

AMENDED IN ASSEMBLY APRIL 18, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 222**

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**Introduced by Assembly Member Emmerson**

January 29, 2007

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An act to amend, renumber, and add Section 4600 of, and to add Section 4602 to, the Fish and Game Code, relating to fish and game, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 222, as amended, Emmerson. Undomesticated burros.

(1) Existing law makes it unlawful to kill, wound, capture, or have in possession any undomesticated burro.

This bill would authorize the appropriate state or local agency, *as defined*, to arrange for the removal of stray undomesticated burros, as defined, from private land at the request of the landowner. The bill would authorize a state or local agency, *at the request of the landowner if on private land*, under certain conditions, to capture, relocate, provide feed and water to, or conduct other activities to ensure the health of, or otherwise improve the safety of, undomesticated burros.

The bill would authorize public and private entities to purchase lands for a sanctuary and, with the approval of appropriate *state or* local agencies, to relocate undomesticated burros to that sanctuary, if the sanctuary is managed to prevent harassment of burros and provides for their humane treatment.

The bill would subject any person who harms an undomesticated burro, as specified, to a \$1,000 fine or 6 months imprisonment, or both, thereby imposing a state-mandated *local* program by creating a new crime.

The bill would prohibit the sale or transfer for consideration of any undomesticated burro for commercial processing, as defined.

(2) 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.

(3) This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
 State-mandated local program: yes.

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

1 SECTION 1. The Legislature finds and declares all of the  
 2 following:

3 (a) That undomesticated burros are living symbols of the historic  
 4 and pioneer spirit of the American West.

5 (b) Burros contribute to the diversity of life-forms within  
 6 California and enrich the lives of its people.

7 (c) It is the policy of the Legislature to protect undomesticated  
 8 burros on state or private lands from capture, branding, harassment,  
 9 or death.

10 SEC. 2. Section 4600 of the Fish and Game Code is amended  
 11 and renumbered to read:

12 4601. (a) It is unlawful to kill, wound, capture, or have in  
 13 possession any undomesticated burro.

14 (b) The fact that a burro was killed, wounded, or captured on  
 15 publicly owned land, or on land owned by a person other than the  
 16 person who killed, wounded, or captured the burro is prima facie  
 17 evidence that the burro was an undomesticated burro at the time  
 18 it was killed, wounded, or captured.

19 (c) Neither the commission nor any other department or agency  
 20 may modify this section by any order, rule, or regulation.

21 SEC. 3. Section 4600 is added to the Fish and Game Code, to  
 22 read:

23 4600. As used in this chapter, the following terms have the  
 24 following meanings:

25 (a) “Undomesticated burro” means a wild burro, or a burro that  
 26 has not been tamed or domesticated for a period of three years

1 after its capture and is not protected by the federal government  
2 under the federal Wild Free-Roaming Horses and Burros Act  
3 (Chapter 30 (commencing with Section 1331) of Title 16 of the  
4 United States Code).

5 ~~(b) “Captured burro” means an undomesticated burro taken and~~  
6 ~~held in the custody of the locally authorized agency until it is~~  
7 ~~adopted, sold, or otherwise placed.~~

8 ~~(c)~~

9 (b) “Commercial processing” refers to selling a burro so that it  
10 can be slaughtered and made into commercial products.

11 ~~(d)~~

12 (c) “Habituated” means a burro who has become so accustomed  
13 to humans that it has lost its fear of them. Habituated animals are  
14 typically found in urban areas, in locations where their safety is  
15 at risk.

16 ~~(e)~~

17 (d) “Harassment” means any intentional act demonstrating  
18 deliberate disregard for the well-being of an undomesticated burro,  
19 which creates a likelihood of injury to, or is detrimental to the  
20 normal behavior patterns of, undomesticated burros including  
21 feeding, watering, resting, and breeding. These acts include, but  
22 are not limited to, unauthorized chasing, pursuing, herding, roping,  
23 or attempting to gather undomesticated burros.

24 ~~(f)~~

25 (e) “Herd” means one or more jacks and their jennies.

26 ~~(g)~~

27 (f) “Humane treatment” means kind and merciful treatment,  
28 without causing unnecessary stress or suffering to the animal.

29 ~~(h)~~

30 (g) “Inhumane treatment” means any of the following:

31 (1) Causing physical stress to an animal through any harmful  
32 action or omission that is not compatible with standard animal  
33 husbandry practices.

34 (2) Causing or allowing an animal to suffer from a lack of  
35 necessary food, water, or shelter.

36 (3) Using any equipment, apparatus, or technique during  
37 transportation, domestication, or handling that causes undue injury  
38 to an animal.

39 (4) Failing to treat or care for a sick or injured animal.

40 ~~(i)~~

1 (h) “Relocation” means the capture of undomesticated burros  
 2 from an area where they are at risk of injury, and placement of  
 3 them in another area suitable for their survival.

4 (j)

5 (i) “Sanctuary” means a location set aside for burros to live out  
 6 their lives free of harassment. A sanctuary is intended to be  
 7 managed to protect burro health and safety in perpetuity.

8 (j) “State or local agency” means the Department of the  
 9 California Highway Patrol, local law enforcement, and local  
 10 animal control agencies.

11 SEC. 4. Section 4602 is added to the Fish and Game Code, to  
 12 read:

13 4602. (a) (1) If a burro that is protected by the federal  
 14 government under the federal Wild Free-Roaming Horses and  
 15 Burros Act (Chapter 30 (commencing with Section 1331) of Title  
 16 16 of the United States Code) strays from federal land onto  
 17 privately owned land, the landowner may request the appropriate  
 18 federal agency to remove the animal.

19 (2) If an undomesticated burro strays onto private land, the  
 20 appropriate state or local agency, at the request of the landowner,  
 21 may arrange for the removal of the animal in accordance with this  
 22 section.

23 (3) An undomesticated burro removed by a state or local agency  
 24 may not be destroyed, except for humane disposal by the state or  
 25 local agency in cases of serious illness or injury.

26 (4) This section does not prohibit a private landowner from  
 27 maintaining undomesticated burros on his or her private lands, if  
 28 the private landowner does so in a manner that *allows the animals*  
 29 *to roam free and that* protects the animals from harassment, and  
 30 if the animals were not willfully removed from adjacent lands or  
 31 enticed by feeding, watering, or other means.

32 (b) In order to protect undomesticated burros, ~~a state or local~~  
 33 ~~agency that stray onto public or private land, a state or local~~  
 34 ~~agency, at the request of the landowner if on private land,~~ may  
 35 capture, relocate, provide feed and water to, or conduct other  
 36 activities to ensure the health of, or otherwise improve the safety  
 37 of, undomesticated burros, as determined to be necessary, if one  
 38 or more of the following conditions exist:

1 (1) Individual burros have become habituated as a result of  
2 frequent contact with humans and cannot survive on their own in  
3 a natural ecological setting.

4 (2) Undomesticated burros regularly frequent areas with high  
5 vehicle traffic, such as highway corridors, where risk of injury or  
6 death is increased.

7 (3) Undomesticated burros are surviving on handouts from  
8 humans, including trash and other unhealthy food items, and, as  
9 a result of this diet, the burros current and future health is at risk.

10 (4) The undomesticated burro population exceeds the level at  
11 which available habitat provides an adequate food supply.

12 (5) Loss of habitat is anticipated as a result of planned  
13 development, and remaining habitat will not support the  
14 undomesticated burro population once the site has been cleared.

15 (6) Capture or relocation of undomesticated burros, in the  
16 determination of the state or local agency, is necessary before  
17 initiating construction in order to facilitate growth and prevent  
18 burro conflicts and injuries within local neighborhoods.

19 (c) This section does not authorize a state or local agency to  
20 relocate undomesticated burros to public or private lands where  
21 they do not presently exist, unless the owner of those lands is in  
22 agreement with the placement and the area to which the burros are  
23 being relocated offers similar habitat and a safer environment.  
24 Public or private entities may purchase lands for a sanctuary and,  
25 with the approval of appropriate state ~~and~~ *or* local agencies,  
26 relocate undomesticated burros to that sanctuary, if the sanctuary  
27 is managed to prevent harassment of burros and provides for their  
28 humane treatment.

29 (d) Any person who does any of the following acts shall be  
30 deemed to have violated this chapter, and that violation shall be  
31 punishable by a fine of not more than one thousand dollars  
32 (\$1,000), or imprisonment for not more than six months, or both:

33 (1) Willfully removes or attempts to remove an undomesticated  
34 burro from public or private lands, without authorization from the  
35 appropriate federal, state, or local agency.

36 (2) Converts an undomesticated burro to private use, without  
37 authority from the appropriate state or local agency.

38 (3) Feeds, waters, or otherwise provides care or other  
39 enticements that could cause an undomesticated burro to lose its  
40 natural fear of humans.

1 (4) Maliciously harasses or causes the death of any  
2 undomesticated burro.

3 (5) Processes, or permits the commercial processing of, the  
4 remains of an undomesticated burro.

5 (e) No undomesticated burro may be sold or transferred for  
6 consideration for commercial processing.

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

16 SEC. 6. This act is an urgency statute necessary for the  
17 immediate preservation of the public peace, health, or safety within  
18 the meaning of Article IV of the Constitution and shall go into  
19 immediate effect. The facts constituting the necessity are:

20 In order to authorize a state or local agency to conduct activities  
21 to protect undomesticated burros on state or private lands from  
22 capture, branding, harassment, or death as soon as possible, thereby  
23 preserving the public peace, health, and safety, it is necessary that  
24 this act take immediate effect.