates Section 4.56.020 may be enjoined therefrom by any court of competent jurisdiction. An action for injunction under this subsection may be brought by any aggrieved person, by the City Attorney, or by any person or entity who will fairly and adequately represent the interest of the protected class.

(d) Penalties and Other Monetary Awards. Any person who violates or aids or incites another person to violate the provisions of this Chapter is liable for each and every such offense for the actual damages suffered by any aggrieved party or for statutory damages in the sum of one thousand dollars, whichever is greater, and shall be liable for such attorney's fees and costs as may be determined by the court in addition thereto. The court may also award punitive damages to any plaintiff, including the City, in a proper case as defined by Civil Code Section 3294. The burden of proof for purposes of punitive damages shall be clear and convincing evidence.

(e) Nonexclusive Remedies and Penalties. The remedies provided in this Chapter are not exclusive, and nothing in this Chapter shall preclude any person from seeking any other remedies, penalties or procedures provided by law. (Added by Ord. No. 1817CCS § 1 (part), adopted 10/10/95; amended by Ord. No. 1859CCS § 2 (part), adopted 7/30/96; Ord. No. 1943 § 3, adopted 5/25/99; Ord. No. 2005CCS § 2, adopted 4/24/01)