

california legislature—2013–14 regular session
ASSEMBLY BILL No. 339

Introduced by Assembly Member Dickinson
February 13, 2013

An act to amend Section 597.4 of the Penal Code, relating to malicious mischief.

legislative counsel's digest

AB 339, as introduced, Dickinson. Malicious mischief: live animals.

Existing law makes it a crime to willfully sell or give away as part of a commercial transaction a live animal on any street, highway, public right-of-way, parking lot, carnival, or boardwalk. Existing law also makes it a crime to willfully display or offer for sale, or display or offer to give away as part of a commercial transaction, a live animal, if the act of selling or giving away the live animal is to occur on any street, highway, public right-of-way, parking lot, carnival, or boardwalk. A person who violates these provisions for the first time is generally guilty of an infraction punishable by a fine not to exceed \$250. A person who violates these provisions a 2nd or subsequent time, or who violates these provisions the first time and by that violation causes or permits an animal to suffer or be injured or to be placed in a situation in which the animal's life or health may be endangered, is guilty of a misdemeanor punishable by a fine not to exceed \$1,000 per violation.

Existing law regulates vendors and operators of certain swap meets. A swap meet is defined for purposes of these provisions to include a flea market or open-air market and to mean an event at which 2 or more persons offer merchandise for sale or exchange and (1) imposes a fee for the privilege of offering or displaying merchandise for sale or exchange, (2) charges a fee to prospective buyers for parking or

admission, or (3) is an event that is held more than 6 times in a 12-month period. A violation of these provisions is a misdemeanor, except as specified.

This bill would make it a crime to willfully sell or give away as part of a commercial transaction a live animal, at a swap meet or to willfully display or offer for sale, or display or offer to give away as part of a commercial transaction, a live animal, if the act of selling or giving away the live animal is to occur at a swap meet. By creating new crimes, the bill would impose a state-mandated local program.

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.

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

1 SECTION 1. Section 597.4 of the Penal Code is amended to line 2 read:

3 597.4. (a) It shall be unlawful for any person to willfully do line 4 either of the following:

5 (1) Sell or give away as part of a commercial transaction a live 6 animal on any street,
highway, public right-of-way, parking lot, 7 carnival, or boardwalk, *or at a swap meet as defined
in Section line 8 21661 of the Business and Professions Code.*

9 (2) Display or offer for sale, or display or offer to give away as 10 part of a commercial
transaction, a live animal, if the act of selling 11 or giving away the live animal is to occur on
any street, highway, 12 public right-of-way, parking lot, carnival, or boardwalk, *or at a line 13
swap meet as defined in Section 21661 of the Business and line 14 Professions Code.*

15 (b) (1) A person who violates this section for the first time shall 16 be guilty of an
infraction punishable by a fine not to exceed two 17 hundred fifty dollars (\$250).

18 (2) A person who violates this section for the first time and by 19 that violation either
causes or permits any animal to suffer or be 20 injured, or causes or permits any animal to be
placed in a situation

1 in which its life or health may be endangered, shall be guilty of a 2 misdemeanor.
3 (3) A person who violates this section for a second or subsequent 4 time shall be guilty of
a misdemeanor.

5 (c) A person who is guilty of a misdemeanor violation of this 6 section shall be punishable
by a fine not to exceed one thousand 7 dollars (\$1,000) per violation. The court shall weigh the
gravity 8 of the violation in setting the fine.

9 (d) A notice describing the charge and the penalty for a violation 10 of this section may be
issued by any peace officer, animal control 11 officer, as defined in Section 830.9, or humane
officer qualified 12 pursuant to Section 14502 or 14503 of the Corporations Code.

13 (e) This section shall not apply to the following:

14 (1) Events held by 4-H Clubs, Junior Farmers Clubs, or Future 15 Farmers Clubs.

16 (2) The California Exposition and State Fair, district agricultural 17 association fairs, or
county fairs.

18 (3) Stockyards with respect to which the Secretary of the United 19 States Department of
Agriculture has posted notice that the 20 stockyards are regulated by the federal Packers and
Stockyards 21 Act, 1921 (7 U.S.C. Sec. 181 et seq.).

22 (4) The sale of cattle on consignment at any public cattle sales 23 market, the sale of
sheep on consignment at any public sheep sales 24 market, the sale of swine on consignment at
any public swine sales 25 market, the sale of goats on consignment at any public goat sales
26 market, and the sale of equines on consignment at any public 27 equine sales market.

28 (5) Live animal markets regulated under Section 597.3.

29 (6) A public animal control agency or shelter, society for the 30 prevention of cruelty to
animals shelter, humane society shelter, 31 or rescue group regulated under Division 14
(commencing with 32 Section 30501) of the Food and Agricultural Code. For purposes 33 of
this section, "rescue group" is a not-for-profit entity whose 34 primary purpose is the placement
of dogs, cats, or other animals 35 that have been removed from a public animal control agency or
36 shelter, society for the prevention of cruelty to animals shelter, or 37 humane society
shelter, or that have been surrendered or 38 relinquished to the entity by the previous owner.

39 (7) The sale of fish or shellfish, live or dead, from a fishing 40 vessel or registered
aquaculture facility, at a pier or wharf, or at a

1 farmer's market by any licensed commercial fisherman or an owner 2 or employee of a registered aquaculture facility to the public for 3 human consumption.

4 (8) A cat show, dog show, or bird show, provided that all of the 5 following circumstances exist:

6 (A) The show is validly permitted by the city or county in which 7 the show is held.

8 (B) The show's sponsor or permittee ensures compliance with 9 all federal, state, and local animal welfare and animal control laws.

10 (C) The participant has written documentation of the payment 11 of a fee for the entry of his or her cat, dog, or bird in the show.

12 (D) The sale of a cat, dog, or bird occurs only on the premises 13 and within the confines of the show.

14 (E) The show is a competitive event where the cats, dogs, or 15 birds are exhibited and judged by an established standard or set of 16 ideals established for each breed or species.

17 (9) A pet store as defined in subdivision (i) of Section 122350 18 of the Health and Safety Code.

19 (f) Nothing in this section shall be construed to in any way limit 20 or affect the application or enforcement of any other law that 21 protects animals or the rights of consumers, including, but not 22 limited to, the Lockyer-Polanco-Farr Pet Protection Act contained 23 in Article 2 (commencing with Section 122125) of Chapter 5 of 24 Part 6 of Division 105 of the Health and Safety Code, or Sections 25 597 and 5971 of this code.

26 (g) Nothing in this section limits or authorizes any act or 27 omission that violates Section 597 or 5971, or any other local, state, 28 or federal law. The procedures set forth in this section shall not 29 apply to any civil violation of any other local, state, or federal law 30 that protects animals or the rights of consumers, or to a violation 31 of Section 597 or 5971, which is cited or prosecuted pursuant to 32 one or both of those sections, or to a violation of any other local, 33 state, or federal law that is cited or prosecuted pursuant to that law.

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

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