

AMENDED IN ASSEMBLY APRIL 23, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2616

Introduced by Assembly Member DeVore

February 22, 2008

~~An act to amend Section 425.16 of the Code of Civil Procedure, relating to civil procedure. An act to add Section 51.13 to the Civil Code, relating to civil rights.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2616, as amended, DeVore. ~~Anti-SLAPP suits.~~ *Free speech.*

~~Existing law provides that a cause of action against a person arising from any act of that person in furtherance of the person's prohibits interference with the exercise or enjoyment by any individual of rights secured by the United States or California Constitution or by the laws of the United States or this state, including the 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. For purposes of that provision, any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest is deemed to be an act 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.~~

This bill would specifically provide that a "place open to the public" or a "public forum" for purposes of that provision includes *any person shall be entitled to exercise the right of petition or free speech in the apron and perimeter areas of a retail establishment that is open to the*

public as long as the use of those areas does not unduly compromise public safety or unreasonably impede free access to the retail establishment. ~~The bill would make other nonsubstantive, technical days.~~

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 51.13 is added to the Civil Code, to read:
2 51.13. Any person shall be entitled to exercise the right of
3 petition or free speech in the apron and perimeter areas of a retail
4 establishment that is open to the public, as long as the use of those
5 areas does not unduly compromise public safety or unreasonably
6 impede free access to the retail establishment.

7 SEC. 2. It is the intent of the Legislature in adding Section
8 51.13 to the Civil Code to overrule the decision in *Van v. Target*
9 *Corp.* (2007) 155 Cal.App.4th 1375.

10 SECTION 1. ~~Section 425.16 of the Code of Civil Procedure~~
11 ~~is amended to read:~~

12 ~~425.16. (a) The Legislature finds and declares that there has~~
13 ~~been a disturbing increase in lawsuits brought primarily to chill~~
14 ~~the valid exercise of the constitutional rights of freedom of speech~~
15 ~~and petition for the redress of grievances. The Legislature finds~~
16 ~~and declares that it is in the public interest to encourage continued~~
17 ~~participation in matters of public significance, and that this~~
18 ~~participation should not be chilled through abuse of the judicial~~
19 ~~process. To this end, this section shall be construed broadly.~~

20 ~~(b) (1) A cause of action against a person arising from any act~~
21 ~~of that person in furtherance of the person's right of petition or~~
22 ~~free speech under the United States or California Constitution in~~
23 ~~connection with a public issue shall be subject to a special motion~~
24 ~~to strike, unless the court determines that the plaintiff has~~
25 ~~established that there is a probability that the plaintiff will prevail~~
26 ~~on the claim.~~

27 ~~(2) In making its determination, the court shall consider the~~
28 ~~pleadings, and supporting and opposing affidavits stating the facts~~
29 ~~upon which the liability or defense is based.~~

30 ~~(3) If the court determines that the plaintiff has established a~~
31 ~~probability that he or she will prevail on the claim, neither that~~

1 determination nor the fact of that determination shall be admissible
2 in evidence at any later stage of the case, or in any subsequent
3 action, and no burden of proof or degree of proof otherwise
4 applicable shall be affected by that determination in any later stage
5 of the case or in any subsequent proceeding:

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

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

17 ~~(e) The special motion may be filed within 60 days of the service~~
18 ~~of the complaint or, in the court's discretion, at any later time upon~~
19 ~~terms it deems proper. The motion shall be scheduled by the clerk~~
20 ~~of the court for a hearing not more than 30 days after the service~~
21 ~~of the motion unless the docket conditions of the court require a~~
22 ~~later hearing.~~

23 ~~(f) All discovery proceedings in the action shall be stayed upon~~
24 ~~the filing of a notice of motion made pursuant to this section. The~~
25 ~~stay of discovery shall remain in effect until notice of entry of the~~
26 ~~order ruling on the motion. The court, on noticed motion and for~~
27 ~~good cause shown, may order that specified discovery be conducted~~
28 ~~notwithstanding this subdivision.~~

29 ~~(g) For purposes of this section, "the following shall apply:~~

30 ~~(1) "Act in furtherance of a person's right of petition or free~~
31 ~~speech under the United States or California Constitution in~~
32 ~~connection with a public issue" includes all of the following:~~

33 ~~(A) Any written or oral statement or writing made before a~~
34 ~~legislative, executive, or judicial proceeding, or any other official~~
35 ~~proceeding authorized by law.~~

36 ~~(B) Any written or oral statement or writing made in connection~~
37 ~~with an issue under consideration or review by a legislative,~~
38 ~~executive, or judicial body, or any other official proceeding~~
39 ~~authorized by law.~~

1 ~~(C) Any written or oral statement or writing made in a place~~
2 ~~open to the public or a public forum in connection with an issue~~
3 ~~of public interest.~~
4 ~~(D) Any other conduct in furtherance of the exercise of the~~
5 ~~constitutional right of petition or the constitutional right of free~~
6 ~~speech in connection with a public issue or an issue of public~~
7 ~~interest.~~
8 ~~(2) “Complaint” includes “cross-complaint and “petition.”~~
9 ~~(3) “Defendant” includes “cross-defendant” and “respondent.”~~
10 ~~(4) “Place open to the public” or “public forum” includes apron~~
11 ~~and perimeter areas of retail establishments that are open to the~~
12 ~~public as long as the use of those areas does not unduly~~
13 ~~compromise public safety or unreasonably impede free access to~~
14 ~~the retail establishment.~~
15 ~~(5) “Plaintiff” includes “cross-complainant” and “petitioner.”~~
16 ~~(h) An order granting or denying a special motion to strike shall~~
17 ~~be appealable under Section 904.1.~~
18 ~~(i) (1) Any party who files a special motion to strike pursuant~~
19 ~~to this section, and any party who files an opposition to a special~~
20 ~~motion to strike, shall, promptly upon so filing, transmit to the~~
21 ~~Judicial Council, by e-mail or facsimile, a copy of the endorsed,~~
22 ~~filed caption page of the motion or opposition, a copy of any related~~
23 ~~notice of appeal or petition for a writ, and a conformed copy of~~
24 ~~any order issued pursuant to this section, including any order~~
25 ~~granting or denying a special motion to strike, discovery, or fees.~~
26 ~~(2) The Judicial Council shall maintain a public record of~~
27 ~~information transmitted pursuant to this subdivision for at least~~
28 ~~three years, and may store the information on microfilm or other~~
29 ~~appropriate electronic media.~~