

AMENDED IN SENATE MAY 20, 2009

AMENDED IN SENATE MAY 6, 2009

SENATE BILL

No. 786

Introduced by Senator Yee

February 27, 2009

An act to amend Section 425.16 of the Code of Civil Procedure, relating to civil procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 786, as amended, Yee. Civil procedure: attorney's fees and costs.

Existing law subjects to a special motion to strike a cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim. Existing law entitles a prevailing defendant on that special motion to strike to recover his or her attorney's fees and costs.

This bill would prohibit that prevailing defendant from recovering attorney's fees and costs in the following actions: whenever it is made to appear by verified petition that certain public records are improperly being withheld from a member of the public, specified actions involving meeting provisions of the legislative body of a local agency or a state body, or an action to obtain a judicial determination that an action taken by a legislative body of a local agency or a state body is null and void, as specified. *The bill would specify that nothing in that provision shall be construed to prevent a prevailing defendant from recovering attorney's fees and costs pursuant to specified provisions that allow a defendant to recover reasonable attorney's fees and costs in certain*

circumstances, such as when the court finds that the action is clearly frivolous.

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
2 is 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 Constitution or the California
14 Constitution in connection with a public issue shall be subject to
15 a special motion to strike, unless the court determines that the
16 plaintiff has established that there is a probability that the plaintiff
17 will prevail 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
24 in evidence at any later stage of the case, or in any subsequent
25 action, and no burden of proof or degree of proof otherwise
26 applicable shall be affected by that determination in any later stage
27 of the case or in any subsequent proceeding.
28 (c) (1) Except as provided in paragraph (2), in any action subject
29 to subdivision (b), a prevailing defendant on a special motion to
30 strike shall be entitled to recover his or her attorney's fees and
31 costs. If the court finds that a special motion to strike is frivolous
32 or is solely intended to cause unnecessary delay, the court shall

1 award costs and reasonable attorney's fees to a plaintiff prevailing
2 on the motion, pursuant to Section 128.5.

3 (2) A defendant who prevails on a special motion to strike in
4 an action subject to paragraph (1) shall not be entitled to attorney's
5 fees and costs if that cause of action is brought pursuant to Section
6 6259, 11130, 11130.3, 54960, or 54960.1 of the Government Code.
7 *Nothing in this paragraph shall be construed to prevent a*
8 *prevailing defendant from recovering attorney's fees and costs*
9 *pursuant to subdivision (d) of Section 6259, 54690.5, or 11130.5.*

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

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

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

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

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

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

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

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