

AMENDED IN SENATE MAY 2, 2011

**SENATE BILL**

**No. 110**

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**Introduced by Senator Rubio**

January 14, 2011

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~~An act to add Section 3482.8 to the Civil Code, relating to nuisance.~~  
*An act to amend Section 1103.4 of the Civil Code, relating the property disclosures.*

LEGISLATIVE COUNSEL'S DIGEST

SB 110, as amended, Rubio. ~~Nuisance: mining activities.~~ *Real property disclosures: mining operations.*

*Existing law limits the liability of a transferor under certain conditions for failing to disclose natural hazards or make other disclosures in specified property transactions and either or transferee 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 responds to a request regarding natural hazards, that the expert determine whether the property is within an airport influence zone, the jurisdiction of the San Francisco Bay Conservation and Development Commission, or designated farm land and, if so, provide a specified notice or notices with his or her report.*

*This bill would further condition the limitation on liability described above by requiring an expert, when responding to a request regarding natural hazards, to also determine whether the property is presently located within 1000 feet of a parcel of real property subject to mine operations identified in a Notice of Reclamation Plan Approval recorded*

with the county recorder, as specified, and to provide a specified notice in this regard.

Existing law defines a nuisance, in part, as anything that is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property. Existing law authorizes various remedies for nuisances, including remedies to effect abatement and damages. Existing law provides, among other things, that no agricultural activity, operation, facility, or appurtenances thereof, as defined, in operation for more than 3 years, and conducted or maintained for commercial purposes in a manner consistent with proper and accepted customs and standards, shall become a nuisance due to any changed condition in the locality if it was not a nuisance at the time it began, except as specified.

This bill would provide that no mining activity, operation or facility, or appurtenances thereof, as defined, in operation for more than 3 years, and conducted or maintained for commercial purposes in a manner consistent with proper and accepted customs and standards, shall become a nuisance due to any changed condition in the locality if it was not a nuisance at the time it began, except as specified.

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 1103.4 of the Civil Code is amended to
- 2 read:
- 3 1103.4. (a) Neither the transferor nor any listing or selling
- 4 agent shall be liable for any error, inaccuracy, or omission of any
- 5 information delivered pursuant to this article if the error,
- 6 inaccuracy, or omission was not within the personal knowledge
- 7 of the transferor or the listing or selling agent, and was based on
- 8 information timely provided by public agencies or by other persons
- 9 providing information as specified in subdivision (c) that is
- 10 required to be disclosed pursuant to this article, and ordinary care
- 11 was exercised in obtaining and transmitting the information.
- 12 (b) The delivery of any information required to be disclosed by
- 13 this article to a prospective transferee by a public agency or other
- 14 person providing information required to be disclosed pursuant to
- 15 this article shall be deemed to comply with the requirements of
- 16 this article and shall relieve the transferor or any listing or selling

1 agent of any further duty under this article with respect to that item  
2 of information.

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

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

22  
23 NOTICE OF AIRPORT IN VICINITY  
24

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

35 (2) In responding to the request, the expert shall determine  
36 whether the property is within the jurisdiction of the San Francisco  
37 Bay Conservation and Development Commission, as defined in  
38 Section 66620 of the Government Code. If the property is within  
39 the commission’s jurisdiction, the report shall contain the following  
40 notice:

1 NOTICE OF SAN FRANCISCO BAY CONSERVATION AND  
2 DEVELOPMENT COMMISSION JURISDICTION

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

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

21

22 NOTICE OF RIGHT TO FARM

23 This property is located within one mile of a farm or ranch land  
24 designated on the current county-level GIS “Important Farmland  
25 Map,” issued by the California Department of Conservation,  
26 Division of Land Resource Protection. Accordingly, the property  
27 may be subject to inconveniences or discomforts resulting from  
28 agricultural operations that are a normal and necessary aspect of  
29 living in a community with a strong rural character and a healthy  
30 agricultural sector. Customary agricultural practices in farm  
31 operations may include, but are not limited to, noise, odors, dust,  
32 light, insects, the operation of pumps and machinery, the storage  
33 and disposal of manure, bee pollination, and the ground or aerial  
34 application of fertilizers, pesticides, and herbicides. These  
35 agricultural practices may occur at any time during the 24-hour  
36 day. Individual sensitivities to those practices can vary from person  
37 to person. You may wish to consider the impacts of such  
38 agricultural practices before you complete your purchase. Please  
39 be advised that you may be barred from obtaining legal remedies  
40 against agricultural practices conducted in a manner consistent

1 with proper and accepted customs and standards pursuant to  
2 Section 3482.5 of the Civil Code or any pertinent local ordinance.

3 (4) *In responding to the request, the expert shall determine*  
4 *whether the property is presently located within 1000 feet of a*  
5 *parcel of real property subject to mine operations identified in a*  
6 *Notice of Reclamation Plan Approval recorded with the county*  
7 *recorder pursuant to Section 2772.7 of the Public Resources Code.*  
8 *If the residential property is within 1000 feet of real property*  
9 *subject to mine operations identified in a Notice of Reclamation*  
10 *Plan Approval, the report shall contain the following notice:*

11  
12 *NOTICE OF MINING OPERATIONS*

13 *This property is located within 1000 feet of a mine operation*  
14 *that has been identified in a Notice of Reclamation Plan Approval*  
15 *recorded with the county recorder pursuant to Section 2772.7 of*  
16 *the Public Resources Code. Accordingly, the property may be*  
17 *subject to inconveniences resulting from mining operations. You*  
18 *may wish to consider the impacts of these practices before you*  
19 *complete your transaction.*

20 ~~SECTION 1. Section 3482.8 is added to the Civil Code, to~~  
21 ~~read:~~

22 ~~3482.8. (a) No mining activity, operation or facility, or~~  
23 ~~appurtenances thereof, whether underground or in a quarry or pit,~~  
24 ~~conducted or maintained for commercial purposes, and in a manner~~  
25 ~~consistent with proper and accepted customs and standards, as~~  
26 ~~established and followed by similar mining operations in the same~~  
27 ~~locality, shall become a nuisance, private or public, due to any~~  
28 ~~changed condition in or about the locality, after it has been in~~  
29 ~~operation for more than three years, if it was not a nuisance at the~~  
30 ~~time it began.~~

31 ~~(b) Subdivision (a) shall not apply if the mining activity,~~  
32 ~~operation, or facility, or appurtenances thereof, obstruct the free~~  
33 ~~passage or use, in the customary manner, of any navigable lake,~~  
34 ~~river, bay, stream, canal, or basin, or any public park, square, street,~~  
35 ~~or highway.~~

36 ~~(c) Subdivision (a) shall not invalidate any provision contained~~  
37 ~~in the Health and Safety Code, Fish and Game Code, Food and~~  
38 ~~Agricultural Code, or Division 7 (commencing with Section 13000)~~  
39 ~~of the Water Code, if the mining activity, operation, or facility, or~~

1 appurtenances thereof, constitutes a nuisance, public or private,  
2 as specifically defined or described in any of those provisions.

3 ~~(d) This section shall prevail over any contrary provision of an~~  
4 ~~ordinance or regulation of a city, county, city and county, or other~~  
5 ~~political subdivision of the state. However, nothing in this section~~  
6 ~~shall preclude a city, county, city and county, or other political~~  
7 ~~subdivision of this state, acting within its constitutional or statutory~~  
8 ~~authority and not in conflict with other provisions of state law,~~  
9 ~~from adopting an ordinance that allows notification to a prospective~~  
10 ~~homeowner that the dwelling is in close proximity to a mining~~  
11 ~~activity, operation, facility, or appurtenances thereof, and is subject~~  
12 ~~to the provisions of this section consistent with Section 1102.6a.~~

13 ~~(e) For purposes of this section, the term “mining activity,~~  
14 ~~operation, or facility, or appurtenances thereof” shall include, but~~  
15 ~~not be limited to, the excavation, extraction, or removal from land~~  
16 ~~of ores and minerals, including sand, gravel, shells, or stone, or~~  
17 ~~combinations thereof, used to produce a construction material or~~  
18 ~~an industrial product or other commercial product directly from~~  
19 ~~those ores and minerals, including the private ways, roads, and~~  
20 ~~areas necessary to conduct that activity or operation, and the~~  
21 ~~operation of a plant site for processing those ores and minerals,~~  
22 ~~including associated onsite structures, equipment, machines, tools,~~  
23 ~~or other materials, including the onsite stockpiling and onsite~~  
24 ~~recovery of those ores and minerals.~~