

ASSEMBLY BILL

No. 339

Introduced by Assembly Member Dickinson

February 13, 2013

An act to amend Section 597.4 of the Penal Code, relating to malicious mischief.

LEGISLATIVE COUNSEL'S DIGEST

AB 339, as introduced, Dickinson. Malicious mischief: live animals.

Existing law makes it a crime to willfully sell 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. Existing law also makes it a crime to willfully display or offer for sale, or display or offer to give away as part of a commercial transaction, a live animal, if the act of selling or giving away the live animal is to occur on any street, highway, public right-of-way, parking lot, carnival, or boardwalk. A person who violates these provisions for the first time is generally guilty of an infraction punishable by a fine not to exceed \$250. A person who violates these provisions a 2nd or subsequent time, or who violates these provisions the first time and by that violation causes or permits an animal to suffer or be injured or to be placed in a situation in which the animal's life or health may be endangered, is guilty of a misdemeanor punishable by a fine not to exceed \$1,000 per violation.

Existing law regulates vendors and operators of certain swap meets. A swap meet is defined for purposes of these provisions to include a flea market or open-air market and to mean an event at which 2 or more persons offer merchandise for sale or exchange and (1) imposes a fee for the privilege of offering or displaying merchandise for sale or exchange, (2) charges a fee to prospective buyers for parking or

admission, or (3) is an event that is held more than 6 times in a 12-month period. A violation of these provisions is a misdemeanor, except as specified.

This bill would make it a crime to willfully sell or give away as part of a commercial transaction a live animal, at a swap meet or to willfully display or offer for sale, or display or offer to give away as part of a commercial transaction, a live animal, if the act of selling or giving away the live animal is to occur at a swap meet. By creating new crimes, the 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 597.4 of the Penal Code is amended to
2 read:

3 597.4. (a) It shall be unlawful for any person to willfully do
4 either of the following:

5 (1) Sell or give away as part of a commercial transaction a live
6 animal on any street, highway, public right-of-way, parking lot,
7 carnival, or boardwalk, *or at a swap meet as defined in Section*
8 *21661 of the Business and Professions Code.*

9 (2) Display or offer for sale, or display or offer to give away as
10 part of a commercial transaction, a live animal, if the act of selling
11 or giving away the live animal is to occur on any street, highway,
12 public right-of-way, parking lot, carnival, or boardwalk, *or at a*
13 *swap meet as defined in Section 21661 of the Business and*
14 *Professions Code.*

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

18 (2) A person who violates this section for the first time and by
19 that violation either causes or permits any animal to suffer or be
20 injured, or causes or permits any animal to be placed in a situation

1 in which its life or health may be endangered, shall be guilty of a
2 misdemeanor.

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

5 (c) A person who is guilty of a misdemeanor violation of this
6 section shall be punishable by a fine not to exceed one thousand
7 dollars (\$1,000) per violation. The court shall weigh the gravity
8 of the violation in setting the fine.

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

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

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

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

18 (3) Stockyards with respect to which the Secretary of the United
19 States Department of Agriculture has posted notice that the
20 stockyards are regulated by the federal Packers and Stockyards
21 Act, 1921 (7 U.S.C. Sec. 181 et seq.).

22 (4) The sale of cattle on consignment at any public cattle sales
23 market, the sale of sheep on consignment at any public sheep sales
24 market, the sale of swine on consignment at any public swine sales
25 market, the sale of goats on consignment at any public goat sales
26 market, and the sale of equines on consignment at any public
27 equine sales market.

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

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

39 (7) The sale of fish or shellfish, live or dead, from a fishing
40 vessel or registered aquaculture facility, at a pier or wharf, or at a

1 farmer's market by any licensed commercial fisherman or an owner
2 or employee of a registered aquaculture facility to the public for
3 human consumption.

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

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

8 (B) The show's sponsor or permittee ensures compliance with
9 all federal, state, and local animal welfare and animal control laws.

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

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

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

17 (9) A pet store as defined in subdivision (i) of Section 122350
18 of the Health and Safety Code.

19 (f) Nothing in this section shall be construed to in any way limit
20 or affect the application or enforcement of any other law that
21 protects animals or the rights of consumers, including, but not
22 limited to, the Lockyer-Polanco-Farr Pet Protection Act contained
23 in Article 2 (commencing with Section 122125) of Chapter 5 of
24 Part 6 of Division 105 of the Health and Safety Code, or Sections
25 597 and 5971 of this code.

26 (g) Nothing in this section limits or authorizes any act or
27 omission that violates Section 597 or 5971, or any other local, state,
28 or federal law. The procedures set forth in this section shall not
29 apply to any civil violation of any other local, state, or federal law
30 that protects animals or the rights of consumers, or to a violation
31 of Section 597 or 5971, which is cited or prosecuted pursuant to
32 one or both of those sections, or to a violation of any other local,
33 state, or federal law that is cited or prosecuted pursuant to that law.

34 SEC. 2. No reimbursement is required by this act pursuant to
35 Section 6 of Article XIII B of the California Constitution because
36 the only costs that may be incurred by a local agency or school
37 district will be incurred because this act creates a new crime or
38 infraction, eliminates a crime or infraction, or changes the penalty
39 for a crime or infraction, within the meaning of Section 17556 of
40 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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