

Introduced by Senator LieuFebruary 18, 2011

An act to amend Section 597 of, and to add Section 597.4 to, the Penal Code, relating to animals.

LEGISLATIVE COUNSEL'S DIGEST

SB 917, as introduced, Lieu. Animal abuse.

Existing law provides, subject to exceptions, that every person who overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink, shelter, or to be cruelly beaten, mutilated, or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to provide the animal with proper food, drink, or shelter or protection from the weather, or who drives, rides, or otherwise uses the animal when unfit for labor, is guilty of a crime punishable as a misdemeanor or as a felony, or alternatively as a misdemeanor or a felony and a fine of not more than \$20,000.

This bill would revise the punishment for this offense to provide that it is punishable by imprisonment in a county jail for not more than one year, or in the state prison, or by a fine of not more than \$20,000, or by both that fine and imprisonment. The bill would make other technical, nonsubstantive changes. By revising the penalty for an existing crime, this bill would impose a state-mandated local program.

Existing law proscribes animal abuse, as specified, including the failure to maintain and care for the premises and animals at pet shops. Existing law also generally provides that a pet store shall not sell, offer for sale, trade, or barter any dog or cat that is under 8 weeks of age, but may sell, offer for sale, trade, or barter a dog or cat over 8 weeks of age only if the animal is weaned.

This bill would provide, in addition and with specified exceptions, that it shall be a crime, punishable as specified, for any person to willfully sell, display, or offer for sale or give away as part of a commercial transaction, a live animal on any street, highway, public right-of-way, parking lot, carnival, or boardwalk. The bill would provide that a notice describing the charge and the penalty for a violation of this bill may be issued by a peace officer, animal control officer, or humane officer. By creating a new crime, this bill would impose a state-mandated local program.

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 597 of the Penal Code is amended to
2 read:
3 597. (a) Except as provided in subdivision (c) of this section
4 or Section 599c, every person who maliciously and intentionally
5 maims, mutilates, tortures, or wounds a living animal, or
6 maliciously and intentionally kills an animal, is guilty of ~~an offense~~
7 ~~punishable by imprisonment in the state prison, or by a fine of not~~
8 ~~more than twenty thousand dollars (\$20,000), or by both the fine~~
9 ~~and imprisonment, or, alternatively, by imprisonment in a county~~
10 ~~jail for not more than one year, or by a fine of not more than twenty~~
11 ~~thousand dollars (\$20,000), or by both the fine and imprisonment~~
12 *a crime punishable pursuant to subdivision (d).*
13 (b) Except as otherwise provided in subdivision (a) or (c), every
14 person who overdrives, overloads, drives when overloaded,
15 overworks, tortures, torments, deprives of necessary sustenance,

1 drink, or shelter, cruelly beats, mutilates, or cruelly kills any
2 animal, or causes or procures any animal to be so overdriven,
3 overloaded, driven when overloaded, overworked, tortured,
4 tormented, deprived of necessary sustenance, drink, shelter, or to
5 be cruelly beaten, mutilated, or cruelly killed; and whoever, having
6 the charge or custody of any animal, either as owner or otherwise,
7 subjects any animal to needless suffering, or inflicts unnecessary
8 cruelty upon the animal, or in any manner abuses any animal, or
9 fails to provide the animal with proper food, drink, or shelter or
10 protection from the weather, or who drives, rides, or otherwise
11 uses the animal when unfit for labor, is, ~~for every such~~ *each*
12 offense, guilty of a crime punishable ~~as a misdemeanor or as a~~
13 ~~felony or alternatively punishable as a misdemeanor or a felony~~
14 ~~and by a fine of not more than twenty thousand dollars (\$20,000)~~
15 *pursuant to subdivision (d).*

16 (c) Every person who maliciously and intentionally maims,
17 mutilates, or tortures any mammal, bird, reptile, amphibian, or
18 fish, as described in subdivision ~~(d)~~, ~~is guilty of an offense~~
19 ~~punishable by imprisonment in the state prison, or by a fine of not~~
20 ~~more than twenty thousand dollars (\$20,000), or by both the fine~~
21 ~~and imprisonment, or, alternatively, by imprisonment in the county~~
22 ~~jail for not more than one year, by a fine of not more than twenty~~
23 ~~thousand dollars (\$20,000), or by both the fine and imprisonment~~
24 ~~(e), is guilty of a crime punishable pursuant to subdivision (d).~~

25 (d) *A violation of subdivision (a), (b), or (c) is punishable as a*
26 *felony by imprisonment in the state prison, or by a fine of not more*
27 *than twenty thousand dollars (\$20,000), or by both that fine and*
28 *imprisonment, or alternatively, as a misdemeanor by imprisonment*
29 *in a county jail for not more than one year, or by a fine of not more*
30 *than twenty thousand dollars (\$20,000), or by both that fine and*
31 *imprisonment.*

32 ~~(d)~~

33 (e) Subdivision (c) applies to any mammal, bird, reptile,
34 amphibian, or fish which is a creature described as follows:

35 (1) Endangered species or threatened species as described in
36 Chapter 1.5 (commencing with Section 2050) of Division 3 of the
37 Fish and Game Code.

38 (2) Fully protected birds described in Section 3511 of the Fish
39 and Game Code.

1 (3) Fully protected mammals described in Chapter 8
2 (commencing with Section 4700) of Part 3 of Division 4 of the
3 Fish and Game Code.

4 (4) Fully protected reptiles and amphibians described in Chapter
5 2 (commencing with Section 5050) of Division 5 of the Fish and
6 Game Code.

7 (5) Fully protected fish as described in Section 5515 of the Fish
8 and Game Code.

9 This subdivision does not supersede or affect any provisions of
10 law relating to taking of the described species, including, but not
11 limited to, Section 12008 of the Fish and Game Code.

12 ~~(e)~~

13 (f) For the purposes of subdivision (c), each act of malicious
14 and intentional maiming, mutilating, or torturing a separate
15 specimen of a creature described in subdivision ~~(d)~~ (e) is a separate
16 offense. If any person is charged with a violation of subdivision
17 (c), the proceedings shall be subject to Section 12157 of the Fish
18 and Game Code.

19 ~~(f)~~

20 (g) (1) Upon the conviction of a person charged with a violation
21 of this section by causing or permitting an act of cruelty, as defined
22 in Section 599b, all animals lawfully seized and impounded with
23 respect to the violation by a peace officer, officer of a humane
24 society, or officer of a pound or animal regulation department of
25 a public agency shall be adjudged by the court to be forfeited and
26 shall thereupon be awarded to the impounding officer for proper
27 disposition. A person convicted of a violation of this section by
28 causing or permitting an act of cruelty, as defined in Section 599b,
29 shall be liable to the impounding officer for all costs of
30 impoundment from the time of seizure to the time of proper
31 disposition.

32 (2) Mandatory seizure or impoundment shall not apply to
33 animals in properly conducted scientific experiments or
34 investigations performed under the authority of the faculty of a
35 regularly incorporated medical college or university of this state.

36 ~~(g)~~

37 (h) Notwithstanding any other provision of law, if a defendant
38 is granted probation for a conviction under this section, the court
39 shall order the defendant to pay for, and successfully complete,
40 counseling, as determined by the court, designed to evaluate and

1 treat behavior or conduct disorders. If the court finds that the
2 defendant is financially unable to pay for that counseling, the court
3 may develop a sliding fee schedule based upon the defendant's
4 ability to pay. An indigent defendant may negotiate a deferred
5 payment schedule, but shall pay a nominal fee if the defendant has
6 the ability to pay the nominal fee. County mental health
7 departments or Medi-Cal shall be responsible for the costs of
8 counseling required by this section only for those persons who
9 meet the medical necessity criteria for mental health managed care
10 pursuant to Section 1830.205 of Title 7 9 of the California Code
11 of Regulations or the targeted population criteria specified in
12 Section 5600.3 of the Welfare and Institutions Code. The
13 counseling specified in this subdivision shall be in addition to any
14 other terms and conditions of probation, including any term of
15 imprisonment and any fine. This provision specifies a mandatory
16 additional term of probation and is not to be utilized as an
17 alternative in lieu of imprisonment in the state prison or *in a* county
18 jail when ~~such a~~ *that* sentence is otherwise appropriate. If the court
19 does not order custody as a condition of probation for a conviction
20 under this section, the court shall specify on the court record the
21 reason or reasons for not ordering custody. This subdivision shall
22 not apply to cases involving police dogs or horses as described in
23 Section 600.

24 SEC. 2. Section 597.4 is added to the Penal Code, to read:

25 597.4. (a) It shall be unlawful for any person to willfully sell,
26 display for sale, offer for sale, or give away as part of a commercial
27 transaction, a live animal on any street, highway, public
28 right-of-way, parking lot, carnival, or boardwalk.

29 (b) (1) A person who violates this section for the first time shall
30 be guilty of an infraction punishable by a fine not to exceed two
31 hundred fifty dollars (\$250).

32 (2) A person who violates this section for the first time and by
33 that violation either causes or permits any animal to suffer or be
34 injured, or causes or permits any animal to be placed in a situation
35 in which its life or health may be endangered, shall be guilty of a
36 misdemeanor.

37 (3) A person who violates this section for a second or subsequent
38 time shall be guilty of a misdemeanor.

39 (c) A person who is guilty of a misdemeanor violation of this
40 section shall be punishable by a fine not to exceed one thousand

1 dollars (\$1,000) per violation. The court shall weigh the gravity
2 of the violation in setting the fine.

3 (d) A notice describing the charge and the penalty for a violation
4 of this section may be issued by any peace officer, animal control
5 officer, as defined in Section 830.9, or humane officer qualified
6 pursuant to Section 14502 or 14503 of the Corporations Code.

7 (e) This section shall not apply to the following:

8 (1) Events held by 4-H Clubs, Junior Farmers Clubs, or Future
9 Farmers Clubs.

10 (2) The California Exposition and State Fair, district agricultural
11 association fairs, or county fairs.

12 (3) Stockyards with respect to which the Secretary of the United
13 States Department of Agriculture has posted notice that the
14 stockyards are regulated by the federal Packers and Stockyards
15 Act (7 U.S.C. Sec. 181 et seq.).

16 (4) The sale of cattle on consignment at any public cattle sales
17 market, the sale of sheep on consignment at any public sheep sales
18 market, the sale of swine on consignment at any public swine sales
19 market, the sale of goats on consignment at any public goat sales
20 market; and the sale of equine on consignment at any public equine
21 sales market.

22 (5) Live animal markets regulated under Section 597.3.

23 (6) A public animal control agency or shelter, society for the
24 prevention of cruelty to animals shelter, humane society shelter,
25 or rescue group regulated under Division 14 (commencing with
26 Section 30501) of the Food and Agricultural Code. For purposes
27 of this section, “rescue group” is a not-for-profit entity whose
28 primary purpose is the placement of dogs, cats, or other animals
29 that have been removed from a public animal control agency or
30 shelter, society for the prevention of cruelty to animals shelter, or
31 humane society shelter, or that have been surrendered or
32 relinquished to the entity by the previous owner.

33 (7) The sale of fish or shellfish, live or dead, from a fishing
34 vessel, at a pier or wharf, or at a farmer’s market by any licensed
35 commercial fisherman to the public for human consumption.

36 (8) A cat show, dog show, or bird show, provided that all of the
37 following circumstances exist:

38 (A) The show is validly permitted by the city or county in which
39 the show is held.

1 (B) Each and every participant in the show complies with all
2 federal, state, and local animal welfare and animal control laws.

3 (C) The participant has written documentation of the payment
4 of a fee for the entry of his or her cat, dog, or bird in the show.

5 (D) The sale of a cat, dog, or bird occurs only on the premises
6 and within the confines of the show.

7 (E) The show is a competitive event where the cats, dogs, or
8 birds are exhibited and judged by an established standard or set of
9 ideals established for each breed or species.

10 (f) Nothing in this section shall be construed to in any way limit
11 or affect the application or enforcement of any other law that
12 protects animals or the rights of consumers, including, but not
13 limited to, the Lockyer-Polanco-Farr Pet Protection Act contained
14 in Article 2 (commencing with Section 122125) of Chapter 5 of
15 Part 6 of Division 105 of the Health and Safety Code, or Sections
16 597 and 5971 of this code.

17 (g) Nothing in this section limits or authorizes any act or
18 omission that violates Section 597 or 5971 of this code, or any
19 other local, state, or federal law. The procedures set forth in this
20 section shall not apply to any civil violation of any other local,
21 state, or federal law that protects animals or the rights of
22 consumers, or to a violation of Section 597 or 5971 of this code,
23 which is cited or prosecuted pursuant to one or both of those
24 sections, or to a violation of any other local, state, or federal law
25 that is cited or prosecuted pursuant to that law.

26 SEC. 3. 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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