

AMENDED IN SENATE SEPTEMBER 9, 1999

AMENDED IN SENATE JUNE 14, 1999

AMENDED IN ASSEMBLY APRIL 27, 1999

AMENDED IN ASSEMBLY APRIL 15, 1999

AMENDED IN ASSEMBLY MARCH 9, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 72

**Introduced by Assembly Member ~~Hertzberg~~ Members
Florez and Ashburn**

**(Coauthors: Assembly Members ~~Alquist, Honda, Knox,
Thomson, and Washington)~~**

(Coauthor: Senator Peace)

(Principal coauthors: Senators Costa and Poochigian)

December 7, 1998

~~An act to amend Section 399.5 of the Penal Code, relating to dog bites. An act relating to highways.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 72, as amended, ~~Hertzberg~~ Florez. ~~Dog bites: penalties~~ State Highway Route 46: emergency improvements.

Existing law requires the Department of Transportation to improve and maintain the state highways.

This bill would require the Director of Transportation, on or before January 15, 2000, to submit a report to the Legislature identifying emergency improvements involving either negligible or no expansion of highway capacity, that

may be constructed prior to specified scheduled improvements, with the intent to prevent or mitigate an emergency situation on a specified portion of State Highway Route 46.

The bill would provide that an emergency improvement identified pursuant to the bill may not result in the delay of, or have an adverse impact on, projects that are scheduled in the state transportation improvement program or a regional transportation improvement program outside the jurisdiction of the Kern County Regional Transportation Agency or in the State Highway Operations Pavement Protection Program. The provisions of the bill would be repealed on June 1, 2001.

~~Existing law provides, except as specified, that when any person owns or has custody or control of a dog trained to fight, attack, or kill, and, if as a result of that person's failure to exercise ordinary care, the dog bites a human being on 2 separate occasions, or on one occasion causing substantial physical injury, that person is guilty of a misdemeanor.~~

~~This bill would provide that the offense is punishable as a felony or a misdemeanor. This bill would impose a state-mandated local program by increasing local prosecution costs.~~

~~This bill would also provide that the above-described provisions of law do not apply to a veterinarian, or on-duty animal control officer while in the performance of his or her prescribed duties, or a peace officer, as defined, if he or she is assigned to a canine unit.~~

~~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~~-no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 399.5 of the Penal Code is
2



1 SECTION 1. (a) Notwithstanding Section 7550.5 of
 2 the Government Code, on or before January 15, 2000, the
 3 Director of Transportation shall submit a report to the
 4 Legislature identifying emergency improvements,
 5 involving either negligible or no expansion of highway
 6 capacity, including, but not limited to, passing lanes, that
 7 may be constructed prior to scheduled improvements
 8 included in the state transportation improvement
 9 program or a regional transportation improvement
 10 program, with the intent to prevent or mitigate an
 11 emergency situation on that portion of State Highway
 12 Route 46 in Kern County, west of State Highway Route
 13 99.

14 (b) The report shall also include the estimated dates
 15 by which the improvements may be commenced and
 16 completed.

17 (c) An emergency improvement identified pursuant
 18 to subdivision (a) shall not result in the delay of, or have
 19 an adverse impact on, projects that are scheduled in the
 20 state transportation improvement program or a regional
 21 improvement program outside of the jurisdiction of the
 22 Kern County Regional Transportation Agency or in the
 23 State Highway Operations Pavement Protection
 24 Program.

25 (d) This section shall remain in effect only until June
 26 1, 2001, and as of that date is repealed.

27 amended to read:

28 ~~399.5. (a) Any person owning or having custody or~~
 29 ~~control of a dog trained to fight, attack, or kill is guilty of~~
 30 ~~a felony or misdemeanor, punishable by imprisonment in~~
 31 ~~the state prison for two, three, or four years, or in a county~~
 32 ~~jail not to exceed one year, or by a fine not exceeding ten~~
 33 ~~thousand dollars (\$10,000), or by both the fine and~~
 34 ~~imprisonment, if, as a result of that person's failure to~~
 35 ~~exercise ordinary care, the dog bites a human being, on~~
 36 ~~two separate occasions or on one occasion causing~~
 37 ~~substantial physical injury. No person shall be criminally~~
 38 ~~liable under this section, however, unless he or she knew~~
 39 ~~or reasonably should have known of the vicious or~~
 40 ~~dangerous nature of the dog, or if the victim failed to take~~



1 all the precautions that a reasonable person would
2 ordinarily take in the same situation.

3 (b) Following the conviction of an individual for a
4 violation of this section, the court shall hold a hearing to
5 determine whether conditions of the treatment or
6 confinement of the dog or other circumstances existing
7 at the time of the bite or bites have changed so as to
8 remove the danger to other persons presented by the
9 animal. The court, after the hearing, may make any order
10 it deems appropriate to prevent the recurrence of such
11 an incident, including, but not limited to, the removal of
12 the animal from the area or its destruction if necessary.

13 (c) Nothing in this section shall authorize the bringing
14 of an action pursuant to subdivision (a) based on a bite or
15 bites inflicted upon a trespasser, upon a person who has
16 provoked the dog or contributed to his or her own
17 injuries, or by a dog used in military or police work if the
18 bite or bites occurred while the dog was actually
19 performing in that capacity. As used in this subdivision,
20 “provocation” includes, but is not limited to, situations
21 where a dog held on a leash by its owner or custodian
22 reacts in a protective manner to a person or persons who
23 approach the owner or custodian in a threatening
24 manner.

25 (d) Nothing in this section shall be construed to affect
26 the liability of the owner of a dog under Section 399 or any
27 other provision of law.

28 (e) This section shall not apply to a veterinarian or an
29 on-duty animal control officer while in the performance
30 of his or her prescribed duties, or to a peace officer as
31 defined in Chapter 4.5 (commencing with Section 830) of
32 Title 3 of Part 2, if he or she is assigned to a canine unit.

33 SEC. 2. No reimbursement is required by this act
34 pursuant to Section 6 of Article XIII B of the California
35 Constitution because the only costs that may be incurred
36 by a local agency or school district will be incurred
37 because this act creates a new crime or infraction,
38 eliminates a crime or infraction, or changes the penalty
39 for a crime or infraction, within the meaning of Section
40 17556 of the Government Code, or changes the definition



~~1 of a crime within the meaning of Section 6 of Article
2 XIII B of the California Constitution.~~

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