

Assembly Bill No. 2284

CHAPTER 390

An act to add Section 12025 to the Fish and Game Code, and to add Section 2810.2 to the Vehicle Code, relating to irrigation.

[Approved by Governor September 19, 2012. Filed with Secretary of State September 19, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2284, Chesbro. Irrigation.

(1) Existing law establishes fines and penalties for a violation of the Fish and Game Code.

This bill would impose additional civil penalties for a violation of specified provisions of the Fish and Game Code in connection with the production or cultivation of a controlled substance, as defined, on land within the jurisdiction of specified state and federal agencies or within the ownership of a timberland production zone as prescribed.

(2) Existing law authorizes a member of the Department of the California Highway Patrol to stop any vehicle transporting any timber products, livestock, poultry, farm products, crude oil, petroleum products, or inedible kitchen grease, and inspect the bills of lading, shipping, or delivery papers, or other evidence to determine whether the driver is in legal possession of the load, and, upon reasonable belief that the driver of the vehicle is not in legal possession, to take custody of the vehicle and load and turn them over to the custody of the sheriff of the county in which any of those items are apprehended. Existing law also generally prohibits a person from driving a motor vehicle upon a highway, unless the person then holds a valid driver's license.

This bill would authorize a peace officer, as described, to stop a vehicle transporting agricultural irrigation supplies, as defined, that are in plain view on a rock or unpaved road that is located in a county that elects to implement these provisions, and within the jurisdiction of specified state or federal agencies or within the ownership of a timberland production zone and to inspect the bills of lading, shipping, or delivery papers, or other evidence to determine whether the driver is in legal possession of the load, and, upon reasonable belief that the driver of the vehicle is not in legal possession, to take custody of the vehicle and load and turn them over to the custody of the sheriff of the county in which any of those items are apprehended. The bill would, except as specified, prohibit a peace officer from impounding a vehicle at a traffic stop made pursuant to this authorization if the driver's only offense is a violation of the prohibition against driving a motor vehicle upon a highway without holding a valid driver's license. The bill would require a peace officer making the stop who

encounters a driver in violation of this prohibition to take certain actions with regard to obtaining from the registered owner of the vehicle authorization to release the vehicle to a licensed driver. The bill would authorize the board of supervisors of a county to adopt a resolution to elect to implement these provisions.

(3) The bill would declare the intent of the Legislature that the implementation of the bill's provisions not contradict the purposes or application of the Compassionate Use Act of 1996 and the Medical Marijuana Program.

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

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) As a result of the closure and lack of staffing at numerous state parks, those parks and other resource lands have become infested with illegal marijuana cultivation.

(2) The illegal marijuana growing sites create a hazard for those who recreate on these public resource lands. One of the most recent events that showed the relative danger was the murder of Fort Bragg City Council Member Jere Melo who surveyed the forest for illegal marijuana growth in connection with local law enforcement and was killed in the course of his job.

(3) The marijuana growsites often are constructed without regard for the environment or wildlife.

(4) Because the illegal marijuana cultivation operations are set up deep in resource land, all the equipment is brought in and constructed without consideration for the environmental effects.

(5) Many illegal marijuana growsites include water diversion with irrigation pipes, generators, and batteries to power the cultivation equipment and camp, illegal damming and water diversion, and pesticides and insecticides that are sometimes added directly to streams and ponds.

(6) Illegal water diversion for the purpose of cultivating marijuana poses a direct threat to California's endangered coho salmon. To prevent their extinction from northern California waters, it is imperative that habitat restoration occurs.

(b) It is the intent of the Legislature to have local jurisdictions, where applicable, utilize a portion of the funds from the cleanup and abatement funds collected pursuant to this act to address coho salmon habitat and recovery.

SEC. 2. Section 12025 is added to the Fish and Game Code, to read:

12025. (a) In addition to any penalties imposed by any other law, a person found to have violated Section 1602, 5650, or 5652 in connection with the production or cultivation of a controlled substance on land within the respective jurisdiction of the Department of Parks and Recreation, the Department of Fish and Game, the Department of Forestry and Fire Protection, the State Lands Commission, a regional park district, the United

States Forest Service, or the 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 Division 1 of Title 5 of the Government Code, of more than 50,000 acres, shall be liable for a civil penalty in the following amounts:

(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.

(b) 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.

(c) All civil penalties collected 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) 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.

(3) Forty percent shall be distributed to the agency performing the cleanup or abatement of the cultivation or production site for the reimbursement for all reasonable costs associated with the cleanup or abatement.

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

SEC. 3. Section 2810.2 is added to the Vehicle Code, to read:

2810.2. (a) (1) A peace officer, as described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, may stop any vehicle transporting agricultural irrigation supplies that are in plain view to inspect the bills of lading, shipping, or delivery papers, or other evidence to determine whether the driver is in legal possession of the load, if the vehicle is on a rock road or unpaved road that is located in a county that has elected to implement this section and the road is located as follows:

(A) Located within the respective jurisdiction of the Department of Parks and Recreation, the Department of Fish and Game, the Department of Forestry and Fire Protection, the State Lands Commission, a regional park district, the United States Forest Service, or the Bureau of Land Management.

(B) Located within the respective ownership of a timberland production zone, as defined in Chapter 6.7 (commencing with Section 51100) of

Division 1 of Title 5 of the Government Code, either that is larger than 50,000 acres or for which the owner of more than 2,500 acres has given express written permission for a vehicle to be stopped within that zone pursuant to this section.

(2) Upon reasonable belief that the driver of the vehicle is not in legal possession, the law enforcement officer specified in paragraph (1) shall take custody of the vehicle and load and turn them over to the custody of the sheriff of the county that has elected to implement this section where the agricultural irrigation supplies are apprehended.

(b) The sheriff shall receive and provide for the care and safekeeping of the apprehended agricultural irrigation supplies that were in plain view within the boundaries of public lands under the jurisdiction of the entities listed in subparagraph (A) of paragraph (1) of subdivision (a) or on a timberland production zone as specified in subparagraph (B) of paragraph (1) of subdivision (a), and immediately, in cooperation with the department, proceed with an investigation and its legal disposition.

(c) Any expense incurred by the sheriff in the performance of his or her duties under this section shall be a legal charge against the county.

(d) Except as provided in subdivision (e), a peace officer shall not cause the impoundment of a vehicle at a traffic stop made pursuant to subdivision (a) if the driver's only offense is a violation of Section 12500.

(e) During the conduct of pulling a driver over in accordance with subdivision (a), if the peace officer encounters a driver who is in violation of Section 12500, the peace officer shall make a reasonable attempt to identify the registered owner of the vehicle. If the registered owner is present, or the peace officer is able to identify the registered owner and obtain the registered owner's authorization to release the motor vehicle to a licensed driver during the vehicle stop, the vehicle shall be released to either the registered owner of the vehicle if he or she is a licensed driver or to the licensed driver authorized by the registered owner of the vehicle. If a notice to appear is issued, the name and the driver's license number of the licensed driver to whom the vehicle was released pursuant to this subdivision shall be listed on the officer's copy of the notice to appear issued to the unlicensed driver. When a vehicle cannot be released, the vehicle shall be removed pursuant to subdivision (p) of Section 22651, whether a notice to appear has been issued or not.

(f) For the purposes of this section, "agricultural irrigation supplies" include agricultural irrigation water bladder and one-half inch diameter or greater irrigation line.

(g) This section shall be implemented only in a county where the board of supervisors adopts a resolution authorizing the enforcement of this section.

SEC. 4. It is the intent of the Legislature that the implementation of Section 12025 of the Fish and Game Code and Section 2810.2 of the Vehicle Code, as added by this act and hereafter amended, not contradict the purposes or application of the Compassionate Use Act of 1996 (Section 11362.5 of the Health and Safety Code) and Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of the Health and Safety Code.

SEC. 5. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

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