

# AB 2296 (Mullin) Animal Enterprise Protection Act

## Frequently Asked Questions

### General Questions

1. *This is called the Animal Enterprise Protection Act; what constitutes the "enterprise? Does this just protect University research or does it also include private industry and groups like animal dealers and other third parties doing business with the "enterprise?"*

The state legislative proposal utilizes the federal definition of "animal enterprise," which includes a number of entities, in addition to research universities, that engage in lawful activities involving the use of animals. Specifically, an "animal enterprise" is defined as:

- (1) a commercial or academic enterprise that uses or sells animals or animal products for profit, food or fiber production, agriculture, education, research, or testing;
- (2) a zoo, aquarium, animal shelter, pet store, breeder, furrier, circus, or rodeo, or other lawful competitive animal event; or
- (3) any fair or similar event intended to advance agricultural arts and sciences.

The legislation would also provide various protections to "tertiary" or "third party" targets of animal rights extremists. The protections provided by the criminal and civil provisions of the bill extend to individuals who have "a connection to, relationship with, or transactions with an animal enterprise." The protections provided by the online privacy provisions of the bill extend to "individuals residing at the same home address" of the animal enterprise employee.

### Criminal Provisions

1. *This bill is seeking to enact new criminal penalties for acts specifically related to animal enterprise terror. Why are the existing provisions of the California Criminal Code inadequate to prosecute animal enterprise terrorists?*

Existing California law does provide for the prosecution of some of the criminal behavior used by animal rights extremists to target university researchers and others. However, in many cases, local law enforcement may be hesitant to intervene in situations where alleged lawbreakers argue that they are simply exercising their constitutional rights to free speech and freedom of assembly. A state law that explicitly addresses the types of tactics used by animal rights extremists would provide local law enforcement officials with clear authority to take action against activists who commit criminal acts in furtherance of their cause. It would also set clearer boundaries for activists between permissible protest activity and unlawful harassment.

Enacting state law will also help fill gaps in federal prosecution of animal rights extremists. For a criminal offense to be prosecuted under the federal Animal Enterprise Terrorism Act (AETA), the law requires that the alleged lawbreaker, in committing a violation of the Act, must travel in interstate or foreign commerce, or use the mail or any facility of interstate or foreign commerce, for the purpose of damaging or interfering with the operations of an animal enterprise. Enacting California law as a counterpart to the AETA would facilitate local prosecution of offenses that cannot be prosecuted federally because they lack an element of interstate or foreign commerce or the use of the mail. Establishing concurrent state jurisdiction over crimes covered by the AETA would also facilitate local prosecution of offenses that may not rise to the level of federal felony prosecution.

2. *How do the proposed criminal sanctions in this bill differ from existing law (aren't these actions already a crime)?*

Existing law provides for the prosecution of much of the misdemeanor criminal behavior committed by animal rights extremists through the use of general criminal statutes, such as laws against trespass (Penal Code § 602), blocking passage of public walkways (Penal Code § 647c), failure to disperse from an unlawful assembly (Penal Code § 409), and vandalism (Penal Code § 594). Violations of these laws generally carry penalties ranging from minimal fines, community service and/or probation to a maximum of six months in jail and/or a \$1,000 fine. This bill would redefine and expand the type of

conduct subject to misdemeanor prosecution, when that conduct is directed specifically against animal enterprises. The bill would define any of its prohibited conduct as a misdemeanor, and would impose criminal penalties ranging from a maximum of six months in jail and/or a maximum fine of \$2,000 for first offenses that are exclusively nonviolent, to a maximum of one year in jail and/or a maximum \$25,000 fine for offenses that are violent.

It is not unusual for state and federal law to allow for enhanced penalties when criminal offenses intentionally target selected groups. In particular, California law includes many criminal penalties that apply in specified contexts or that provide different punishment because of the status of the victim. These include special battery statutes that allow for more severe punishment when the victim is a spouse or cohabitant (Penal Code § 273.5.), a juror (Penal Code § 243.7), or when a battery is committed against a peace officer, custodial officer, firefighter, emergency medical technician, lifeguard, process server, traffic officer, code enforcement officer, or animal control officer engaged in the performance of his or her duties (Penal Code § 243). Most closely related to this bill is existing California law that provides enhanced misdemeanor penalties for the commission of certain criminal activities directed against reproductive health services providers, facilities, and patients (California Penal Code § 423).

### **Civil Provisions**

#### *1. Why will allowing prosecutors and employers to pursue civil remedies help?*

Obstacles exist that prevent victims from asserting their own rights to civil remedies. It is unlikely that individuals who have already been targeted by animal rights extremists will permit themselves to be further targeted by becoming a named party to a lawsuit. Individuals may not have the resources to sue for the injunctive relief and damages that might legally and financially deter the unlawful conduct directed at them. Allowing an employer to assert a claim on its employee's behalf transfers the burden of seeking civil remedies from the individual victim to his or her employer.

#### *2. Can you already do this?*

California law provides for a variety of civil remedies that have potential for enjoining violent or threatening conduct. Recently, corporations engaged in animal research have had mixed success in attempting to seek these remedies for their employees. In limited situations, an employer has legal standing to seek civil action on behalf of its employees. California law grants an employer express statutory authority to bring a claim of workplace harassment on behalf of an employee (Code of Civil Procedure § 527.8), but such claims do not include harassment that occurs at the employee's home (as does much animal activist harassment) nor does the statute apply to claims of intentional infliction of emotional distress or violation of the right to privacy. A recent appellate court ruling affirmed an employer's legal standing to assert claims on behalf of its employees, but only if a number of requirements are met, including that the employer has also suffered an injury in fact (*Novartis v. SHAC USA* (2006) 143 Cal. App. 4<sup>th</sup> 1284). The proposed legislation would affirm and strengthen the holding in that case.

### **Public Posting on the Internet**

#### *1. Why isn't this provision a violation of the First Amendment right to free speech?*

The United States Supreme Court has upheld that "true threats" of violence, and statements that are intended to incite, and likely will incite, imminent unlawful action, do not enjoy First Amendment protections [*Virginia v. Black* (2003), *Brandenburg v. Ohio* (1969)]. The proposed legislation conforms with the constitutional requirements, set forth by the Supreme Court, for prohibiting these types of unprotected speech. For example, the bill specifies that the public posting of personal information is prohibited only if it is done so with the intent to incite violence or threaten the person identified in the posting. Similar prohibitions against posting the personal information of elected and appointed officials, as well as reproductive health services providers and patients are currently provided in California law (Government Code § 6254.21, 6218).

#### *2. Would this even be effective? Isn't this information available elsewhere (e.g. public research abstracts and published research papers)?*

Some of the information prohibited from being posted on the internet is not readily available from other sources. For example, under this legislation photographs of the children of an animal enterprise employee would be prohibited from being posted, and in most cases, such images would not be readily available from other sources.

### **California Public Records Act**

1. *Don't current exemptions in the PRA allow the University to redact information that could jeopardize personal privacy and safety?*

While the University has been successful in arguing for limited redactions of animal research records, in a number of recent incidents these redactions have been inadequate to protect researchers from harassment and violence. Despite redactions, records produced under the PRA have been used by extremists to instigate harassment against researchers. Furthermore, there is no provision in the California Public Records Act that explicitly exempts information that would jeopardize researcher safety. Instead, the University has been required to rely on the "catchall" provision of section 6255(a) of the Government Code which permits information to be withheld if "on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." This provision provides no specific guidance to courts regarding application to animal research issues, resulting in inconsistent rulings. A provision specifically addressing animal research records will provide more guidance to the courts, the University, and the public regarding what information must be disclosed and what may be withheld and will provide additional protection to animal researchers.

2. *Would this even be effective? Isn't this information available elsewhere, and if the terrorists really want it, don't they have other sources?*

As noted above, records produced as a result of CPRA requests have been used by extremists in several instances to target research faculty for harassment. Furthermore, seeking an exemption from publicly disclosing certain records under the CPRA is just one of many avenues being pursued to prevent this information from being made available to animal rights extremists.