

AMENDED IN ASSEMBLY AUGUST 5, 2013

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, *and to add Section 42402.6 to*, the Health and Safety Code, relating to *nonvehicular* 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 or 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, make a person who violates this provision by emitting a discharge liable for a civil penalty of not more than \$100,000, as specified, if the violation results from 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 and the discharge contains or includes one or more toxic air contaminants, as specified.~~ This The 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 (2) ~~A penalty described in paragraph (1) shall apply on the initial~~
18 ~~date a violation of subdivision (a) occurs, unless a penalty~~
19 ~~prescribed in Section 42402, 42402.1, 42402.2, or 42402.3 is~~
20 ~~greater, in which case the greater penalty shall apply.~~

21 (3) ~~If a violation of subdivision (a) that is described in paragraph~~
22 ~~(1) continues to occur subsequent to the initial date of violation,~~

1 the penalty described in Section 42402, 42402.1, 42402.2, or
2 42402.3 shall apply to those subsequent days.

3 (e) ~~This section shall become operative on January 1, 2014.~~

4 ~~SEC. 2.~~

5 *SECTION 1.* Section 42400.7 of the Health and Safety Code
6 is amended to read:

7 42400.7. (a) The recovery of civil penalties pursuant to Section
8 39674, ~~41700~~, 42401, 42402, 42402.1, 42402.2, 42402.3, ~~or~~
9 42402.4, ~~or 42402.6~~ precludes prosecution under Section 42400,
10 42400.1, 42400.2, 42400.3, 42400.3.5, or 42400.4 for the same
11 offense. When a district refers a violation to a prosecuting agency,
12 the filing of a criminal complaint is grounds requiring the dismissal
13 of any civil action brought pursuant to this article for the same
14 offense.

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

19 ~~SEC. 3.~~

20 *SEC. 2.* Section 42402 of the Health and Safety Code is
21 amended to read:

22 42402. (a) Except as provided in Sections ~~41700~~, 42402.1,
23 42402.2, 42402.3, ~~and 42402.4~~, ~~and 42402.6~~ a person who violates
24 this part, an order issued pursuant to Section 42316, or a rule,
25 regulation, permit, or order of a district, including a district hearing
26 board, or of the state board issued pursuant to Part 1 (commencing
27 with Section 39000) to Part 4 (commencing with Section 41500),
28 inclusive, is strictly liable for a civil penalty of not more than one
29 thousand dollars (\$1,000).

30 (b) (1) A person who violates this part, an order issued pursuant
31 to Section 42316, or a rule, regulation, permit or order of a district,
32 including a district hearing board, or of the state board issued
33 pursuant to Part 1 (commencing with Section 39000) to Part 4
34 (commencing with Section 41500), inclusive, is strictly liable for
35 a civil penalty of not more than ten thousand dollars (\$10,000).

36 (2) (A) If a civil penalty in excess of one thousand dollars
37 (\$1,000) for each day in which a violation occurs is sought, there
38 is no liability under this subdivision if the person accused of the
39 violation alleges by affirmative defense and establishes that the

1 violation was caused by an act that was not the result of intentional
2 nor negligent conduct.

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

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

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

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

17 ~~SEC. 4.~~

18 *SEC. 3.* Section 42402.1 of the Health and Safety Code is
19 amended to read:

20 42402.1. (a) Except as provided in Section ~~41700~~ 42402.6, a
21 person who negligently emits an air contaminant in violation of
22 this part or a rule, regulation, permit, or order of the state board
23 or of a district, including a district hearing board, pertaining to
24 emission regulations or limitations is liable for a civil penalty of
25 not more than twenty-five thousand dollars (\$25,000).

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

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

33 ~~SEC. 5.~~

34 *SEC. 4.* Section 42402.2 of the Health and Safety Code is
35 amended to read:

36 42402.2. (a) Except as provided in Section ~~41700~~ 42402.6, a
37 person who emits an air contaminant in violation of a provision
38 of this part, or an order, rule, regulation, or permit of the state
39 board or of a district, including a district hearing board, pertaining
40 to emission regulations or limitations, and who knew of the

1 emission and failed to take corrective action, as defined in
2 subdivision (b) of Section 42400.2, within a reasonable period of
3 time under the circumstances, is liable for a civil penalty of not
4 more than forty thousand dollars (\$40,000).

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

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

15 ~~SEC. 6.~~

16 *SEC. 5.* Section 42402.3 of the Health and Safety Code is
17 amended to read:

18 42402.3. (a) Except as provided in Section ~~41700~~ 42402.6, a
19 person who willfully and intentionally emits an air contaminant
20 in violation of this part or a rule, regulation, permit, or order of
21 the state board, or of a district, including a district hearing board,
22 pertaining to emission regulations or limitations, is liable for a
23 civil penalty of not more than seventy-five thousand dollars
24 (\$75,000).

25 (b) A person who willfully and intentionally, or with reckless
26 disregard for the risk of great bodily injury, as defined by Section
27 12022.7 of the Penal Code, to, or death of, a person, emits an air
28 contaminant in violation of Section 41700 that results in an
29 unreasonable risk of great bodily injury to, or death of, a person,
30 is liable for a civil penalty of not more than one hundred
31 twenty-five thousand dollars (\$125,000). If the violator is a
32 corporation, the maximum penalty may be up to five hundred
33 thousand dollars (\$500,000).

34 (c) A person who willfully and intentionally, or with reckless
35 disregard for the risk of great bodily injury, as defined by Section
36 12022.7 of the Penal Code, to, or death of, a person, emits an air
37 contaminant in violation of Section 41700 that causes great bodily
38 injury, as defined by Section 12022.7 of the Penal Code, to a person
39 or that causes the death of a person, is liable for a civil penalty of
40 not more than two hundred fifty thousand dollars (\$250,000). If

1 the violator is a corporation, the maximum penalty may be up to
2 one million dollars (\$1,000,000).

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

5 *SEC. 6. Section 42402.6 is added to the Health and Safety
6 Code, to read:*

7 *42402.6. (a) If a person violates Section 41700, the violation
8 results from a discharge from a Title V source, and the discharge
9 contains or includes one or more toxic air contaminants, as
10 identified in Section 39657, the person is liable for a civil penalty
11 of not more than one hundred thousand dollars (\$100,000). This
12 subdivision does not apply to air contaminant releases that are
13 only nuisance odors.*

14 *(b) Except as provided in subdivision (b) of Section 42402.2 or
15 subdivision (b) or (c) of Section 42402.3, a civil penalty described
16 in subdivision (a) shall apply on the initial date of a violation.*

17 *(c) If a violation of subdivision (a) continues to occur subsequent
18 to the initial date of the violation, the civil penalty described in
19 Section 42402, 42402.1, 42402.2, or 42402.3 shall apply to those
20 subsequent days.*

21 *SEC. 7. Section 42403 of the Health and Safety Code is
22 amended to read:*

23 *42403. (a) The civil penalties prescribed in Sections 39674,
24 ~~41700~~, 42401, 42402, 42402.1, 42402.2, ~~and~~ 42402.3, and 42402.6
25 shall be assessed and recovered in a civil action brought in the
26 name of the people of the State of California by the Attorney
27 General, by a district attorney, or by the attorney for the district
28 in which the violation occurs in a court of competent jurisdiction.*

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

32 *(1) The extent of harm caused by the violation.*

33 *(2) The nature and persistence of the violation.*

34 *(3) The length of time over which the violation occurs.*

35 *(4) The frequency of past violations.*

36 *(5) The record of maintenance.*

37 *(6) The unproven or innovative nature of the control equipment.*

38 *(7) An action taken by the defendant, including the nature,
39 extent, and time of response of the cleanup and construction
40 undertaken, to mitigate the violation.*

- 1 (8) The financial burden to the defendant.

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