

AMENDED IN SENATE MAY 24, 2013

SENATE BILL

No. 691

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 amended, 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~~ *a person who violates this provision by emitting a discharge from a stationary source required by federal law to be included in an operating permit program established pursuant to Title V of the federal Clean Air Act, when that discharge includes the release of toxic air contaminants, to be liable for a civil penalty of 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 person who violates subdivision (a) by emitting a*
 12 *discharge from a Title V source that includes the release of a toxic*
 13 *air contaminant, as described in Chapter 3.5 (commencing with*
 14 *Section 39650) of Part 2 is liable for a civil penalty of not more*
 15 *than one hundred thousand dollars (\$100,000). This penalty does*
 16 *not apply to air contaminant releases that are only nuisance odors.*

17 ~~(b) (1)~~

18 (2) A penalty described in ~~subdivision (e)~~ *paragraph (1)* shall
 19 apply on the initial date a violation of subdivision (a) occurs, unless
 20 a penalty prescribed in Section 42402, 42402.1, 42402.2, or
 21 42402.3 is greater, in which case the greater penalty shall apply.

22 ~~(2)~~

1 (3) If a violation of subdivision (a) *that is described in*
2 *paragraph (1)* continues to occur ~~after subsequent to~~ the initial
3 date of violation, the penalty described in Section 42402, 42402.1,
4 42402.2, or 42402.3 shall apply to those subsequent days.

5 ~~(e) (1) Except as provided in paragraph (2), a person who~~
6 ~~violates subdivision (a) is liable for a civil penalty of not more~~
7 ~~than ten thousand dollars (\$10,000).~~

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

11 ~~(d)~~

12 (c) This section shall become operative on January 1, 2014.

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

15 42400.7. (a) The recovery of civil penalties pursuant to Section
16 39674, 41700, 42401, 42402, 42402.1, 42402.2, 42402.3, or
17 42402.4 precludes prosecution under Section 42400, 42400.1,
18 42400.2, 42400.3, 42400.3.5, or 42400.4 for the same offense.
19 When a district refers a violation to a prosecuting agency, the filing
20 of a criminal complaint is grounds requiring the dismissal of any
21 civil action brought pursuant to this article for the same offense.

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

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

28 42402. (a) Except as provided in Sections 41700, 42402.1,
29 42402.2, 42402.3, and 42402.4, a person who violates this part,
30 an order issued pursuant to Section 42316, or a rule, regulation,
31 permit, or order of a district, including a district hearing board, or
32 of the state board issued pursuant to Part 1 (commencing with
33 Section 39000) to Part 4 (commencing with Section 41500),
34 inclusive, is strictly liable for a civil penalty of not more than one
35 thousand dollars (\$1,000).

36 (b) (1) A person who violates this part, an order issued pursuant
37 to Section 42316, or a rule, regulation, permit or order of a district,
38 including a district hearing board, or of the state board issued
39 pursuant to Part 1 (commencing with Section 39000) to Part 4

1 (commencing with Section 41500), inclusive, is strictly liable for
2 a civil penalty of not more than ten thousand dollars (\$10,000).

3 (2) (A) If a civil penalty in excess of one thousand dollars
4 (\$1,000) for each day in which a violation occurs is sought, there
5 is no liability under this subdivision if the person accused of the
6 violation alleges by affirmative defense and establishes that the
7 violation was caused by an act that was not the result of intentional
8 nor negligent conduct.

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

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

16 (c) A person who owns or operates a source of air contaminants
17 in violation of Section 41700 that causes actual injury, as defined
18 in subdivision (d) of Section 42400, to the health and safety of a
19 considerable number of persons or the public, is liable for a civil
20 penalty of not more than fifteen thousand dollars (\$15,000).

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

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

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

31 (b) A person who negligently emits an air contaminant in
32 violation of Section 41700 that causes great bodily injury, as
33 defined by Section 12022.7 of the Penal Code, to a person or that
34 causes the death of a person, is liable for a civil penalty of not
35 more than one hundred thousand dollars (\$100,000).

36 (c) Each day during a portion of which a violation occurs is a
37 separate offense.

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

1 42402.2. (a) Except as provided in Section 41700, a person
2 who emits an air contaminant in violation of a provision of this
3 part, or an order, rule, regulation, or permit of the state board or
4 of a district, including a district hearing board, pertaining to
5 emission regulations or limitations, and who knew of the emission
6 and failed to take corrective action, as defined in subdivision (b)
7 of Section 42400.2, within a reasonable period of time under the
8 circumstances, is liable for a civil penalty of not more than forty
9 thousand dollars (\$40,000).

10 (b) A person who owns or operates a source of air contaminants
11 in violation of Section 41700 that causes great bodily injury, as
12 defined by Section 12022.7 of the Penal Code, to a person or that
13 causes the death of a person, and who knew of the emission and
14 failed to take corrective action, as defined in subdivision (b) of
15 Section 42400.2, within a reasonable period of time under the
16 circumstances, is liable for a civil penalty not to exceed two
17 hundred fifty thousand dollars (\$250,000).

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

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

22 42402.3. (a) Except as provided in Section 41700, a person
23 who willfully and intentionally emits an air contaminant in
24 violation of this part or a rule, regulation, permit, or order of the
25 state board, or of a district, including a district hearing board,
26 pertaining to emission regulations or limitations, is liable for a
27 civil penalty of not more than seventy-five thousand dollars
28 (\$75,000).

29 (b) A person who willfully and intentionally, or with reckless
30 disregard for the risk of great bodily injury, as defined by Section
31 12022.7 of the Penal Code, to, or death of, a person, emits an air
32 contaminant in violation of Section 41700 that results in an
33 unreasonable risk of great bodily injury to, or death of, a person,
34 is liable for a civil penalty of not more than one hundred
35 twenty-five thousand dollars (\$125,000). If the violator is a
36 corporation, the maximum penalty may be up to five hundred
37 thousand dollars (\$500,000).

38 (c) A person who willfully and intentionally, or with reckless
39 disregard for the risk of great bodily injury, as defined by Section
40 12022.7 of the Penal Code, to, or death of, a person, emits an air

1 contaminant in violation of Section 41700 that causes great bodily
2 injury, as defined by Section 12022.7 of the Penal Code, to a person
3 or that causes the death of a person, is liable for a civil penalty of
4 not more than two hundred fifty thousand dollars (\$250,000). If
5 the violator is a corporation, the maximum penalty may be up to
6 one million dollars (\$1,000,000).

7 (d) Each day during a portion of which a violation occurs is a
8 separate offense.

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

11 42403. (a) The civil penalties prescribed in Sections 39674,
12 41700, 42401, 42402, 42402.1, 42402.2, and 42402.3 shall be
13 assessed and recovered in a civil action brought in the name of the
14 people of the State of California by the Attorney General, by a
15 district attorney, or by the attorney for the district in which the
16 violation occurs in a court of competent jurisdiction.

17 (b) In determining the amount assessed, the court, or in reaching
18 a settlement, the district, shall take into consideration all relevant
19 circumstances, including, but not limited to, the following:

- 20 (1) The extent of harm caused by the violation.
- 21 (2) The nature and persistence of the violation.
- 22 (3) The length of time over which the violation occurs.
- 23 (4) The frequency of past violations.
- 24 (5) The record of maintenance.
- 25 (6) The unproven or innovative nature of the control equipment.
- 26 (7) An action taken by the defendant, including the nature,
27 extent, and time of response of the cleanup and construction
28 undertaken, to mitigate the violation.
- 29 (8) The financial burden to the defendant.