

AMENDED IN ASSEMBLY APRIL 1, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2296

Introduced by Assembly Member Mullin

February 21, 2008

An act ~~relating to animals~~ to add Section 52.6 to the Civil Code, to add Section 6254.30 to the Government Code, and to add Sections 606, 606.1, 606.2, and 606.3 to the Penal Code, relating to animal enterprises.

LEGISLATIVE COUNSEL'S DIGEST

AB 2296, as amended, Mullin. ~~Animals~~. *Animals: Animal Enterprise Protection Act.*

Existing law establishes various causes of action, including actions for damages and injunctive relief, for the enforcement of various rights.

This bill would provide that no person, business, or association shall knowingly publicly post or publicly display on the Internet a home address, home telephone number, or image of any employee of an animal enterprise or other individuals residing at the same home address of the employee of an animal enterprise, as specified. The bill would authorize a victim of a violation of those prohibitions to maintain an action for damages and for injunctive relief, as specified.

Existing law, subject to exceptions, generally provides the disclosure of public records, as specified.

This bill would exempt from disclosure, information relating to animal research activities when there is a reasonable basis to conclude that public disclosure of the records would result in harassment of individuals involved with the research. The bill would state findings and the intent of the Legislature in this regard.

Existing law establishes various offenses in connection with obstruction of, or interference with, among other things, places of business.

This bill would provide that every person who commits any of certain acts for the purpose of injuring, intimidating, or interfering with the operations of an animal enterprise, as defined, or with a person connected, as specified, to an animal enterprise, or who damages or destroys property because of its connection to an animal enterprise, as specified, is guilty of a misdemeanor. The bill would provide alternate punishments depending on the elements of the offense of up to 6 months imprisonment in a county jail and a fine of up to \$2,000, or up to one year in a county jail and a fine of up to \$25,000. Fines would be increased for subsequent offenses and other circumstances, as specified. The bill would also authorize actions for damages and civil penalties, and for restraining orders in connection with violations of the prohibitions, as specified.

By creating new crimes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law generally regulates animals.~~

~~This bill would declare the intent of the Legislature to enact legislation to protect individuals engaging in work with animal subjects in California.~~

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

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

- 1 SECTION 1. This act shall be known and may be cited as the
- 2 California Animal Enterprise Protection Act.
- 3 SEC. 2. Section 52.6 is added to the Civil Code, to read:
- 4 52.6. (a) (1) No person, business, or association shall
- 5 knowingly publicly post or publicly display on the Internet a home
- 6 address, home telephone number, or image of any employee of an
- 7 animal enterprise or other individuals residing at the same home

1 address of the employee of an animal enterprise, with the intent
2 to do either of the following:

3 (A) Incite a third person to cause imminent great bodily harm
4 to the person identified in the posting or display, or to a coresident
5 of that person, where the third person is likely to commit this harm.

6 (B) Threaten the person identified in the posting or display, or
7 a coresident of that person, in a manner that places the person
8 identified or the coresident in objectively reasonable fear for his
9 or her personal safety.

10 (2) An employee of an animal enterprise whose home address,
11 home telephone number, or image is made public as a result of a
12 violation of paragraph (1) may do either or both of the following:

13 (A) Bring an action seeking injunctive or declarative relief in
14 any court of competent jurisdiction. If a jury or court finds that a
15 violation has occurred, it may grant injunctive or declarative relief
16 and shall award the successful plaintiff court costs and reasonable
17 attorney's fees.

18 (B) Bring an action for money damages in any court of
19 competent jurisdiction. In addition to any other legal rights or
20 remedies, if a jury or court finds that a violation has occurred, it
21 shall award damages to that individual in an amount up to a
22 maximum of three times the actual damages, but in no case less
23 than four thousand dollars (\$4,000).

24 (b) (1) No person, business, or association shall publicly post
25 or publicly display on the Internet a home address, home telephone
26 number, or image of any employee of an animal enterprise if that
27 individual has made a written demand of that person, business,
28 or association to not disclose his or her home address or home
29 telephone number. A demand made under this paragraph shall
30 include a sworn statement declaring that the person is subject to
31 the protection of this section and describing a reasonable fear for
32 the safety of that individual or of any person residing at the
33 individual's home address, based on a violation of subdivision (a).
34 A written demand made under this paragraph shall be effective
35 for four years, regardless of whether or not the individual's
36 affiliation with an animal enterprise has expired prior to the end
37 of the four-year period.

38 (2) An employee of an animal enterprise whose home address
39 or home telephone number is made public as a result of a failure
40 to honor a demand made pursuant to paragraph (1) may bring an

1 action seeking injunctive or declarative relief in any court of
2 competent jurisdiction. If a jury or court finds that a violation has
3 occurred, it may grant injunctive or declarative relief and shall
4 award the successful plaintiff court costs and reasonable attorney's
5 fees.

6 (3) This subdivision shall not apply to a person or entity defined
7 in Section 1070 of the Evidence Code.

8 (c) (1) No person, business, or association shall solicit, sell,
9 or trade on the Internet a home address, home telephone number,
10 or image of any employee of an animal enterprise with the intent
11 to do either of the following:

12 (A) Incite a third person to cause imminent great bodily harm
13 to the person identified in the posting or display, or to a coresident
14 of that person, where the third person is likely to commit this harm.

15 (B) Threaten the person identified in the posting or display, or
16 a coresident of that person, in a manner that places the person
17 identified or the coresident in objectively reasonable fear for his
18 or her personal safety.

19 (2) An employee of an animal enterprise whose home address,
20 home telephone number, or image is solicited, sold, or traded in
21 violation of paragraph (1) may bring an action in any court of
22 competent jurisdiction. In addition to any other legal rights and
23 remedies, if a jury or court finds that a violation has occurred, it
24 shall award damages to that individual in an amount up to a
25 maximum of three times the actual damages, but in no case less
26 than four thousand dollars (\$4,000).

27 (d) An interactive computer service or access software provider,
28 as defined in Section 230(f) of Title 47 of the United States Code,
29 shall not be liable under this section unless the service or provider
30 intends to abet or cause bodily harm that is likely to occur or
31 threatens to cause bodily harm to an owner or employee of an
32 animal enterprise or any person residing at the same home address.

33 (e) Nothing in this section is intended to preclude punishment
34 under any other provision of law.

35 (f) For purposes of this section, the following terms have the
36 following meanings:

37 (1) "Animal enterprise" means any of the following:

38 (A) A commercial or academic enterprise that uses or sells
39 animals or animal products for profit, food or fiber production,
40 agriculture, education, research, or testing.

1 (B) A zoo, aquarium, animal shelter, pet store, breeder, furrier,
2 circus, or rodeo, or other lawful competitive animal event.

3 (C) Any fair or similar event intended to advance agricultural
4 arts and sciences.

5 (2) “Image” includes, but is not limited to, any photograph,
6 video footage, sketch, or computer-generated image that provides
7 a means to visually identify the person depicted.

8 (3) “Publicly post” or “publicly display” means to intentionally
9 communicate or otherwise make available to the general public.

10 SEC. 3. Section 6254.30 is added to the Government Code, to
11 read:

12 6254.30. (a) The Legislature finds and declares that this
13 section imposes a limitation on the public’s right of access to the
14 meetings of public bodies or the writings of public officials and
15 agencies within the meaning of Section 3 of Article I of the
16 California Constitution. Pursuant to that constitutional provision,
17 the Legislature makes the following findings to demonstrate the
18 interest protected by this limitation and the need for protecting
19 that interest:

20 (1) Access to information concerning the conduct of the people’s
21 business is a fundamental and necessary right of every person in
22 this state pursuant to subdivision (b) of Section 3 of Article I of
23 the California Constitution and Section 6250. The public has a
24 paramount interest in knowing how public money is spent and
25 invested, including how moneys are used to fund research
26 activities.

27 (2) No researcher should be subject to the risk of threats,
28 assault, or physical harm in order to engage in legal research
29 activities.

30 (3) Increasingly, individuals who conduct research using animal
31 subjects have become targets of harassment and threats of violence
32 by groups representing themselves as animal rights activists.

33 (4) Threats of violence, stalking, and vandalism have extended
34 beyond animal researchers to also target their family members
35 and supporters.

36 (5) The information used to target the victims of these crimes
37 often is obtained by making a request for public records from a
38 government agency.

1 (6) *The high incidence of violence against animal researchers*
 2 *has led some to abandon their work with animal subjects out of*
 3 *fear for themselves and their families.*

4 (b) *It is the intent of the Legislature to balance the public’s right*
 5 *of access to information and the ability of animal researchers to*
 6 *conduct their work without fear of being targets of harassment*
 7 *and threats of violence. This section is not intended to reverse the*
 8 *general presumption of access and openness of the California*
 9 *Public Records Act and subdivision (b) of Section 3 of Article I of*
 10 *the California Constitution.*

11 (c) *It is not the intent of the Legislature to overrule or invalidate*
 12 *any court orders in or stipulated resolutions of prior litigation*
 13 *relating to any public entity’s obligation to disclose information*
 14 *about animal research activities, to narrow the information*
 15 *disclosed as a result of those decisions, or to otherwise apply this*
 16 *section retroactively. It is, rather, the intent of the Legislature to*
 17 *establish protocols regarding the public disclosure of records*
 18 *relating to animal research activities so that researchers will be*
 19 *able to continue to conduct research using animal subjects without*
 20 *fear of harassment and threats of violence.*

21 (d) *Nothing in this chapter or any other provision of law shall*
 22 *require the disclosure of information relating to animal research*
 23 *activities when there is a reasonable basis to conclude that public*
 24 *disclosure of the records would result in harassment of individuals*
 25 *involved with the research.*

26 SEC. 4. *Section 606 is added to the Penal Code, to read:*

27 606. (a) *Every person who commits any of the following acts*
 28 *for the purpose of damaging or interfering with the operations of*
 29 *an animal enterprise is guilty of a public offense:*

30 (1) *By force, threat of force, or physical obstruction that is a*
 31 *crime of violence, intentionally injures, intimidates, interferes with,*
 32 *or attempts to injure, intimidate, or interfere with, any person*
 33 *because that person has a connection to, relationship with, or*
 34 *transactions with an animal enterprise.*

35 (2) *By nonviolent physical obstruction, intentionally injures,*
 36 *intimidates, or interferes with, or attempts to injure, intimidate,*
 37 *or interfere with, any person because that person has a connection*
 38 *to, relationship with, or transactions with an animal enterprise.*

39 (3) *Intentionally damages or destroys the property of a person,*
 40 *entity, or facility, or attempts to do so, because the person, entity,*

1 or facility has a connection to, relationship with, or transactions
2 with an animal enterprise.

3 (b) (1) A first violation of paragraph (1) or (3) of subdivision
4 (a) is a misdemeanor, punishable by imprisonment in a county jail
5 for a period of not more than one year and a fine not to exceed
6 twenty-five thousand dollars (\$25,000).

7 (2) A second or subsequent violation of paragraph (1) or (3) of
8 subdivision (a) is a misdemeanor, punishable by imprisonment in
9 a county jail for a period of not more than one year and a fine not
10 to exceed fifty thousand dollars (\$50,000).

11 (c) (1) A first violation of paragraph (2) of subdivision (a) is
12 a misdemeanor, punishable by imprisonment in a county jail for
13 a period of not more than six months and a fine not to exceed two
14 thousand dollars (\$2,000).

15 (2) A second or subsequent violation of paragraph (2) of
16 subdivision (a) is a misdemeanor, punishable by imprisonment in
17 a county jail for a period of not more than six months and a fine
18 not to exceed five thousand dollars (\$5,000).

19 (d) In imposing fines pursuant to this section, the court shall
20 consider applicable factors in aggravation and mitigation set out
21 in Rules 4.421 and 4.423 of the California Rules of Court, and
22 shall consider a prior violation of the federal Animal Enterprise
23 Terrorism Act (18 U.S.C. Sec. 43), or a prior violation of a statute
24 of another jurisdiction that would constitute a violation of
25 subdivision (a), if committed in this state, or of the federal Animal
26 Enterprise Terrorism Act, to be a prior violation of subdivision
27 (a).

28 (e) No person shall be convicted under this section for conduct
29 in violation of subdivision (a) that was done on a particular
30 occasion where the identical conduct on that occasion was the
31 basis for a conviction of that person under the federal Animal
32 Enterprise Terrorism Act (18 U.S.C. Sec. 43).

33 (f) The following definitions apply for the purposes of this
34 section and Section 606.1:

35 (1) "Animal enterprise" means any of the following:

36 (A) A commercial or academic enterprise that uses or sells
37 animals or animal products for profit, food or fiber production,
38 agriculture, education, research, or testing.

39 (B) A zoo, aquarium, animal shelter, pet store, breeder, furrier,
40 circus, or rodeo, or other lawful competitive animal event.

1 (C) Any fair or similar event intended to advance agricultural
2 arts and sciences.

3 (2) “Crime of violence” means an offense that has as an element
4 the use, attempted use, or threatened use of physical force against
5 the person or property of another.

6 (3) “Interfere with” means to restrict a person’s freedom of
7 movement.

8 (4) “Intimidate” means to place a person in reasonable
9 apprehension of bodily harm to herself or himself or to another.

10 (5) “Nonviolent” means conduct that would not constitute a
11 crime of violence.

12 (6) “Physical obstruction” means rendering ingress to or egress
13 from an animal enterprise facility or animal enterprise employee’s
14 residence impassable to another person, or rendering passage to
15 or from an animal enterprise facility or animal enterprise
16 employee’s residence unreasonably difficult or hazardous to
17 another person.

18 SEC. 5. Section 606.1 is added to the Penal Code, to read:

19 606.1. (a) A person aggrieved by a violation of Section 606
20 may bring a civil action to enjoin the violation, for compensatory
21 and punitive damages, and for the costs of suit and reasonable
22 fees for attorneys and expert witnesses. With respect to
23 compensatory damages, the plaintiff may elect, at any time prior
24 to the rendering of a final judgment, to recover, in lieu of actual
25 damages, an award of statutory damages in the amount of one
26 thousand dollars (\$1,000) for each exclusively nonviolent violation,
27 and five thousand dollars (\$5,000) for each other violation.

28 (b) An animal enterprise may bring a civil action to enjoin a
29 violation of Section 606, for compensatory and punitive damages
30 for persons who are employees of that animal enterprise who are
31 aggrieved as described in subdivision (a), and for its costs of suit
32 and reasonable fees for attorneys and expert witnesses.

33 (c) The Attorney General, a district attorney, or a city attorney
34 may bring a civil action to enjoin a violation of Section 606, for
35 compensatory damages to persons aggrieved as described in
36 subdivision (a) and for the assessment of a civil penalty against
37 each respondent. The civil penalty shall not exceed two thousand
38 dollars (\$2,000) for an exclusively nonviolent first violation, and
39 fifteen thousand dollars (\$15,000) for any other first violation,
40 and shall not exceed five thousand dollars (\$5,000) for an

1 *exclusively nonviolent subsequent violation, and twenty-five*
2 *thousand dollars (\$25,000) for any other subsequent violation. In*
3 *imposing civil penalties pursuant to this subdivision, the court*
4 *shall consider a prior violation of the federal Animal Enterprise*
5 *Terrorism Act (18 U.S.C. Sec. 43), or a prior violation of a statute*
6 *of another jurisdiction that would constitute a violation of Section*
7 *606, if committed in this state, or of the federal Animal Enterprise*
8 *Terrorism Act, to be a prior violation of Section 606.*

9 *(d) Actions brought pursuant to this section shall not be subject*
10 *to any motion brought pursuant to Section 425.16 of the Code of*
11 *Civil Procedure.*

12 *SEC. 6. Section 606.2 is added to the Penal Code, to read:*

13 *606.2. (a) The court in which a criminal or civil proceeding*
14 *is filed for a violation of Section 606 shall take all action*
15 *reasonably required, including granting restraining orders, to*
16 *safeguard the health, safety, or privacy of an animal enterprise*
17 *employee who is a party or witness in the proceeding, or a person*
18 *who is a victim of, or at risk of becoming a victim of, conduct*
19 *prohibited by Section 606.*

20 *(b) Restraining orders issued pursuant to subdivision (a) may*
21 *include provisions prohibiting or restricting the photographing of*
22 *persons described in subdivision (a) when reasonably required to*
23 *safeguard the health, safety, or privacy of those persons.*

24 *(c) A court may, in its discretion, permit an individual described*
25 *in subdivision (a) to use a pseudonym in a civil proceeding*
26 *described in subdivision (a) when reasonably required to safeguard*
27 *the health, safety, or privacy of those persons.*

28 *SEC. 7. Section 606.3 is added to the Penal Code, to read:*

29 *606.3. Sections 606, 606.1, and 606.2 shall not be construed*
30 *to do any of the following:*

31 *(a) To impair any constitutionally protected activity, or any*
32 *activity protected by the laws of this state or of the United States.*

33 *(b) To negate, supersede, or otherwise interfere with the*
34 *operation of any provision of Chapter 10 (commencing with Section*
35 *1138) of Part 3 of Division 2 of the Labor Code.*

36 *(c) To create or to limit any other civil or criminal remedies*
37 *that redress an activity that interferes with the exercise of any*
38 *other rights protected by the First Amendment to the United States*
39 *Constitution or of Article I of the California Constitution.*

1 (d) To preclude prosecution under both this title and any other
2 applicable provision of law, except as provided in subdivision (e)
3 of Section 606.

4 SEC. 8. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.

13 ~~SECTION 1. It is the intent of the Legislature to enact~~
14 ~~legislation to protect individuals engaging in work with animal~~
15 ~~subjects in California.~~