

Assembly Bill No. 1423

Passed the Assembly September 10, 2009

Chief Clerk of the Assembly

Passed the Senate September 8, 2009

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 1571, 1572, 1573, 1574, 2009, 3240.5, and 12000 of, and to repeal and add Sections 3241 and 3242 of, the Fish and Game Code, relating to fish and wildlife.

LEGISLATIVE COUNSEL'S DIGEST

AB 1423, Tom Berryhill. Commercial hunting clubs: Shared Habitat Alliance for Recreational Enhancement program: interference with hunting.

(1) Existing law establishes the Department of Fish and Game in the Natural Resources Agency. Existing law authorizes the department to regulate commercial hunting clubs. Existing law requires a person in possession or control of property who imposes or collects a fee for the privilege of taking birds or mammals on that property, or who imposes or collects a fee for any type of entry or use permit that includes the privilege of taking birds or mammals on that property, to obtain a commercial hunting club license from the department, as prescribed. Existing law requires that license to be issued to any person upon submission of a completed application on a form approved by the Fish and Game Commission and the payment of a fee, as specified. Existing law exempts from those provisions any hunting club or program licensed under other provisions of the Fish and Game Code and any person who receives less than \$50 per entrant to the club and an annual total of fees that is less than \$500.

This bill would recast those provisions to establish a number of exemptions from the requirement to obtain a commercial hunting club license, including an exemption for property that is used in conjunction with the Shared Habitat Alliance for Recreational Enhancement (SHARE) program. The bill would require an application for a commercial hunting club license to be on a form furnished by the department. The bill would require the application to contain prescribed information. The bill would authorize the department to issue a license to any person upon submission of a completed application and payment of a fee, in accordance with a fee schedule based on the number of properties used by the club.

(2) Existing law requires the Department of Fish and Game to establish the SHARE program to encourage private landowners to voluntarily make their land available to the public for wildlife-dependent recreational activities, as defined. Existing law establishes the SHARE Account in the Fish and Game Preservation Fund to be used for the program.

This bill, among other changes, would require the department to adopt regulations for the management and control of wildlife-dependent recreational activities on land that is subject to the program, to report to the Fish and Game Commission annually on the status of the program, and to maintain data on the types of wildlife-dependent recreational activities preferred by users of the program. The department would be authorized to establish and impose user fees, use existing hunting and fishing license stamp or tag fees from the Fish and Game Preservation Fund, or apply for grants, federal funds, or other contributions from other sources. Money generated pursuant to this authorization, except as otherwise provided, would be deposited into the SHARE Account and would, upon appropriation by the Legislature, be available for expenditure by the department to fund the program.

(3) Existing law prohibits a person from willfully interfering with the participation of any individual in the lawful activity of shooting, hunting, fishing, falconry, or trapping at the location where that activity is taking place.

This bill would include in that list of actions hunting dog field trials and hunting dog training. The bill would authorize a violation of the prohibition above to be enforced as either an infraction or a misdemeanor, and would make a 2nd violation within 2 years of a prior violation punishable as a misdemeanor. By creating a new crime, this bill would impose a state-mandated local program.

(4) 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.

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

SECTION 1. Section 1571 of the Fish and Game Code is amended to read:

1571. For purposes of this article, the following definitions apply:

(a) “Agreement” includes, but is not limited to, a contract, license, easement, memorandum of understanding, or lease.

(b) “Partnership” means a collaborative effort involving financial or in-kind contributions by nongovernmental organizations, the department, and other interested parties working in concert to achieve the goals of the program.

(c) “Private landowner” means an owner of any possessory interest in real property that is suitable for use for wildlife-dependent recreational activities.

(d) “Program” means the SHARE program established under this article.

(e) “Wildlife-dependent recreational activities” means hunting, fishing, wildlife observation, conservation education, and related outdoor activities through means that are consistent with applicable law.

SEC. 2. Section 1572 of the Fish and Game Code is amended to read:

1572. (a) There is hereby established the Shared Habitat Alliance for Recreational Enhancement (SHARE) program. The department, in partnership with nonprofit conservation groups and other interested nongovernmental organizations that seek to increase and enhance wildlife-dependent recreational opportunities, shall work cooperatively to implement the program in order to facilitate public access to private lands in a voluntary and incentive-based manner.

(b) The department shall adopt regulations for the management and control of wildlife-dependent recreational activities on land that is subject to the program. The department shall report to the commission annually on the status of the program and maintain data on the types of wildlife-dependent recreational activities preferred by landowners and participants in the program.

(c) (1) The SHARE Account is hereby established in the Fish and Game Preservation Fund. Money deposited in the account

from the sources cited in this subdivision shall only be used for the purposes set forth in this article.

(2) Consistent with existing law, the department may establish and impose user fees, use existing hunting and fishing license stamp or tag fees from the Fish and Game Preservation Fund, or apply for grants, federal funds, or other contributions from other sources to fund the program. General Fund moneys shall not be used for the program.

(3) All funding generated pursuant to paragraph (2) from grants, federal funds, or other sources, where the person or entity providing the funds specifically designates in writing prior to the time of transmittal of the funds to the department that the funds are intended solely for the purposes of the program, and any user fees assessed by the department specifically for the program, shall be deposited in the SHARE Account in the Fish and Game Preservation Fund. The moneys in the account, upon appropriation by the Legislature, shall be available for expenditure by the department solely for programs and projects to benefit the program and for the direct costs and administrative overhead incurred solely in carrying out the department's program activities. Funds may also be used for wildlife conservation purposes on lands subject to an agreement under the program. Administrative overhead shall be limited to the reasonable costs associated with the direct administration of the program. The department shall maintain internal accountability necessary to ensure that all restrictions on the expenditure of these funds are met.

(d) The department may make grants to, or enter into agreements with, nonprofit organizations, governmental entities, or any other entities for the use of the funds described in subdivision (c) when the department finds that the agreements are necessary for carrying out the purposes of this article.

(e) The program is not subject to Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code, or Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code.

(f) The department may reimburse a nonprofit organization, a private landowner, or other entity for its costs related to the implementation of the program.

SEC. 3. Section 1573 of the Fish and Game Code is amended to read:

1573. (a) (1) The department may enter into a voluntary agreement with a private landowner, including an agreement under which the private landowner is compensated by the department for public use of the land, to provide public access for wildlife-dependent recreational activities. Any financial compensation offered to a private landowner pursuant to this paragraph shall not exceed thirty dollars (\$30) per acre, or fifty dollars (\$50) per public participant per day, and shall be commensurate with the quality of the wildlife-dependent recreational opportunities that are to be provided on the property.

(2) The department also may enter into a voluntary agreement with a private landowner to facilitate access to adjacent public lands or waters, upon approval of the governmental entity that holds title to the land. This article does not authorize a private landowner to exclude persons not participating in the SHARE program from using public land for wildlife-dependent recreational activities.

(3) The department may enter into a voluntary agreement with a governmental entity to provide wildlife-dependent recreational opportunities to the public on public lands or waters.

(b) Notwithstanding any other provision of law, the department shall keep confidential and not release to the public any personal identifying information received from a private landowner participating in the program, unless the director determines that release of that information is necessary for the administration of the program.

(c) Either the department or a private landowner may, in writing, modify or cancel an agreement executed under the program, at any time. Upon cancellation or modification of the agreement by either party, the other party shall be reimbursed for any lost revenues or expenses incurred pursuant to the terms of the original agreement.

(d) In addition to any other protection or remedy under law, the protections and remedies afforded to an owner of an estate or any other interest in real property under Section 846 of the Civil Code shall apply to a private landowner, nonprofit organization, or other entity participating in the program.

(e) The department shall require every person who wants to use land that is subject to an agreement pursuant to subdivision (a), prior to using that land, to sign a waiver that releases the

department or any private group, nonprofit organization, governmental entity, or other organization involved in administering the program, and the private landowner, from liability for any injury or damage that arises from, or is connected with that person's use of the land. Upon request, the department shall provide a copy of the waiver to any of the parties to the waiver.

(f) An agreement executed pursuant to the program shall not authorize the take of nongame species by public participants in the program. An agreement may not authorize a private landowner to transfer a hunting or fishing license, stamp, or tag to another person, unless otherwise authorized by law.

(g) In determining which lands may be included in the program, the department shall give priority to those lands with the greatest wildlife habitat value. To the extent possible, the department shall also include in the program private lands that permit multiple wildlife-dependent recreational activities, in order to take into consideration the participation of the general public in the program.

SEC. 4. Section 1574 of the Fish and Game Code is amended to read:

1574. (a) The department may revoke, for up to three years, the public access privilege granted pursuant to this article, of any person who violates any provision of this code or regulation adopted pursuant to this code while on any property that is subject to an agreement under the program.

(b) The department shall enforce all applicable regulations established by the commission or the department on property that is subject to an agreement executed under the program.

SEC. 5. Section 2009 of the Fish and Game Code is amended to read:

2009. (a) A person shall not willfully interfere with the participation of any individual in the lawful activity of shooting, hunting, fishing, falconry, hunting dog field trials, hunting dog training, or trapping at the location where that activity is taking place.

(b) A violation of this section is punishable pursuant to subdivision (b) of Section 12000.

(c) Any person convicted for a violation of this section that occurred within two years of a prior violation of this section which resulted in a conviction is guilty of a misdemeanor, punishable by

imprisonment in the county jail for a period of not more than one year, by a fine of not less than one hundred dollars (\$100) and not to exceed one thousand dollars (\$1,000), or by both imprisonment and fine.

(d) This section does not apply to the actions of any peace officer or personnel of the department in the performance of their official duties. This section does not obstruct the rights and normal activities of landowners or tenants, including, but not limited to, farming, ranching, and limiting unlawful trespass.

(e) In order to be liable for a violation of this section, the person is required to have had the specific intent to interfere with the participation of an individual who was engaged in lawful shooting, hunting, fishing, falconry, hunting dog field trials, hunting dog training, or trapping.

(f) For purposes of this section, “interfere with” means any action which physically impedes, hinders, or obstructs the lawful pursuit of any of the above-mentioned activities, including, but not limited to, all of the following:

(1) Actions taken for the purpose of frightening away animals from the location where the lawful activity is taking place.

(2) Placing or maintaining signs, gates, locks, or barricades that prohibit or deny access to lands without authorization from the landowner or lessee or an authorized designee of the landowner or lessee.

(3) Placing food on lands not belonging to the person placing the food for purposes of eliminating the lawful ability to hunt due to the presence of bait, as defined in this code or regulations adopted pursuant to this code.

SEC. 6. Section 3240.5 of the Fish and Game Code is amended to read:

3240.5. (a) As used in this article, “property” means a number of contiguous legal parcels held by an owner or a combination of owners and held out for a common purpose.

(b) A person, including, but not limited to, a renter or lessee, in possession or control of property on or with respect to which a fee for the privilege of taking birds or mammals is imposed or collected, or on or with respect to which a fee for any type of entry or use permit that includes the privilege of taking birds or mammals on the property is imposed or collected, is maintaining a commercial hunting club if birds or mammals are taken on the

property, and shall procure a “commercial hunting club license” before birds or mammals are taken.

(c) This article does not apply if the property meets any of the following conditions:

(1) The landowner, or the renter or lessee, of the property receives less than one hundred dollars (\$100) per entrant and receives less than a total of one thousand dollars (\$1,000) between July 1 and the following June 30 for permission, entry access, or use fees that include the privilege of hunting on the property in his or her possession or control. The department may adjust the threshold amounts established in this paragraph pursuant to Section 713.

(2) The property is used by a hunting club or program licensed under regulations adopted pursuant to this code.

(3) The property is used for an officially sanctioned field trial event pursuant to regulations adopted pursuant to this code.

(4) The property is used in conjunction with the Shared Habitat Alliance for Recreational Enhancement (SHARE) program under Article 3 (commencing with Section 1570) of Chapter 5 of Division 2.

(5) A domesticated game bird hunting club licensed under Article 3 (commencing with Section 3270) operates on the property.

(6) A domesticated migratory game bird shooting area licensed under Article 4 (commencing with Section 3300) operates on the property.

(7) The property is used in conjunction with the private wildlife habitat enhancement and management program under Article 5 (commencing with Section 3400).

(8) The property is subject to a recorded state, federal, or nonprofit wildlife conservation or agricultural easement or any property enrolled in a habitat protection or enhancement program under this code, including, but not limited to, Article 7 (commencing with Section 3460).

(d) This article does not apply to a landowner who rents or leases his or her property to the commercial hunting club and is not involved in the operation of the club, if the club is licensed in accordance with this article.

SEC. 7. Section 3241 of the Fish and Game Code is repealed.

SEC. 8. Section 3241 is added to the Fish and Game Code, to read:

3241. (a) An application for a commercial hunting club license shall be submitted on a form furnished by the department. The application, which shall set forth all of the exemptions and conditions established in Section 3240.5, shall require the applicant to include all of the following information:

- (1) The name of the club and the ownership.
- (2) The business telephone number and mailing address of the club.
- (3) The number of properties used by the club and the physical location of each property.
- (4) The total acreage of the club property.
- (5) A list of all species of game hunted on the club property.
- (6) Information as to whether the club owner owns any of the properties used by the club.
- (7) The name and address of each property owner, if the property owner is substantially involved in the operation of the club, but does not own the club.
- (8) The signature and title of the applicant.
- (9) Any other information the department may require.

(b) The department shall allow a commercial hunting club that leases or rents more than one property for hunting purposes to submit a single application listing each of the properties for which the club is seeking a license, if all of the information required for each property is submitted in a format approved by the department.

SEC. 9. Section 3242 of the Fish and Game Code is repealed.

SEC. 10. Section 3242 is added to the Fish and Game Code, to read:

3242. (a) The department may issue a commercial hunting club license to any person upon submission of a completed application and payment of the required fee, according to the number of properties used by the club, as follows:

- (1) The fee for one property shall be two hundred dollars (\$200).
- (2) The fee for two to five properties shall be five hundred dollars (\$500).
- (3) The fee for six to 10 properties shall be one thousand dollars (\$1,000).
- (4) The fee for 11 or more properties shall be two thousand dollars (\$2,000).

(b) The fees specified in this section are applicable to the 2010 license year, and shall be adjusted annually thereafter pursuant to Section 713.

SEC. 11. Section 12000 of the Fish and Game Code is amended to read:

12000. (a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor.

(b) Notwithstanding subdivision (a), any person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than one hundred dollars (\$100) and not to exceed one thousand dollars (\$1,000), or of a misdemeanor:

(1) Section 2009.

(2) Subdivision (a) of Section 6596.

(3) Section 7149.8.

(4) Section 7360.

(5) Sections 1.14, 1.17, 1.18, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations.

(6) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations.

(7) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations.

(8) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations.

(9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations.

(10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations.

(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations.

SEC. 12. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2009

Governor