

AMENDED IN SENATE JULY 2, 2008
AMENDED IN SENATE JUNE 11, 2008
AMENDED IN ASSEMBLY MAY 7, 2008
AMENDED IN ASSEMBLY APRIL 22, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2881

**Introduced by Assembly Member Wolk
(Coauthor: Assembly Member La Malfa)**

February 22, 2008

An act to amend Section 11010 of the Business and Professions Code, and to amend Section 1103.4 of, and to amend the heading of Article 1.7 (commencing with Section 1103) of Chapter 2 of Title 4 of Part 4 of Division 2 of, the Civil Code, relating to nuisance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2881, as amended, Wolk. Nuisance: agricultural activity: recovery of defendant's costs: right to farm.

(1) Existing law requires any person who intends to offer subdivided lands within California for sale or lease to file with the Department of Real Estate an application for a public report, consisting of a completed questionnaire and a notice of intention that includes, among other things, a statement that there is an airport in the vicinity, and that this may affect the use of the property. Existing law makes a violation of these provisions a crime.

This bill would require the notice of intention provided as part of an application for a public report, as described above, to contain a specified notice regarding any property that is presently located within 1 mile of

farm or ranch land designated as specified. By changing the definition of a crime, this bill would impose a state-mandated local program.

(2) Existing law limits the liability of a transferor for failing to disclose natural hazards in specified property transactions if the transferor obtains a report or opinion prepared by a licensed engineer, land surveyor, geologist, or expert in natural hazard discovery dealing with matters within the scope of the professional’s license or expertise. Existing law conditions this limitation in specified ways, including the requirement that when an expert ~~in natural hazard disclosure~~ responds to a request regarding natural hazards, that the expert also determine whether the property is within an airport influence zone and, if so, provide a specified notice with his or her report.

This bill would condition the limitation on liability described above by requiring an expert ~~in natural hazard disclosure~~, when responding to a request regarding natural hazards, to also determine whether the property is presently located within 1 mile of farm or ranch land designated as specified, and to provide a specified notice in this regard. *The bill would also make conforming changes.*

(3) 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 11010 of the Business and Professions
- 2 Code is amended to read:
- 3 11010. (a) Except as otherwise provided pursuant to
- 4 subdivision (c) or elsewhere in this chapter, any person who intends
- 5 to offer subdivided lands within this state for sale or lease shall
- 6 file with the Department of Real Estate an application for a public
- 7 report consisting of a notice of intention and a completed
- 8 questionnaire on a form prepared by the department.
- 9 (b) The notice of intention shall contain the following
- 10 information about the subdivided lands and the proposed offering:
- 11 (1) The name and address of the owner.
- 12 (2) The name and address of the subdivider.

1 (3) The legal description and area of lands.

2 (4) A true statement of the condition of the title to the land,
3 particularly including all encumbrances thereon.

4 (5) A true statement of the terms and conditions on which it is
5 intended to dispose of the land, together with copies of any
6 contracts intended to be used.

7 (6) A true statement of the provisions, if any, that have been
8 made for public utilities in the proposed subdivision, including
9 water, electricity, gas, telephone, and sewerage facilities. For
10 subdivided lands that were subject to the imposition of a condition
11 pursuant to subdivision (b) of Section 66473.7 of the Government
12 Code, the true statement of the provisions made for water shall be
13 satisfied by submitting a copy of the written verification of the
14 available water supply obtained pursuant to Section 66473.7 of
15 the Government Code.

16 (7) A true statement of the use or uses for which the proposed
17 subdivision will be offered.

18 (8) A true statement of the provisions, if any, limiting the use
19 or occupancy of the parcels in the subdivision.

20 (9) A true statement of the amount of indebtedness that is a lien
21 upon the subdivision or any part thereof, and that was incurred to
22 pay for the construction of any onsite or offsite improvement, or
23 any community or recreational facility.

24 (10) A true statement or reasonable estimate, if applicable, of
25 the amount of any indebtedness which has been or is proposed to
26 be incurred by an existing or proposed special district, entity, taxing
27 area, assessment district, or community facilities district within
28 the boundaries of which, the subdivision, or any part thereof, is
29 located, and that is to pay for the construction or installation of
30 any improvement or to furnish community or recreational facilities
31 to that subdivision, and which amounts are to be obtained by ad
32 valorem tax or assessment, or by a special assessment or tax upon
33 the subdivision, or any part thereof.

34 (11) A notice pursuant to Section 1102.6c of the Civil Code.

35 (12) (A) As to each school district serving the subdivision, a
36 statement from the appropriate district that indicates the location
37 of each high school, junior high school, and elementary school
38 serving the subdivision, or documentation that a statement to that
39 effect has been requested from the appropriate school district.

1 (B) In the event that, as of the date the notice of intention and
 2 application for issuance of a public report are otherwise deemed
 3 to be qualitatively and substantially complete pursuant to Section
 4 11010.2, the statement described in subparagraph (A) has not been
 5 provided by any school district serving the subdivision, the person
 6 who filed the notice of intention and application for issuance of a
 7 public report shall immediately provide the department with the
 8 name, address, and telephone number of that district.

9 (13) (A) The location of all existing airports, and of all proposed
 10 airports shown on the general plan of any city or county, located
 11 within two statute miles of the subdivision. If the property is
 12 located within an airport influence area, the following statement
 13 shall be included in the notice of intention:

14
 15 NOTICE OF AIRPORT IN VICINITY
 16

17 This property is presently located in the vicinity of an
 18 airport, within what is known as an airport influence area. For that
 19 reason, the property may be subject to some of the annoyances or
 20 inconveniences associated with proximity to airport operations
 21 (for example: noise, vibration, or odors). Individual sensitivities
 22 to those annoyances can vary from person to person. You may wish to consider
 23 what airport annoyances, if any, are associated with the
 24 property before you complete your purchase and determine whether they
 25 are acceptable to you.
 26

27 (B) For purposes of this section, an “airport influence area,”
 28 also known as an “airport referral area,” is the area in which current
 29 or future airport-related noise, overflight, safety, or airspace
 30 protection factors may significantly affect land uses or necessitate
 31 restrictions on those uses as determined by an airport land use
 32 commission.

33 (14) A true statement, if applicable, referencing any soils or
 34 geologic report or soils and geologic reports that have been
 35 prepared specifically for the subdivision.

36 (15) A true statement of whether or not fill is used, or is
 37 proposed to be used, in the subdivision and a statement giving the
 38 name and the location of the public agency where information
 39 concerning soil conditions in the subdivision is available.

1 (16) On or after July 1, 2005, as to property located within the
2 jurisdiction of the San Francisco Bay Conservation and
3 Development Commission, a statement that the property is so
4 located and the following notice:

5

6 NOTICE OF SAN FRANCISCO BAY CONSERVATION
7 AND DEVELOPMENT COMMISSION JURISDICTION

8

9 This property is located within the jurisdiction of the San Francisco Bay
10 Conservation and Development Commission. Use and development of property
11 within the commission's jurisdiction may be subject to special regulations,
12 restrictions, and permit requirements. You may wish to investigate and determine
13 whether they are acceptable to you and your intended use of the property before
14 you complete your transaction.

15

16 (17) If the property is presently located within
17 one mile of a parcel of real property designated as "Prime
18 Farmland," "Farmland of Statewide Importance," "Unique
19 Farmland," "Farmland of Local Importance," or "Grazing Land"
20 on the most current "Important Farmland Map" issued by the
21 California Department of Conservation, Division of Land Resource
22 Protection, utilizing solely the county-level GIS map data, if any,
23 available on the Farmland Mapping and Monitoring Program
24 Website. If the residential property is within one mile of a
25 designated farmland area, the report shall contain the following
26 notice:

27

28 NOTICE OF RIGHT TO FARM

29

30 This property is located within one mile of a farm or ranch land
31 designated on the current county-level GIS "Important Farmland
32 Map," issued by the California Department of Conservation,
33 Division of Land Resource Protection. Accordingly, the property
34 may be subject to inconveniences or discomforts resulting from
35 agricultural operations that are a normal and necessary aspect of
36 living in a community with a strong rural character and a healthy
37 agricultural sector. Customary agricultural practices in farm
38 operations may include, but are not limited to, noise, odors, dust,
39 light, insects, the operation of pumps and machinery, the storage
40 and disposal of manure, bee pollination, and the ground or aerial

1 application of fertilizers, pesticides, and herbicides. THESE
 2 AGRICULTURAL PRACTICES MAY OCCUR DURING ANY
 3 24-HOUR PERIOD. Individual sensitivities to those practices can
 4 vary from person to person. You may wish to consider the impacts
 5 of such agricultural practices before you complete your purchase.
 6 Please be advised that you may be barred from obtaining legal
 7 remedies against agricultural practices conducted in a manner
 8 consistent with proper and accepted customs and standards pursuant
 9 to Section 3482.5 of the Civil Code or any pertinent local
 10 ordinance.

11
 12 (18) Any other information that the owner, his or her agent, or
 13 the subdivider may desire to present.

14 (c) The commissioner may, by regulation, or on the basis of the
 15 particular circumstances of a proposed offering, waive the
 16 requirement of the submission of a completed questionnaire if the
 17 commissioner determines that prospective purchasers or lessees
 18 of the subdivision interests to be offered will be adequately
 19 protected through the issuance of a public report based solely upon
 20 information contained in the notice of intention.

21 SEC. 2. The heading of Article 1.7 (commencing with Section
 22 1103) of Chapter 2 of Title 4 of Part 4 of Division 2 of the Civil
 23 Code is amended to read:

24
 25 Article 1.7. Disclosure of Natural and Environmental Hazards,
 26 Right-to-Farm, and Other ~~Mandatory~~ Disclosures Upon Transfer
 27 of Residential Property
 28

29 SEC. 3. Section 1103.4 of the Civil Code is amended to read:

30 1103.4. (a) Neither the transferor nor any listing or selling
 31 agent shall be liable for any error, inaccuracy, or omission of any
 32 information delivered pursuant to this article if the error,
 33 inaccuracy, or omission was not within the personal knowledge
 34 of the transferor or the listing or selling agent, and was based on
 35 information timely provided by public agencies or by other persons
 36 providing information as specified in subdivision (c) that is
 37 required to be disclosed pursuant to this article, and ordinary care
 38 was exercised in obtaining and transmitting the information.

39 (b) The delivery of any information required to be disclosed by
 40 this article to a prospective transferee by a public agency or other

1 person providing information required to be disclosed pursuant to
2 this article shall be deemed to comply with the requirements of
3 this article and shall relieve the transferor or any listing or selling
4 agent of any further duty under this article with respect to that item
5 of information.

6 (c) The delivery of a report or opinion prepared by a licensed
7 engineer, land surveyor, geologist, or expert in natural hazard
8 discovery dealing with matters within the scope of the
9 professional's license or expertise, shall be sufficient compliance
10 for application of the exemption provided by subdivision (a) if the
11 information is provided to the prospective transferee pursuant to
12 a request therefor, whether written or oral. In responding to that
13 request, an expert may indicate, in writing, an understanding that
14 the information provided will be used in fulfilling the requirements
15 of Section 1103.2 and, if so, shall indicate the required disclosures,
16 or parts thereof, to which the information being furnished is
17 applicable. Where that statement is furnished, the expert shall not
18 be responsible for any items of information, or parts thereof, other
19 than those expressly set forth in the statement.

20 (1) In responding to the request, the expert shall determine
21 whether the property is within an airport influence area as defined
22 in subdivision (b) of Section 11010 of the Business and Professions
23 Code. If the property is within an airport influence area, the report
24 shall contain the following statement:

25
26 NOTICE OF AIRPORT IN VICINITY

27
28 This property is presently located in the vicinity of an
29 airport, within what is known as an airport influence area. For that
30 reason, the property may be subject to some of the annoyances or
31 inconveniences associated with proximity to airport operations
32 (for example: noise, vibration, or odors). Individual sensitivities
33 to those annoyances can vary from person to person. You may wish to
34 consider what airport annoyances, if any, are associated with the
35 property before you complete your purchase and determine whether they
36 are acceptable to you.

37
38 (2) In responding to the request, the expert shall determine
39 whether the property is within the jurisdiction of the San Francisco
40 Bay Conservation and Development Commission, as defined in

1 Section 66620 of the Government Code. If the property is within
2 the commission’s jurisdiction, the report shall contain the following
3 notice:

4

5 NOTICE OF SAN FRANCISCO BAY CONSERVATION
6 AND DEVELOPMENT COMMISSION JURISDICTION

7

8 This property is located within the jurisdiction of the San
9 Francisco Bay Conservation and Development Commission. Use
10 and development of property within the commission’s jurisdiction
11 may be subject to special regulations, restrictions, and permit
12 requirements. You may wish to investigate and determine whether
13 they are acceptable to you and your intended use of the property
14 before you complete your transaction.

15

16 (3) In responding to the request, the expert shall determine
17 whether the property is presently located within
18 one mile of a parcel of real property designated as “Prime
19 Farmland,” “Farmland of Statewide Importance,” “Unique
20 Farmland,” “Farmland of Local Importance,” or “Grazing Land”
21 on the most current “Important Farmland Map” issued by the
22 California Department of Conservation, Division of Land Resource
23 Protection, utilizing solely the county-level GIS map data, if any,
24 available on the Farmland Mapping and Monitoring Program
25 website. If the residential property is within one mile of a
26 designated farmland area, the report shall contain the following
27 notice:

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29 NOTICE OF RIGHT TO FARM

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31 This property is located within one mile of a farm or ranch land
32 designated on the current county-level GIS “Important Farmland
33 Map,” issued by the California Department of Conservation,
34 Division of Land Resource Protection. Accordingly, the property
35 may be subject to inconveniences or discomforts resulting from
36 agricultural operations that are a normal and necessary aspect of
37 living in a community with a strong rural character and a healthy
38 agricultural sector. Customary agricultural practices in farm
39 operations may include, but are not limited to, noise, odors, dust,
40 light, insects, the operation of pumps and machinery, the storage

1 and disposal of manure, bee pollination, and the ground or aerial
2 application of fertilizers, pesticides, and herbicides. THESE
3 AGRICULTURAL PRACTICES MAY OCCUR DURING ANY
4 24-HOUR PERIOD. Individual sensitivities to those practices can
5 vary from person to person. You may wish to consider the impacts
6 of such agricultural practices before you complete your purchase.
7 Please be advised that you may be barred from obtaining legal
8 remedies against agricultural practices conducted in a manner
9 consistent with proper and accepted customs and standards pursuant
10 to Section 3482.5 of the Civil Code or any pertinent local
11 ordinance.

12
13 SEC. 4. No reimbursement is required by this act pursuant to
14 Section 6 of Article XIII B of the California Constitution because
15 the only costs that may be incurred by a local agency or school
16 district will be incurred because this act creates a new crime or
17 infraction, eliminates a crime or infraction, or changes the penalty
18 for a crime or infraction, within the meaning of Section 17556 of
19 the Government Code, or changes the definition of a crime within
20 the meaning of Section 6 of Article XIII B of the California
21 Constitution.