

AMENDED IN ASSEMBLY MAY 6, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

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.~~ *add Chapter 10 (commencing with Section 122370) to Part 6 of Division 105 of the Health and Safety Code, relating to the sale of animals.*

LEGISLATIVE COUNSEL'S DIGEST

AB 339, as amended, Dickinson. ~~Malicious mischief: live animals.~~ *Sale of animals at swap meets.*

Existing law generally regulates the operation of swap meets, flea markets, and open-air markets where personal property is exchanged, sold, or offered for sale or exchange. Existing law also regulates food vendors operating at swap meets.

This bill would authorize, subject to exceptions and commencing January 1, 2016, a swap meet operator to permit a vendor to offer animals for sale at a swap meet provided the local jurisdiction has adopted certain standards for the care and treatment of those animals during the time that the animals are present at the swap meet and transported to and from the swap meet. These provisions would not apply to the sale of a particular species of animal if a local jurisdiction has adopted a local ordinance prior to January 1, 2013, that applies specifically to the sale of that particular species of animal at swap meets. The bill would provide that a swap meet vendor who offers animals for sale at a swap meet in violation of the requirements of this bill would be guilty of an infraction punishable by a fine not to exceed

\$250 for the first violation, or, if the animal suffers or is endangered, or for a 2nd or subsequent violation, a fine not to exceed \$1,000. 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.

~~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. Chapter 10 (commencing with Section 122370)
2 is added to Part 6 of Division 105 of the Health and Safety Code,
3 to read:

4
5 CHAPTER 10. SALE OF ANIMALS AT SWAP MEETS

6
7 122370. A swap meet operator may permit a vendor to offer
8 animals for sale at a swap meet provided the local jurisdiction
9 has adopted standards for the care and treatment of those animals
10 during the time that the animals are present at the swap meet and
11 transported to and from the swap meet. This chapter does not
12 apply to the sale of a particular species of animal if a local
13 jurisdiction has adopted a local ordinance prior to January 1,
14 2013, that applies specifically to the sale of that particular species
15 of animal at swap meets.

16 122371. Any ordinance adopted pursuant to Section 122370
17 shall, at a minimum, require the swap meet vendor to do all of the
18 following:

19 (a) Maintain the facilities used for the keeping of animals in a
20 sanitary condition.

21 (b) Provide proper heating and ventilation for the facilities used
22 for the keeping of animals.

23 (c) Provide adequate nutrition for, and humane care and
24 treatment of, all animals that are under his or her care and control.

25 (d) Take reasonable care to release for sale, trade, or adoption
26 only those animals that are free of disease or injuries.

27 (e) Provide adequate space appropriate to the size, weight, and
28 species of animals.

29 (f) Have a documented program of routine care, preventative
30 care, emergency care, disease control and prevention, and

1 *veterinary treatment and euthanasia that is established and*
2 *maintained by the vendor in consultation with a licensed*
3 *veterinarian employed by the vendor or a California-licensed*
4 *veterinarian, to ensure adherence to the program with respect to*
5 *each animal. The program shall also include a documented onsite*
6 *visit to the swap meet premises by a California-licensed*
7 *veterinarian at least once a year.*

8 (g) *Provide buyers of an animal with general written*
9 *recommendations for the generally accepted care of the type of*
10 *animal sold, including recommendations as to the housing,*
11 *equipment, cleaning, environment, and feeding of the animal. This*
12 *written information shall be in a form determined by the vendor*
13 *and may include references to Internet Web sites, books, pamphlets,*
14 *videos, and compact discs.*

15 (h) *Present for inspection and display a current business license*
16 *issued by the local jurisdiction where the animals are principally*
17 *housed.*

18 (i) *Maintain records for identification purposes of the person*
19 *from whom the animals offered for sale were acquired, including*
20 *that person's name, address, e-mail address, and telephone number*
21 *and the date the animals were acquired.*

22 122372. (a) (1) *A swap meet vendor who offers animals for*
23 *sale at a swap meet in a local jurisdiction that has not adopted an*
24 *ordinance authorizing that sale, is guilty of an infraction*
25 *punishable by a fine not to exceed two hundred fifty dollars (\$250).*

26 (2) *A swap meet vendor who (A) violates paragraph (1) for the*
27 *first time and by that violation either causes or permits any animal*
28 *to suffer or be injured, or causes or permits any animal to be*
29 *placed in a situation in which its life or health may be endangered,*
30 *or (B) violates paragraph (1) for a second or subsequent time, is*
31 *guilty of an infraction punishable by a fine not to exceed one*
32 *thousand dollars (\$1,000) per violation. The court shall weigh the*
33 *gravity of the violation in setting the amount of the fine.*

34 (b) *A notice describing the charge and the penalty for a violation*
35 *of this section may be issued by any peace officer, animal control*
36 *officer, as defined in Section 830.9, or humane officer qualified*
37 *pursuant to Section 14502 or 14503 of the Corporations Code.*

38 122373. *This chapter shall not apply to the following:*

39 (a) *Events held by 4-H Clubs, Junior Farmers Clubs, or Future*
40 *Farmers Clubs.*

1 (b) *The California Exposition and State Fair, district*
2 *agricultural association fairs, or county fairs.*

3 (c) *Stockyards with respect to which the Secretary of the United*
4 *States Department of Agriculture has posted notice that the*
5 *stockyards are regulated by the federal Packers and Stockyards*
6 *Act of 1921 (7 U.S.C. Sec. 181 et seq.).*

7 (d) *The sale of cattle on consignment at any public cattle sales*
8 *market, the sale of sheep on consignment at any public sheep sales*
9 *market, the sale of swine on consignment at any public swine sales*
10 *market, the sale of goats on consignment at any public goat sales*
11 *market, and the sale of equines on consignment at any public*
12 *equine sales market.*

13 (e) *Live animal markets regulated under Section 597.3 of the*
14 *Penal Code.*

15 (f) *A public animal control agency or shelter, society for the*
16 *prevention of cruelty to animals shelter, humane society shelter,*
17 *or rescue group regulated under Division 14 (commencing with*
18 *Section 30501) of the Food and Agricultural Code. For purposes*
19 *of this section, “rescue group” is a not-for-profit entity whose*
20 *primary purpose is the placement of dogs, cats, or other animals*
21 *that have been removed from a public animal control agency or*
22 *shelter, society for the prevention of cruelty to animals shelter, or*
23 *humane society shelter, or that have been surrendered or*
24 *relinquished to the entity by the previous owner.*

25 (g) *The sale of fish or shellfish, live or dead, from a fishing*
26 *vessel or registered aquaculture facility, at a pier or wharf, or at*
27 *a farmer’s market by any licensed commercial fisherman or an*
28 *owner or employee of a registered aquaculture facility to the public*
29 *for human consumption.*

30 (h) *A cat show, dog show, or bird show, provided that all of the*
31 *following circumstances exist:*

32 (1) *The show is validly permitted by the city or county in which*
33 *the show is held.*

34 (2) *The show’s sponsor or permittee ensures compliance with*
35 *all federal, state, and local animal welfare and animal control*
36 *laws.*

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

39 (4) *The sale of a cat, dog, or bird occurs only on the premises*
40 *and within the confines of the show.*

1 (5) *The show is a competitive event where the cats, dogs, or*
 2 *birds are exhibited and judged by an established standard or set*
 3 *of ideals established for each breed or species.*

4 (i) *A pet store as defined in subdivision (i) of Section 122350.*

5 (j) *Any reptile and aquatic trade show, provided all of the*
 6 *following circumstances exist:*

7 (1) *The show is validly permitted by the city or county in which*
 8 *the show is held.*

9 (2) *The show’s sponsor or permittee ensures compliance with*
 10 *all federal, state, and local animal welfare and animal control*
 11 *laws.*

12 122374. *This chapter shall become operative on January 1,*
 13 *2016.*

14 SEC. 2. *No reimbursement is required by this act pursuant to*
 15 *Section 6 of Article XIII B of the California Constitution because*
 16 *the only costs that may be incurred by a local agency or school*
 17 *district will be incurred because this act creates a new crime or*
 18 *infraction, eliminates a crime or infraction, or changes the penalty*
 19 *for a crime or infraction, within the meaning of Section 17556 of*
 20 *the Government Code, or changes the definition of a crime within*
 21 *the meaning of Section 6 of Article XIII B of the California*
 22 *Constitution.*

23 SECTION 1. ~~Section 597.4 of the Penal Code is amended to~~
 24 ~~read:~~

25 597.4. ~~(a) It shall be unlawful for any person to willfully do~~
 26 ~~either of the following:~~

27 (1) ~~Sell or give away as part of a commercial transaction a live~~
 28 ~~animal on any street, highway, public right-of-way, parking lot,~~
 29 ~~carnival, or boardwalk, or at a swap meet as defined in Section~~
 30 ~~21661 of the Business and Professions Code.~~

31 (2) ~~Display or offer for sale, or display or offer to give away as~~
 32 ~~part of a commercial transaction, a live animal, if the act of selling~~
 33 ~~or giving away the live animal is to occur on any street, highway,~~
 34 ~~public right-of-way, parking lot, carnival, or boardwalk, or at a~~
 35 ~~swap meet as defined in Section 21661 of the Business and~~
 36 ~~Professions Code.~~

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

- 1 ~~(2) A person who violates this section for the first time and by~~
2 ~~that violation either causes or permits any animal to suffer or be~~
3 ~~injured, or causes or permits any animal to be placed in a situation~~
4 ~~in which its life or health may be endangered, shall be guilty of a~~
5 ~~misdemeanor.~~
- 6 ~~(3) A person who violates this section for a second or subsequent~~
7 ~~time shall be guilty of a misdemeanor.~~
- 8 ~~(e) A person who is guilty of a misdemeanor violation of this~~
9 ~~section shall be punishable by a fine not to exceed one thousand~~
10 ~~dollars (\$1,000) per violation. The court shall weigh the gravity~~
11 ~~of the violation in setting the fine.~~
- 12 ~~(d) A notice describing the charge and the penalty for a violation~~
13 ~~of this section may be issued by any peace officer, animal control~~
14 ~~officer, as defined in Section 830.9, or humane officer qualified~~
15 ~~pursuant to Section 14502 or 14503 of the Corporations Code.~~
- 16 ~~(e) This section shall not apply to the following:~~
- 17 ~~(1) Events held by 4-H Clubs, Junior Farmers Clubs, or Future~~
18 ~~Farmers Clubs.~~
- 19 ~~(2) The California Exposition and State Fair, district agricultural~~
20 ~~association fairs, or county fairs.~~
- 21 ~~(3) Stockyards with respect to which the Secretary of the United~~
22 ~~States Department of Agriculture has posted notice that the~~
23 ~~stockyards are regulated by the federal Packers and Stockyards~~
24 ~~Act, 1921 (7 U.S.C. Sec. 181 et seq.).~~
- 25 ~~(4) The sale of cattle on consignment at any public cattle sales~~
26 ~~market, the sale of sheep on consignment at any public sheep sales~~
27 ~~market, the sale of swine on consignment at any public swine sales~~
28 ~~market, the sale of goats on consignment at any public goat sales~~
29 ~~market, and the sale of equines on consignment at any public~~
30 ~~equine sales market.~~
- 31 ~~(5) Live animal markets regulated under Section 597.3.~~
- 32 ~~(6) A public animal control agency or shelter, society for the~~
33 ~~prevention of cruelty to animals shelter, humane society shelter,~~
34 ~~or rescue group regulated under Division 14 (commencing with~~
35 ~~Section 30501) of the Food and Agricultural Code. For purposes~~
36 ~~of this section, “rescue group” is a not-for-profit entity whose~~
37 ~~primary purpose is the placement of dogs, cats, or other animals~~
38 ~~that have been removed from a public animal control agency or~~
39 ~~shelter, society for the prevention of cruelty to animals shelter, or~~

1 humane society shelter, or that have been surrendered or
2 relinquished to the entity by the previous owner.

3 (7) The sale of fish or shellfish, live or dead, from a fishing
4 vessel or registered aquaculture facility, at a pier or wharf, or at a
5 farmer’s market by any licensed commercial fisherman or an owner
6 or employee of a registered aquaculture facility to the public for
7 human consumption.

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

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

12 (B) The show’s sponsor or permittee ensures compliance with
13 all federal, state, and local animal welfare and animal control laws.

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

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

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

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

23 (f) Nothing in this section shall be construed to in any way limit
24 or affect the application or enforcement of any other law that
25 protects animals or the rights of consumers, including, but not
26 limited to, the Lockyer-Polanco-Farr Pet Protection Act contained
27 in Article 2 (commencing with Section 122125) of Chapter 5 of
28 Part 6 of Division 105 of the Health and Safety Code, or Sections
29 597 and 5971 of this code.

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

38 SEC. 2. No reimbursement is required by this act pursuant to
39 Section 6 of Article XIII B of the California Constitution because
40 the only costs that may be incurred by a local agency or school

1 ~~district will be incurred because this act creates a new crime or~~
2 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
3 ~~for a crime or infraction, within the meaning of Section 17556 of~~
4 ~~the Government Code, or changes the definition of a crime within~~
5 ~~the meaning of Section 6 of Article XIII B of the California~~
6 ~~Constitution.~~

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