

Introduced by Senator Perata

February 23, 2001

An act to amend Sections 5403 and 17206 of the Business and Professions Code, and to amend Section 730.5 of the Streets and Highways Code, relating to highways.

LEGISLATIVE COUNSEL'S DIGEST

SB 1065, as introduced, Perata. Highways: trees and shrubs.

(1) The Outdoor Advertising Act prohibits an advertising display from being placed or maintained in certain conditions. A violation of these provisions is grounds for the removal of the display and is a crime.

This bill would make it a violation of that act to remove, cut, cut down, injure, or destroy, without a permit issued by the department any tree, shrub, plant, or flower growing on property owned by the Department of Transportation if that conduct is undertaken in order to enhance the display's visibility, thereby creating grounds for the removal of the display. Because this would also expand the scope of an existing crime, the bill would impose a state-mandated local program.

(2) Existing law makes every person who engages in unfair competition liable for a civil penalty, not to exceed \$2,500 for each violation, which may be assessed in a civil action brought by the Attorney General, district attorney, county counsel, or city attorney, as specified. For these purposes, existing law defines "unfair competition."

This bill would include any act that is prohibited by the Outdoor Advertising Act within the provisions of this act, and would provide that if an action to enforce those provisions is brought at the request of the Department of Transportation, any civil penalties recovered shall be paid to the State Highway Account in the State Transportation Fund.

(3) Existing law provides a penalty of \$100 for each tree damaged on any state highway and allows for the collection of the costs and expenses incurred in a court action brought against a person who willfully and maliciously digs up, cuts down, destroys, or otherwise injures any shade or ornamental tree on any state highway.

This bill would recast this provision by additionally prohibiting a person from pruning or trimming any tree or shrub on any state highway without a permit issued by the department. The bill would increase the penalty as to a damaged tree to \$10,000 and to \$1,000 as to a damaged shrub; and the bill would allow the department to recover attorney and expert witness fees and the amount of actual damages to any tree or shrub.

(4) 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.

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

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

1 SECTION 1. Section 5403 of the Business and Professions
2 Code is amended to read:
3 5403. No advertising display shall be placed or maintained in
4 any of the following locations or positions or under any of the
5 following conditions or if the advertising structure or sign is of the
6 following nature:
7 (a) If within the right-of-way of any highway.
8 (b) If visible from any highway and simulating or imitating any
9 directional, warning, danger or information sign permitted under
10 the provisions of this chapter, or if likely to be mistaken for any
11 such permitted sign, or if intended or likely to be construed as
12 giving warning to traffic, such as by the use of the words “stop”
13 or “slow down.”
14 (c) If within any stream or drainage channel or below the
15 floodwater level of any stream or drainage channel where the
16 advertising display might be deluged by flood waters and swept



1 under any highway structure crossing the stream or drainage
2 channel or against the supports of the highway structure.

3 (d) If not maintained in safe condition.

4 (e) If visible from any highway and displaying any red or
5 blinking or intermittent light likely to be mistaken for a warning
6 or danger signal.

7 (f) If visible from any highway which is a part of the interstate
8 or primary systems, and which is placed upon trees, or painted or
9 drawn upon rocks or other natural features.

10 (g) If any illumination shall impair the vision of travelers on
11 adjacent highways. Illuminations shall be considered vision
12 impairing when its brilliance exceeds the values set forth in
13 Section 21466.5 of the Vehicle Code.

14 (h) If visible from a state regulated highway displaying any
15 flashing, intermittent, or moving light or lights.

16 (i) *If, in order to enhance the display's visibility, any tree, shrub,*
17 *plant, or flower growing on property owned by the department that*
18 *is visible from the highway that has been removed, cut, cut down,*
19 *injured, or destroyed without a permit issued pursuant to Section*
20 *670 of the Streets and Highways Code.*

21 SEC. 2. Section 17206 of the Business and Professions Code
22 is amended to read:

23 17206. (a) Any person who engages, has engaged, or
24 proposes to engage in unfair competition shall be liable for a civil
25 penalty not to exceed two thousand five hundred dollars (\$2,500)
26 for each violation, which shall be assessed and recovered in a civil
27 action brought in the name of the people of the State of California
28 by the Attorney General, by any district attorney, by any county
29 counsel authorized by agreement with the district attorney in
30 actions involving violation of a county ordinance, by any city
31 attorney of a city, or city and county, having a population in excess
32 of 750,000, with the consent of the district attorney, by a city
33 prosecutor in any city having a full-time city prosecutor, or, *by the*
34 *Department of Transportation* with the consent of the district
35 attorney, by a city attorney in any city and county, in any court of
36 competent jurisdiction.

37 (b) The court shall impose a civil penalty for each violation of
38 this chapter. In assessing the amount of the civil penalty, the court
39 shall consider any one or more of the relevant circumstances
40 presented by any of the parties to the case, including, but not



1 limited to, the following: the nature and seriousness of the
2 misconduct, the number of violations, the persistence of the
3 misconduct, the length of time over which the misconduct
4 occurred, the willfulness of the defendant’s misconduct, and the
5 defendant’s assets, liabilities, and net worth.

6 (c) If the action is brought by the Attorney General, one-half of
7 the penalty collected shall be paid to the treasurer of the county in
8 which the judgment was entered, and one-half to the State General
9 Fund. If the action is brought by a district attorney or county
10 counsel, the penalty collected shall be paid to the treasurer of the
11 county in which the judgment was entered. Except as provided in
12 subdivision (d), if the action is brought by a city attorney or city
13 prosecutor, one-half of the penalty collected shall be paid to the
14 treasurer of the city in which the judgment was entered, and
15 one-half to the treasurer of the county in which the judgment was
16 entered.

17 (d) If the action is brought at the request of a board within the
18 Department of Consumer Affairs or a local consumer affairs
19 agency, the court shall determine the reasonable expenses incurred
20 by the board or local agency in the investigation and prosecution
21 of the action.

22 Before any penalty collected is paid out pursuant to subdivision
23 (c), the amount of any reasonable expenses incurred by the board
24 shall be paid to the state Treasurer for deposit in the special fund
25 of the board described in Section 205. If the board has no such
26 special fund, the moneys shall be paid to the state Treasurer. The
27 amount of any reasonable expenses incurred by a local consumer
28 affairs agency shall be paid to the general fund of the municipality
29 or county that funds the local agency.

30 (e) If the action is brought by a city attorney of a city and
31 county, the entire amount of the penalty collected shall be paid to
32 the treasurer of the city and county in which the judgment was
33 entered. However, if the action is brought by a city attorney of a
34 city and county for the purposes of civil enforcement pursuant to
35 Section 17980 of the Health and Safety Code or Article 3
36 (commencing with Section 11570) of Chapter 10 of Division 10
37 of the Health and Safety Code, either the penalty collected shall be
38 paid entirely to the treasurer of the city and county in which the
39 judgment was entered or, upon the request of the city attorney, the
40 court may order that up to one-half of the penalty, under court



1 supervision and approval, be paid for the purpose of restoring,
2 maintaining, or enhancing the premises that were the subject of the
3 action, and that the balance of the penalty be paid to the treasurer
4 of the city and county.

5 (f) *If the action is brought by the Department of Transportation,*
6 *the entire amount of the penalty collected shall be paid to the State*
7 *Treasurer to the State Highway Account in the State*
8 *Transportation Fund. The Department of Transportation is*
9 *authorized to proceed under this chapter only for violations of*
10 *Chapter 2 (commencing with Section 5200) of Division 3.*

11 SEC. 3. Section 730.5 of the Streets and Highways Code is
12 amended to read:

13 730.5. Any person who by any means ~~wilfully or maliciously,~~
14 *without a permit issued by the department,* digs up, cuts down,
15 destroys, prunes, trims, or otherwise injures any ~~shade or~~
16 ~~ornamental~~ *tree or shrub* on any state highway, rights-of-way, or
17 *property shall be liable to a penalty in the sum of ~~one hundred ten~~*
18 *thousand dollars (~~\$100~~) (\$10,000) for each ~~such~~ tree so damaged*
19 *and one thousand dollars (\$1,000) for each shrub so damaged;*
20 and the department, in the name of the people of the State of
21 California, may recover ~~such the~~ penalty in an action at law, in a
22 court of competent jurisdiction, together with the costs and
23 expenses, *including attorney and expert fees,* incurred in ~~such the~~
24 *action and the actual costs incurred because of the damage to any*
25 *tree or shrub on state property.*

26 SEC. 4. No reimbursement is required by this act pursuant to
27 Section 6 of Article XIII B of the California Constitution because
28 the only costs that may be incurred by a local agency or school
29 district will be incurred because this act creates a new crime or
30 infraction, eliminates a crime or infraction, or changes the penalty
31 for a crime or infraction, within the meaning of Section 17556 of
32 the Government Code, or changes the definition of a crime within
33 the meaning of Section 6 of Article XIII B of the California
34 Constitution.

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