

Introduced by Senator Hancock
(Principal coauthors: Senators DeSaulnier, Hill, and Leno)
(Principal coauthor: Assembly Member Skinner)
(Coauthor: Senator Lara)

February 22, 2013

An act to amend Sections 41700, 42400.7, 42402, 42402.1, 42402.2, 42402.3, and 42403 of the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 691, as introduced, Hancock. Nonvehicular air pollution control: penalties.

Existing law, commencing January 1, 2014, prohibits a person from discharging from nonvehicular sources air contaminants or other materials that cause injury, detriment, nuisance, or annoyance to the public, or that endanger the comfort, repose, health, or safety of the public, or that cause injury or damage to business or property, as specified. Under existing law, a person who violates this provision is guilty of a misdemeanor, as specified, and is strictly liable for a civil penalty of not more than \$10,000, unless that person alleges by affirmative defense and establishes that the act was not the result of intentional or negligent conduct, in which case that person is strictly liable for a civil penalty of not more than \$1,000. A person who violates this provision and who acts negligently, knowingly, willfully and intentionally, or with reckless disregard, is liable for a civil penalty in a greater amount, as specified.

This bill would require, unless the original penalties prescribed are greater, that on the initial date of a violation of this provision, a person is liable for a civil penalty of not more than \$10,000, unless the violation

results from a discharge from a Title V source, in which case the civil penalty is not more than \$100,000. This bill would require that the recovery of a civil penalty under these provisions precludes prosecution of a misdemeanor for the same offense.

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 41700 of the Health and Safety Code, as
2 added by Section 2 of Chapter 411 of the Statutes of 2010, is
3 amended to read:

4 41700. (a) Except as otherwise provided in Section 41705, a
5 person shall not discharge from any source whatsoever quantities
6 of air contaminants or other material that cause injury, detriment,
7 nuisance, or annoyance to any considerable number of persons or
8 to the public, or that endanger the comfort, repose, health, or safety
9 of any of those persons or the public, or that cause, or have a
10 natural tendency to cause, injury or damage to business or property.

11 *(b) (1) A penalty described in subdivision (c) shall apply on*
12 *the initial date a violation of subdivision (a) occurs, unless a*
13 *penalty prescribed in Section 42402, 42402.1, 42402.2, or 42402.3*
14 *is greater, in which case the greater penalty shall apply.*

15 *(2) If a violation of subdivision (a) continues to occur after the*
16 *initial date of violation, the penalty described in Section 42402,*
17 *42402.1, 42402.2, or 42402.3 shall apply to those subsequent days.*

18 *(c) (1) Except as provided in paragraph (2), a person who*
19 *violates subdivision (a) is liable for a civil penalty of not more*
20 *than ten thousand dollars (\$10,000).*

21 *(2) A person who violates subdivision (a), which results in a*
22 *discharge from a Title V source, is liable for a civil penalty of not*
23 *more than one hundred thousand dollars (\$100,000).*

24 ~~(b)~~

25 *(d) This section shall become operative on January 1, 2014.*

26 SEC. 2. Section 42400.7 of the Health and Safety Code is
27 amended to read:

28 42400.7. (a) The recovery of civil penalties pursuant to Section
29 39674, 41700, 42401, 42402, 42402.1, 42402.2, 42402.3, or
30 42402.4 precludes prosecution under Section 42400, 42400.1,
31 42400.2, 42400.3, 42400.3.5, or 42400.4 for the same offense.

1 When a district refers a violation to a prosecuting agency, the filing
2 of a criminal complaint is grounds requiring the dismissal of any
3 civil action brought pursuant to this article for the same offense.

4 (b) If the pending civil action described in subdivision (a)
5 includes a request for injunctive relief, that portion of the civil
6 action shall not be dismissed upon the filing of a criminal complaint
7 for the same offense.

8 SEC. 3. Section 42402 of the Health and Safety Code is
9 amended to read:

10 42402. (a) Except as provided in Sections 41700, 42402.1,
11 42402.2, 42402.3, and 42402.4, ~~any~~ a person who violates this
12 part, ~~any~~ an order issued pursuant to Section 42316, or ~~any~~ a rule,
13 regulation, permit, or order of a district, including a district hearing
14 board, or of the state board issued pursuant to Part 1 (commencing
15 with Section 39000) to Part 4 (commencing with Section 41500),
16 inclusive, is strictly liable for a civil penalty of not more than one
17 thousand dollars (\$1,000).

18 (b) (1) ~~Any~~A person who violates ~~any provision of~~ this part,
19 ~~any~~ an order issued pursuant to Section 42316, or ~~any~~ a rule,
20 regulation, permit or order of a district, including a district hearing
21 board, or of the state board issued pursuant to Part 1 (commencing
22 with Section 39000) to Part 4 (commencing with Section 41500),
23 inclusive, is strictly liable for a civil penalty of not more than ten
24 thousand dollars (\$10,000).

25 (2) (A) If a civil penalty in excess of one thousand dollars
26 (\$1,000) for each day in which a violation occurs is sought, there
27 is no liability under this subdivision if the person accused of the
28 violation alleges by affirmative defense and establishes that the
29 violation was caused by an act that was not the result of intentional
30 nor negligent conduct.

31 (B) Subparagraph (A) shall not apply to a violation of federally
32 enforceable requirements that occur at a Title V source in a district
33 in which a Title V permit program has been fully approved.

34 (C) Subparagraph (A) does not apply to a person who is
35 determined to have violated an annual facility emissions cap
36 established pursuant to a market based incentive program adopted
37 by a district pursuant to subdivision (b) of Section 39616.

38 (c) ~~Any~~A person who owns or operates ~~any~~ a source of air
39 contaminants in violation of Section 41700 that causes actual
40 injury, as defined in subdivision (d) of Section 42400, to the health

1 and safety of a considerable number of persons or the public, is
2 liable for a civil penalty of not more than fifteen thousand dollars
3 (\$15,000).

4 (d) Each day during any portion of which a violation occurs is
5 a separate offense.

6 SEC. 4. Section 42402.1 of the Health and Safety Code is
7 amended to read:

8 42402.1. (a) ~~Any~~ Except as provided in Section 41700, a
9 person who negligently emits an air contaminant in violation of
10 this part or ~~any~~ a rule, regulation, permit, or order of the state board
11 or of a district, including a district hearing board, pertaining to
12 emission regulations or limitations is liable for a civil penalty of
13 not more than twenty-five thousand dollars (\$25,000).

14 (b) ~~Any~~ A person who negligently emits an air contaminant in
15 violation of Section 41700 that causes great bodily injury, as
16 defined by Section 12022.7 of the Penal Code, to ~~any~~ a person or
17 that causes the death of ~~any~~ a person, is liable for a civil penalty
18 of not more than one hundred thousand dollars (\$100,000).

19 (c) Each day during ~~any~~ a portion of which a violation occurs
20 is a separate offense.

21 SEC. 5. Section 42402.2 of the Health and Safety Code is
22 amended to read:

23 42402.2. (a) ~~Any~~ Except as provided in Section 41700, a
24 person who emits an air contaminant in violation of ~~any~~ a provision
25 of this part, or ~~any~~ an order, rule, regulation, or permit of the state
26 board or of a district, including a district hearing board, pertaining
27 to emission regulations or limitations, and who knew of the
28 emission and failed to take corrective action, as defined in
29 subdivision (b) of Section 42400.2, within a reasonable period of
30 time under the circumstances, is liable for a civil penalty of not
31 more than forty thousand dollars (\$40,000).

32 (b) ~~Any~~ A person who owns or operates ~~any~~ a source of air
33 contaminants in violation of Section 41700 that causes great bodily
34 injury, as defined by Section 12022.7 of the Penal Code, to ~~any~~ a
35 person or that causes the death of ~~any~~ a person, and who knew of
36 the emission and failed to take corrective action, as defined in
37 subdivision (b) of Section 42400.2, within a reasonable period of
38 time under the circumstances, is liable for a civil penalty not to
39 exceed two hundred fifty thousand dollars (\$250,000).

1 (c) Each day during ~~any~~ a portion of which a violation occurs
2 is a separate offense.

3 SEC. 6. Section 42402.3 of the Health and Safety Code is
4 amended to read:

5 42402.3. (a) ~~Any~~ *Except as provided in Section 41700, a*
6 *person who willfully and intentionally emits an air contaminant*
7 *in violation of this part or ~~any~~ a rule, regulation, permit, or order*
8 *of the state board, or of a district, including a district hearing board,*
9 *pertaining to emission regulations or limitations, is liable for a*
10 *civil penalty of not more than seventy-five thousand dollars*
11 *(\$75,000).*

12 (b) ~~Any~~ *A person who willfully and intentionally, or with*
13 *reckless disregard for the risk of great bodily injury, as defined by*
14 *Section 12022.7 of the Penal Code, to, or death of, ~~any~~ a person,*
15 *emits an air contaminant in violation of Section 41700 that results*
16 *in an unreasonable risk of great bodily injury to, or death of, ~~any~~*
17 *a person, is liable for a civil penalty of not more than one hundred*
18 *twenty-five thousand dollars (\$125,000). If the violator is a*
19 *corporation, the maximum penalty may be up to five hundred*
20 *thousand dollars (\$500,000).*

21 (c) ~~Any~~ *A person who willfully and intentionally, or with*
22 *reckless disregard for the risk of great bodily injury, as defined by*
23 *Section 12022.7 of the Penal Code, to, or death of, ~~any~~ a person,*
24 *emits an air contaminant in violation of Section 41700 that causes*
25 *great bodily injury, as defined by Section 12022.7 of the Penal*
26 *Code, to ~~any~~ a person or that causes the death of ~~any~~ a person, is*
27 *liable for a civil penalty of not more than two hundred fifty*
28 *thousand dollars (\$250,000). If the violator is a corporation, the*
29 *maximum penalty may be up to one million dollars (\$1,000,000).*

30 (d) Each day during ~~any~~ a portion of which a violation occurs
31 is a separate offense.

32 SEC. 7. Section 42403 of the Health and Safety Code is
33 amended to read:

34 42403. (a) The civil penalties prescribed in Sections 39674,
35 41700, 42401, 42402, 42402.1, 42402.2, and 42402.3 shall be
36 assessed and recovered in a civil action brought in the name of the
37 people of the State of California by the Attorney General, by ~~any~~
38 *a district attorney, or by the attorney for ~~any~~ the district in which*
39 *the violation occurs in ~~any~~ a court of competent jurisdiction.*

- 1 (b) In determining the amount assessed, the court, or in reaching
2 ~~any~~ a settlement, the district, shall take into consideration all
3 relevant circumstances, including, but not limited to, the following:
4 (1) The extent of harm caused by the violation.
5 (2) The nature and persistence of the violation.
6 (3) The length of time over which the violation occurs.
7 (4) The frequency of past violations.
8 (5) The record of maintenance.
9 (6) The unproven or innovative nature of the control equipment.
10 (7) ~~Any~~ An action taken by the defendant, including the nature,
11 extent, and time of response of the cleanup and construction
12 undertaken, to mitigate the violation.
13 (8) The financial burden to the defendant.