

Introduced by Senator DoddFebruary 14, 2018

An act to amend Sections 42400.7, 42402, 42403, and 42405.5 of, and to add Section 42402.7 to, the Health and Safety Code, relating to nonvehicular air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 1144, as introduced, Dodd. Nonvehicular air pollution: penalties and fines.

(1) Existing law generally designates air pollution control and air quality management districts with the primary responsibility for the control of air pollution from all sources other than vehicular sources. Existing law establishes maximum criminal and civil penalties for any person, as defined, for violations of air pollution laws from nonvehicular sources. Existing law generally establishes the maximum criminal and civil penalties at \$5,000, annually adjusted based on the California Consumer Price Index.

This bill would establish additional civil penalties and fines on specified petroleum refineries, petrochemical plants, and fossil-fuel-burning, electricity-generating power plants that emit an air contaminant in violation of specified rules, regulations, emissions limitations, permits, or orders of a district or district hearing board and when the violation presents a serious threat to the health or welfare of the public. The bill also would make various conforming changes. By adding to the duties of air districts, this bill would impose a state-mandated local program.

(2) 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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
4 Section 39674, 42401, 42402, 42402.1, 42402.2, 42402.3, ~~or~~
5 ~~42402.4~~ 42402.4, *or* 42402.7 precludes prosecution under Section
6 42400, 42400.1, 42400.2, 42400.3, 42400.3.5, or 42400.4 for the
7 same offense. When a district refers a violation to a prosecuting
8 agency, the filing of a criminal complaint is grounds requiring the
9 dismissal of any civil action brought pursuant to this article for
10 the same offense.

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

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

17 42402. (a) Except as provided in Sections 42402.1, 42402.2,
18 42402.3, ~~and~~ 42402.4, *and* 42402.7, any person who violates this
19 part, any order issued pursuant to Section 42316, or any rule,
20 regulation, permit, or order of a district, including a district hearing
21 board, or of the state board issued pursuant to Part 1 (commencing
22 with Section 39000) to Part 4 (commencing with Section 41500),
23 inclusive, is strictly liable for a civil penalty of not more than five
24 thousand dollars (\$5,000).

25 (b) (1) Any person who violates any provision of this part, any
26 order issued pursuant to Section 42316, or any rule, regulation,
27 permit or order of a district, including a district hearing board, or
28 of the state board issued pursuant to Part 1 (commencing with
29 Section 39000) to Part 4 (commencing with Section 41500),
30 inclusive, is strictly liable for a civil penalty of not more than ten
31 thousand dollars (\$10,000).

1 (2) (A) If a civil penalty in excess of five thousand dollars
2 (\$5,000) for each day in which a violation occurs is sought, there
3 is no liability under this subdivision if the person accused of the
4 violation alleges by affirmative defense and establishes that the
5 violation was caused by an act that was not the result of intentional
6 conduct or negligent conduct.

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

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

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

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

22 SEC. 3. Section 42402.7 is added to the Health and Safety
23 Code, to read:

24 42402.7. (a) For purposes of this section, the following terms
25 have the following meanings:

26 (1) "Actual injury" means any physical injury that, in the opinion
27 of a physician, requires medical treatment involving more than a
28 physical examination.

29 (2) "Corrective action" has the same meaning as in Section
30 42400.2.

31 (3) "Person" means a Title V source that is a petroleum refinery,
32 petrochemical plant, or fossil-fuel-burning, electricity-generating
33 power plant.

34 (4) "Serious threat to the health or welfare of the public" means
35 either of the following:

36 (A) A violation involving a release of an air contaminant that
37 causes actual injury to one or more members of public.

38 (B) A violation of Section 41700 that affects 25 or more people
39 on any day.

1 (b) (1) A person shall be strictly liable for a civil penalty of not
2 more than thirty thousand dollars (\$30,000) per day if that person
3 emits an air contaminant in violation of this part or any rule,
4 regulation, emissions limitation, permit, or order of a district or
5 district hearing board and the violation presents a serious threat to
6 the health or welfare of the public. If that person has had two or
7 more prior serious violations within the 36 months prior to the
8 date of the violation, the civil penalty shall not be more than one
9 hundred thousand dollars (\$100,000) per day.

10 (2) The civil penalty assessed pursuant to this subdivision shall
11 not apply if the violation is caused by unforeseen and unforeseeable
12 criminal acts, acts of war, acts of terrorism, or civil unrest.

13 (c) A person shall be assessed a fine of not more than
14 seventy-five thousand dollars (\$75,000) per day if that person
15 negligently emits an air contaminant in violation of this part or
16 any rule, regulation, emissions limitation, permit, or order of a
17 district or district hearing board and the violation presents a serious
18 threat to the health or welfare of the public. If that person has had
19 two or more prior serious violations within the 36 months prior to
20 the date of the violation, the fine shall not be more than two
21 hundred fifty thousand dollars (\$250,000) per day.

22 (d) A person shall be liable for a civil penalty of not more than
23 one hundred twenty-five thousand dollars (\$125,000) per day if
24 that person knew of the emission of the air contaminant and failed
25 to take corrective action within a reasonable period of time under
26 the circumstances and the violation presents a serious threat to the
27 health or welfare of the public. If that person has had two or more
28 prior serious violations within the 36 months prior to the date of
29 the violation, the civil penalty shall not be more than three hundred
30 seventy-five thousand dollars (\$375,000) per day.

31 (e) A person shall be liable for a civil penalty of not more than
32 two hundred fifty thousand dollars (\$250,000) per day if that person
33 emits an air contaminant that is willful and intentional and the
34 violation presents a serious threat to the health or welfare of the
35 public. If that person has had two or more prior serious violations
36 within the 36 months prior to the date of the violation, the fine
37 shall not be more than five hundred thousand dollars (\$500,000)
38 per day.

39 (f) Each day during any portion of which a violation occurs is
40 a separate offense.

1 (g) If a higher penalty or fine described in this part may be
2 applied to a violation described in this section, that higher penalty
3 or fine shall be used as the maximum.

4 (h) The provisions of Section 42403 shall apply to this section.

5 SEC. 4. Section 42403 of the Health and Safety Code is
6 amended to read:

7 42403. (a) The civil penalties prescribed in Sections 39674,
8 42402.7, 42401, 42402, 42402.1, 42402.2, and 42402.3 shall be
9 assessed and recovered in a civil action brought in the name of the
10 people of the State of California by the Attorney General, by any
11 district attorney, or by the attorney for any district in which the
12 violation occurs in any court of competent jurisdiction.

13 (b) In determining the amount assessed, the court, or in reaching
14 any settlement, the district, shall take into consideration all relevant
15 circumstances, including, but not limited to, the following:

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

17 (2) The nature and persistence of the violation.

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

19 (4) The frequency of past violations.

20 (5) The record of maintenance.

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

22 (7) Any action taken by the defendant, including the nature,
23 extent, and time of response of the cleanup and construction
24 undertaken, to mitigate the violation.

25 (8) The financial burden to the defendant.

26 SEC. 5. Section 42405.5 of the Health and Safety Code is
27 amended to read:

28 42405.5. (a) If any state or local government agency provides
29 assistance in the investigation, data collection, or monitoring,
30 preparation, or prosecution of an action to recover civil penalties
31 pursuant to Section 42401, 42402, 42402.1, ~~or~~ 42402.2, 42402.7,
32 and that assistance is provided in coordination with the state board
33 or a district prosecuting the action, that agency shall be reimbursed
34 out of the proceeds of the penalty collected for its costs and
35 expenses incurred in providing the assistance.

36 (b) If the penalty collected is insufficient to fully reimburse the
37 state board or district for the costs and expenses incurred in
38 preparing and prosecuting the case and another agency or agencies
39 for the costs and expenses incurred in assisting in the case, the
40 amount collected shall be prorated among the state board or district

1 and the assisting agency or agencies, on the basis of costs and
2 expenses incurred by each.

3 (c) This section does not apply where there is an express
4 agreement between the state board or district and another agency
5 or agencies regarding reimbursement for assistance services and
6 expenses.

7 SEC. 6. If the Commission on State Mandates determines that
8 this act contains costs mandated by the state, reimbursement to
9 local agencies and school districts for those costs shall be made
10 pursuant to Part 7 (commencing with Section 17500) of Division
11 4 of Title 2 of the Government Code.