

SFGate.comwww.sfgate.com[Return to regular view](#)**PROPOSITION 64****Citizens' right to sue limited**- [Carolyn Said, Chronicle Staff Writer](#)

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Proposition 64, which limits citizens' rights to file lawsuits under California's Unfair Business Competition Law, won a solid victory at the polls on Tuesday, with support from 5.28 million voters, or 58.9 percent, and opposition from 3.7 million voters, or 41.1 percent.

The proposition's backers, an array of major corporations and mom-and-pop businesses, say it will eliminate so-called shakedown lawsuits filed by unscrupulous attorneys and show off California to the nation as a more business-friendly environment.

Those against it, a coalition of consumer, public health and environmental groups, say it robs Californians of an important way to enforce consumer protection and environmental laws.

Prior to Prop. 64, the law had allowed any party to sue a company, regardless of whether the plaintiff was directly affected. Under Prop. 64, only those who have directly suffered physical harm or property damage can bring lawsuits under the Unfair Competition law.

"The previous law led to what the governor calls shakedown lawsuits," said John Sullivan, co-chair of the Yes on 64 campaign and president of Civil Justice Association of California, a nonprofit group addressing business laws.

"Businesses of all sizes were threatened with lawsuits, because they had incorrect-sized type in their ads or other minuscule violations - their choice was either to fight it in court or pay money."

Without Prop. 64, a plaintiff's lawyer could simply claim that consumers were harmed by type in an ad that was too small.

Prop. 64, Sullivan said, will immediately remove a threat to businesses that, he said, could in the worst case have destroyed their businesses or caused "many, many hours of frustration and many dollars in dealing with a shakedown lawyer."

Backers of Prop. 64 say the old law opened the door for greedy lawyers to bring frivolous suits against corner grocers for mistakes in their advertisements, for instance.

Many such lawsuits are settled out of court, because the defendant wants to avoid legal fees. In effect, they amount to sanctioned extortion, according to Prop. 64 backers.

But the measure's opponents say the law also made possible many cases in the public interest, such as lawsuits stopping retailers from selling cigarettes to children.

Passage of the measure, they say, will foreclose an important way for citizens to sue companies for selling unsafe products, generating pollution or deceiving consumers.

Past cases that would now be blocked include suits against deceptive door-to-door marketing by HMOs, foreclosure consultants who swindle homeowners out of their properties, discriminatory lending by auto dealers and suits against bottled-water companies whose products contained contaminants, opponents say.

Backers of the measure spent more than \$15 million, ran a barrage of TV ads and got Gov. Arnold Schwarzenegger to stump for their cause. Opponents spent about \$1.3 million.

Sullivan said passage of the measure will attract business to California.

"This sends a signal nationally that we are getting our house in order as far as balanced laws that deal with business," Sullivan said. "California has made a major step toward being a safe place to do business from the standpoint of litigation."



Michael Schmitz, executive director of the California League for Environmental Enforcement Now in Oakland, disagreed, saying the measure "will have a serious impact on enforcement of environmental law, consumer protections against misleading advertising and the right to privacy."

Sullivan said there are many other avenues for citizens to pursue lawsuits against polluters and products that put public health at risk. Schmitz, on the other hand, said, "In fact, there are very few California state statutes that have citizen enforcement provisions."

Sullivan said that California companies have been unfairly penalized in the courts.

"Just because a company is headquartered in California, it stands (to receive) a penalty far, far greater under this (pre-Prop. 64) law than one not based in California," he said.

Last year, for example, Visa International of Foster City and MasterCard of New York were found guilty in Alameda County Superior Court of failing to clearly disclose their fees for currency conversion abroad.

Because Visa is based in California, it must pay refunds to all of its customers who were charged the fees, while MasterCard need only repay fees to its California customers. Both companies are appealing the verdict.

Such cases may explain why so many heavyweight firms lined up behind Prop. 64. In the high-tech sector, Intel, Oracle, Microsoft and Hewlett-Packard each donated \$100,000 or more to the campaign.

Of health care firms, Blue Cross of California and Kaiser gave more than \$650,000. Car dealers were also big backers, along with financial firms, insurers and product companies like Philip Morris, Anheuser Busch and Johnson & Johnson.

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Page C - 1

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