

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1262

Introduced by Assembly Member Audra Strickland

February 27, 2009

An act ~~relating to taxation~~ to amend Section 425.16 of the Code of Civil Procedure, relating to ethics.

LEGISLATIVE COUNSEL'S DIGEST

AB 1262, as amended, Audra Strickland. ~~Sales and use taxes: exemptions: charitable organizations.~~ *Ethics in government.*

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 or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.

The Political Reform Act of 1974, including provisions known as the Ethics in Government Act of 1990, imposes ethical standards on elected officials and candidates for elective or judicial office, including provisions governing the acceptance of gifts, honoraria, and campaign contributions. Existing law authorizes a person to sue for injunctive relief to enjoin violations of, or to compel compliance with, these provisions.

This bill would provide that the special motion to strike described above shall not apply to a cause of action brought by a private citizen pursuant to the provision authorizing a person to sue for injunctive relief to enjoin violations of, or to compel compliance with, the

provisions imposing ethical standards on elected officials and candidates for elective or judicial office.

~~The Sales and Use Tax Law imposes a tax on a retailer measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. Existing law provides certain exemptions from sales and use taxes.~~

~~This bill would declare the intent of the Legislature to enact legislation that would provide exemptions from the Sales and Use Tax Law for sales and uses of tangible personal property by nonprofit organizations that raise money for charitable causes.~~

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 425.16 of the Code of Civil Procedure is
2 amended to read:

3 425.16. (a) The Legislature finds and declares that there has
4 been a disturbing increase in lawsuits brought primarily to chill
5 the valid exercise of the constitutional rights of freedom of speech
6 and petition for the redress of grievances. The Legislature finds
7 and declares that it is in the public interest to encourage continued
8 participation in matters of public significance, and that this
9 participation should not be chilled through abuse of the judicial
10 process. To this end, this section shall be construed broadly.

11 (b) (1) A cause of action against a person arising from any act
12 of that person in furtherance of the person's right of petition or
13 free speech under the United States or California Constitution in
14 connection with a public issue shall be subject to a special motion
15 to strike, unless the court determines that the plaintiff has
16 established that there is a probability that the plaintiff will prevail
17 on the claim.

18 (2) In making its determination, the court shall consider the
19 pleadings, and supporting and opposing affidavits stating the facts
20 upon which the liability or defense is based.

21 (3) If the court determines that the plaintiff has established a
22 probability that he or she will prevail on the claim, neither that
23 determination nor the fact of that determination shall be admissible

1 in evidence at any later stage of the case, or in any subsequent
2 action, and no burden of proof or degree of proof otherwise
3 applicable shall be affected by that determination in any later stage
4 of the case or in any subsequent proceeding.

5 (c) In any action subject to subdivision (b), a prevailing
6 defendant on a special motion to strike shall be entitled to recover
7 his or her attorney's fees and costs. If the court finds that a special
8 motion to strike is frivolous or is solely intended to cause
9 unnecessary delay, the court shall award costs and reasonable
10 attorney's fees to a plaintiff prevailing on the motion, pursuant to
11 Section 128.5.

12 (d) This section shall not apply to ~~any~~ *either of the following*:

13 (1) Any enforcement action brought in the name of the people
14 of the State of California by the Attorney General, district attorney,
15 or city attorney, acting as a public prosecutor.

16 (2) *A cause of action brought by a private citizen pursuant to*
17 *subdivision (a) of Section 91003 of the Government Code.*

18 (e) As used in this section, "act in furtherance of a person's right
19 of petition or free speech under the United States or California
20 Constitution in connection with a public issue" includes: (1) any
21 written or oral statement or writing made before a legislative,
22 executive, or judicial proceeding, or any other official proceeding
23 authorized by law; (2) any written or oral statement or writing
24 made in connection with an issue under consideration or review
25 by a legislative, executive, or judicial body, or any other official
26 proceeding authorized by law; (3) any written or oral statement or
27 writing made in a place open to the public or a public forum in
28 connection with an issue of public interest; (4) ~~or~~ any other conduct
29 in furtherance of the exercise of the constitutional right of petition
30 or the constitutional right of free speech in connection with a public
31 issue or an issue of public interest.

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

38 (g) All discovery proceedings in the action shall be stayed upon
39 the filing of a notice of motion made pursuant to this section. The
40 stay of discovery shall remain in effect until notice of entry of the

1 order ruling on the motion. The court, on noticed motion and for
2 good cause shown, may order that specified discovery be conducted
3 notwithstanding this subdivision.

4 (h) For purposes of this section, “complaint” includes
5 “cross-complaint” and “petition,” “plaintiff” includes
6 “cross-complainant” and “petitioner,” and “defendant” includes
7 “cross-defendant” and “respondent.”

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

10 (j) (1) Any party who files a special motion to strike pursuant
11 to this section, and any party who files an opposition to a special
12 motion to strike, shall, promptly upon so filing, transmit to the
13 Judicial Council, by e-mail or facsimile, a copy of the endorsed,
14 filed caption page of the motion or opposition, a copy of any related
15 notice of appeal or petition for a writ, and a conformed copy of
16 any order issued pursuant to this section, including any order
17 granting or denying a special motion to strike, discovery, or fees.

18 (2) The Judicial Council shall maintain a public record of
19 information transmitted pursuant to this subdivision for at least
20 three years, and may store the information on microfilm or other
21 appropriate electronic media.

22 ~~SECTION 1. It is the intent of the Legislature to enact~~
23 ~~legislation that would provide exemptions from the Sales and Use~~
24 ~~Tax Law for certain sales of, and the storage, use, or other~~
25 ~~consumption of, tangible personal property sold or used by~~
26 ~~nonprofit organizations that raise money for charitable causes.~~