

AMENDED IN ASSEMBLY SEPTEMBER 4, 2013

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 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, or is 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 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 make a person who violates this provision 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 ~~and Act~~, *the discharge results in a severe disruption to the community*, the discharge contains or includes one or more toxic air contaminants, as specified, *and 100 or more people are exposed to the discharge. The bill would prohibit this provision from applying if the violation is caused by unforeseen and unforeseeable criminal acts, acts of war, acts of terrorism, or civil unrest. The bill would require moneys collected pursuant to this provision to be expended in support of air quality programs.* 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 42400.7 of the Health and Safety Code
2 is amended to read:

3 42400.7. (a) The recovery of civil penalties pursuant to Section
4 39674, 42401, 42402, 42402.1, 42402.2, 42402.3, 42402.4, or
5 42402.6 precludes prosecution under Section 42400, 42400.1,
6 42400.2, 42400.3, 42400.3.5, or 42400.4 for the same offense.
7 When a district refers a violation to a prosecuting agency, the filing
8 of a criminal complaint is grounds requiring the dismissal of any
9 civil action brought pursuant to this article for the same offense.

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

14 SEC. 2. Section 42402 of the Health and Safety Code is
15 amended to read:

16 42402. (a) Except as provided in Sections 42402.1, 42402.2,
17 42402.3, 42402.4, and 42402.6 a person who violates this part, an
18 order issued pursuant to Section 42316, or a rule, regulation,
19 permit, or order of a district, including a district hearing board, or

1 of the state board issued pursuant to Part 1 (commencing with
2 Section 39000) to Part 4 (commencing with Section 41500),
3 inclusive, is strictly liable for a civil penalty of not more than one
4 thousand dollars (\$1,000).

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

11 (2) (A) If a civil penalty in excess of one thousand dollars
12 (\$1,000) for each day in which a violation occurs is sought, there
13 is no liability under this subdivision if the person accused of the
14 violation alleges by affirmative defense and establishes that the
15 violation was caused by an act that was not the result of intentional
16 nor negligent conduct.

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

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

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

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

31 SEC. 3. Section 42402.1 of the Health and Safety Code is
32 amended to read:

33 42402.1. (a) Except as provided in Section 42402.6, a person
34 who negligently emits an air contaminant in violation of this part
35 or a rule, regulation, permit, or order of the state board or of a
36 district, including a district hearing board, pertaining to emission
37 regulations or limitations is liable for a civil penalty of not more
38 than twenty-five thousand dollars (\$25,000).

39 (b) A person who negligently emits an air contaminant in
40 violation of Section 41700 that causes great bodily injury, as

1 defined by Section 12022.7 of the Penal Code, to a person or that
2 causes the death of a person, is liable for a civil penalty of not
3 more than one hundred thousand dollars (\$100,000).

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

6 SEC. 4. Section 42402.2 of the Health and Safety Code is
7 amended to read:

8 42402.2. (a) Except as provided in Section 42402.6, a person
9 who emits an air contaminant in violation of a provision of this
10 part, or an order, rule, regulation, or permit of the state board or
11 of a district, including a district hearing board, pertaining to
12 emission regulations or limitations, and who knew of the emission
13 and failed to take corrective action, as defined in subdivision (b)
14 of Section 42400.2, within a reasonable period of time under the
15 circumstances, is liable for a civil penalty of not more than forty
16 thousand dollars (\$40,000).

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

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

27 SEC. 5. Section 42402.3 of the Health and Safety Code is
28 amended to read:

29 42402.3. (a) Except as provided in Section 42402.6, a person
30 who willfully and intentionally emits an air contaminant in
31 violation of this part or a rule, regulation, permit, or order of the
32 state board, or of a district, including a district hearing board,
33 pertaining to emission regulations or limitations, is liable for a
34 civil penalty of not more than seventy-five thousand dollars
35 (\$75,000).

36 (b) A person who willfully and intentionally, or with reckless
37 disregard for the risk of great bodily injury, as defined by Section
38 12022.7 of the Penal Code, to, or death of, a person, emits an air
39 contaminant in violation of Section 41700 that results in an
40 unreasonable risk of great bodily injury to, or death of, a person,

1 is liable for a civil penalty of not more than one hundred
2 twenty-five thousand dollars (\$125,000). If the violator is a
3 corporation, the maximum penalty may be up to five hundred
4 thousand dollars (\$500,000).

5 (c) A person who willfully and intentionally, or with reckless
6 disregard for the risk of great bodily injury, as defined by Section
7 12022.7 of the Penal Code, to, or death of, a person, emits an air
8 contaminant in violation of Section 41700 that causes great bodily
9 injury, as defined by Section 12022.7 of the Penal Code, to a person
10 or that causes the death of a person, is liable for a civil penalty of
11 not more than two hundred fifty thousand dollars (\$250,000). If
12 the violator is a corporation, the maximum penalty may be up to
13 one million dollars (\$1,000,000).

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

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

18 ~~42402.6. (a) If a person violates Section 41700, the violation~~
19 ~~results from a discharge from a Title V source, and the discharge~~
20 ~~contains or includes one or more toxic air contaminants, as~~
21 ~~identified in Section 39657, the person is liable for a civil penalty~~
22 ~~of not more than one hundred thousand dollars (\$100,000). This~~
23 ~~subdivision does not apply to air contaminant releases that are only~~
24 ~~nuisance odors.~~

25 *42402.6. (a) (1) A person is liable for a civil penalty of not*
26 *more than one hundred thousand dollars (\$100,000) if the person*
27 *violates Section 41700 and all of the following occur:*

28 *(A) The discharge is from a Title V source.*

29 *(B) The discharge results in a severe disruption to the*
30 *community, including, but not limited to, residential displacement,*
31 *shelter in place, evacuation, or destruction of property.*

32 *(C) The discharge contains or includes one or more toxic air*
33 *contaminants, as identified in Section 39657.*

34 *(D) One hundred or more people are exposed to the discharge.*

35 *(2) This subdivision does not apply to air contaminant releases*
36 *that are only nuisance odors.*

37 (b) Except as provided in subdivision (b) of Section 42402.2 or
38 subdivision (b) or (c) of Section 42402.3, a civil penalty described
39 in subdivision (a) shall apply on the initial date of a violation.

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

5 (d) *The civil penalty described in paragraph (1) of subdivision*
6 *(a) shall not apply if the violation is caused by unforeseen and*
7 *unforeseeable criminal acts, acts of war, acts of terrorism, or civil*
8 *unrest.*

9 (e) *Moneys collected pursuant to this section shall be expended*
10 *in support of air quality programs, including, but not limited to,*
11 *programs to research or mitigate the effects of air pollution.*

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

14 42403. (a) The civil penalties prescribed in Sections 39674,
15 42401, 42402, 42402.1, 42402.2, 42402.3, and 42402.6 shall be
16 assessed and recovered in a civil action brought in the name of the
17 people of the State of California by the Attorney General, by a
18 district attorney, or by the attorney for the district in which the
19 violation occurs in a court of competent jurisdiction.

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

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