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SB-165 Production or cultivation of a controlled substance: civil penalties. (2015-2016)

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Senate Bill No. 165

CHAPTER 139

An act to amend Section 12025 of the Fish and Game Code, relating to controlled substances.

[Approved by Governor August 07, 2015. Filed with Secretary of State August 07, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

SB 165, Monning. Production or cultivation of a controlled substance: civil penalties.

Existing law imposes various civil penalties for violations of specified provisions of the Fish and Game Code in connection with the production or cultivation of a controlled substance. Existing law requires all civil penalties collected to be apportioned as provided, including 30% of the funds to be distributed to the investigating agency to be used to reimburse the cost of any investigation directly related to the violations described in these provisions.

Existing law authorizes the Department of Fish and Wildlife to impose those civil penalties administratively, subject to specified requirements relating to complaint and hearing procedures, among other things. Existing law authorizes the department to adopt regulations to implement these provisions and requires the administrative penalties collected to be apportioned in a specified manner.

This bill would impose various additional civil penalties, subject to these provisions, for violations of specified provisions of the Penal Code and the Public Resources Code, in connection with the production or cultivation of a controlled substance.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 12025 of the Fish and Game Code is amended to read:

12025. (a) In addition to any penalties imposed by any other law, a person found to have violated the code sections described in paragraphs (1) to (11), inclusive, in connection with the production or cultivation of a controlled substance on land under the management of the Department of Parks and Recreation, the Department of Fish and Wildlife, the Department of Forestry and Fire Protection, the State Lands Commission, a regional park district, the United States Forest Service, or the United States Bureau of Land Management, or within the respective ownership of a timberland production zone, as defined in Chapter 6.7 (commencing with Section 51100) of Part 1 of Division 1 of Title 5 of the Government Code, of more than 50,000 acres, or while trespassing on other public or private land in connection with the production or cultivation of a controlled substance, shall be liable for a civil penalty as follows:

(1) A person who violates Section 1602 in connection with the production or cultivation of a controlled substance is subject to a civil penalty of not more than ten thousand dollars (\$10,000) for each violation.

(2) A person who violates Section 5650 in connection with the production or cultivation of a controlled substance is subject to a civil penalty of not more than forty thousand dollars (\$40,000) for each violation.

(3) A person who violates Section 5652 in connection with the production or cultivation of a controlled substance is subject to a civil penalty of not more than forty thousand dollars (\$40,000) for each violation.

(4) A person who violates subdivision (a) of Section 374.3 of the Penal Code in connection with the production or cultivation of a controlled substance is subject to a civil penalty of not more than forty thousand dollars (\$40,000) for each violation.

(5) A person who violates paragraph (1) of subdivision (h) of Section 374.3 of the Penal Code in connection with the production or cultivation of a controlled substance is subject to a civil penalty of not more than forty thousand dollars (\$40,000) for each violation.

(6) A person who violates subdivision (b) of Section 374.8 of the Penal Code in connection with the production or cultivation of a controlled substance is subject to a civil penalty of not more than forty thousand dollars (\$40,000) for each violation.

(7) A person who violates Section 384a of the Penal Code in connection with the production or cultivation of a controlled substance is subject to a civil penalty of not more than ten thousand dollars (\$10,000) for each violation.

(8) A person who violates subdivision (a) of Section 4571 of the Public Resources Code in connection with the production or cultivation of a controlled substance is subject to a civil penalty of not more than ten thousand dollars (\$10,000) for each violation.

(9) A person who violates Section 4581 of the Public Resources Code in connection with the production or cultivation of a controlled substance is subject to a civil penalty of not more than ten thousand dollars (\$10,000) for each violation.

(10) A person who violates Section 2000 in connection with the production or cultivation of a controlled substance is subject to a civil penalty of not more than ten thousand dollars (\$10,000) for each violation.

(11) A person who violates Section 2002 in connection with the production or cultivation of a controlled substance is subject to a civil penalty of not more than ten thousand dollars (\$10,000) for each violation.

(b) (1) In addition to any penalties imposed by any other law, a person found to have violated the code sections described in this subdivision in connection with the production or cultivation of a controlled substance on land that the person owns, leases, or otherwise uses or occupies with the consent of the landowner shall be liable for a civil penalty as follows:

(A) A person who violates Section 1602 in connection with the production or cultivation of a controlled substance is subject to a civil penalty of not more than eight thousand dollars (\$8,000) for each violation.

(B) A person who violates Section 5650 in connection with the production or cultivation of a controlled substance is subject to a civil penalty of not more than twenty thousand dollars (\$20,000) for each violation.

(C) A person who violates Section 5652 in connection with the production or cultivation of a controlled substance is subject to a civil penalty of not more than twenty thousand dollars (\$20,000) for each violation.

(D) A person who violates subdivision (a) of Section 374.3 of the Penal Code in connection with the production or cultivation of a controlled substance is subject to a civil penalty of not more than twenty thousand dollars (\$20,000) for each violation.

(E) A person who violates paragraph (1) of subdivision (h) of Section 374.3 of the Penal Code in connection with the production or cultivation of a controlled substance is subject to a civil penalty of not more than twenty thousand dollars (\$20,000) for each violation.

(F) A person who violates subdivision (b) of Section 374.8 of the Penal Code in connection with the production or cultivation of a controlled substance is subject to a civil penalty of not more than twenty thousand dollars (\$20,000) for each violation.

(G) A person who violates Section 384a of the Penal Code in connection with the production or cultivation of a controlled substance is subject to a civil penalty of not more than ten thousand dollars (\$10,000) for each violation.

(H) A person who violates subdivision (a) of Section 4571 of the Public Resources Code in connection with the production or cultivation of a controlled substance is subject to a civil penalty of not more than eight thousand dollars (\$8,000) for each violation.

(I) A person who violates Section 4581 of the Public Resources Code in connection with the production or cultivation of a controlled substance is subject to a civil penalty of not more than eight thousand dollars (\$8,000) for each violation.

(J) A person who violates Section 2000 in connection with the production or cultivation of a controlled substance is subject to a civil penalty of not more than eight thousand dollars (\$8,000) for each violation.

(K) A person who violates Section 2002 in connection with the production or cultivation of a controlled substance is subject to a civil penalty of not more than eight thousand dollars (\$8,000) for each violation.

(2) Each day that a violation of a code section described in this subdivision occurs or continues to occur shall constitute a separate violation.

(c) The civil penalty imposed for each separate violation pursuant to this section is in addition to any other civil penalty imposed for another violation of this section, or any violation of any other law.

(d) All civil penalties imposed or collected by a court for a separate violation pursuant to this section shall not be considered to be fines or forfeitures, as described in Section 13003, and shall be apportioned in the following manner:

(1) Thirty percent shall be distributed to the county in which the violation was committed pursuant to Section 13003. The county board of supervisors shall first use any revenues from those penalties to reimburse the costs incurred by the district attorney or city attorney in investigating and prosecuting the violation.

(2) (A) Thirty percent shall be distributed to the investigating agency to be used to reimburse the cost of any investigation directly related to the violations described in this section.

(B) If the department receives reimbursement pursuant to this paragraph for activities funded pursuant to subdivision (f) of Section 4629.6 of the Public Resources Code, the reimbursement funds shall be deposited into the Timber Regulation and Forest Restoration Fund, created by Section 4629.3 of the Public Resources Code, if there is an unpaid balance for a loan authorized by subdivision (f) of Section 4629.6 of the Public Resources Code.

(3) Forty percent shall be deposited into the Timber Regulation and Forest Restoration Fund, created by Section 4629.3 of the Public Resources Code, and used for grants authorized pursuant to Section 4629.6 of the Public Resources Code that improve forest health by remediating former marijuana growing operations.

(e) Civil penalties authorized pursuant to this section may be imposed administratively by the department if all of the following occur:

(1) The chief deputy director or law enforcement division assistant chief in charge of marijuana-related enforcement issues a complaint to any person or entity on which an administrative civil penalty may be imposed pursuant to this section. The complaint shall allege the act or failure to act that constitutes a violation, any facts related to natural resources impacts, the provision of law authorizing the civil penalty to be imposed, and the proposed penalty amount.

(2) The complaint and order is served by personal notice or certified mail and informs the party served that the party may request a hearing not later than 20 days from the date of service. If a hearing is requested, it shall be scheduled before the director or his or her designee, which designee shall not be the chief deputy or assistant chief issuing the complaint and order. A request for a hearing shall contain a brief statement of the material facts the party claims support his or her contention that no administrative penalty should be imposed or that an administrative penalty of a lesser amount is warranted. A party served with a complaint pursuant to this subdivision waives his or her right to a hearing if a hearing is not requested within 20 days of service of the complaint, in which case the order imposing the administrative penalty shall become final.

(3) The director, or his or her designee, shall control the nature and order of hearing proceedings. Hearings shall be informal in nature, and need not be conducted according to the technical rules relating to evidence. The director or his or her designee shall issue a final order within 45 days of the close of the hearing. A copy of the final order shall be served by certified mail upon the party served with the complaint.

(4) A party may obtain review of the final order by filing a petition for a writ of mandate with the superior court within 30 days of the date of service of the final order. The administrative penalty shall be due and payable to the department within 60 days after the time to seek judicial review has expired, or, where the party did not request a hearing of the order, within 20 days after the order imposing an administrative penalty becomes final.

(5) The department may adopt regulations to implement this subdivision.

(f) All administrative penalties imposed or collected by the department for a separate violation pursuant to this section shall not be considered to be fines or forfeitures, as described in Section 13003, and shall be deposited into the Timber Regulation and Forest Restoration Fund, created by Section 4629.3 of the Public Resources Code, to repay any unpaid balance of a loan authorized by subdivision (f) of Section 4629.6 of the Public Resources Code. Any remaining funds from administrative penalties collected pursuant to this section shall be apportioned in the following manner:

(1) Fifty percent shall be deposited into the Timber Regulation and Forest Restoration Fund for grants authorized pursuant to subdivision (h) of Section 4629.6 of the Public Resources Code, with priority given to grants that improve forest health by remediating former marijuana growing operations.

(2) Fifty percent shall be deposited into the Fish and Game Preservation Fund.

(g) Any civil penalty imposed pursuant to this section for the violation of an offense described in paragraph (4), (5), or (6) of subdivision (a) or subparagraph (D), (E), or (F) of paragraph (1) of subdivision (b) for which the person was convicted shall be offset by the amount of any restitution ordered by a criminal court.

(h) For purposes of this section, "controlled substance" has the same meaning as defined in Section 11007 of the Health and Safety Code.