

Senate Bill No. 489

CHAPTER 607

An act to amend Section 25112.5 of, and to add Article 6.6 (commencing with Section 25169.5) to Chapter 6.5 of Division 20 of, the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 16, 2002. Filed with Secretary of State September 17, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

SB 489, Romero. Hazardous waste of concern: handling: transportation.

(1) Under existing law, it is unlawful for any person to carry on, or engage in, the transportation of hazardous waste unless the person holds a valid registration issued by the Department of Toxic Substances Control. Existing law provides that a person who holds a valid registration issued by the department is a registered hazardous waste transporter. Existing law requires any person generating hazardous waste that is transported, or submitted for transportation, for offsite handling, treatment, storage, disposal, or any combination thereof, to complete a manifest prior to the time the waste is transported or offered for transportation and to submit the manifest to the department. Existing law requires any application to use and operate a hazardous waste facility to include a specified disclosure statement, but exempts from this requirement a person operating pursuant to a permit-by-rule, conditional authorization, or conditional exemption.

A violation of the laws regulating hazardous waste is a crime.

This bill would require the department, by July 1, 2003, to adopt a list of hazardous wastes of concern, including the minimum quantities for those hazardous wastes that are required to be reported when missing, which would include hazardous waste that the department determines requires special handling restrictions and requirements as specified, based on its potential to harm the public in a terrorist or other criminal act.

The bill would require the department to develop the list of hazardous wastes of concern, and the reportable quantities for those hazardous wastes, in consultation with other affected local, state, and federal agencies that have technical expertise on the storage, transportation, and potential hazards of those hazardous wastes.

The bill would require any person handling any hazardous waste of concern on and after July 1, 2003, to comply with various requirements,



including requiring a hazardous waste transporter or the owner or operator of a hazardous waste facility who discovers that a reportable amount of hazardous waste of concern is missing during transportation or storage to immediately, as specified, provide a verbal notification to the department, to later report the discrepancy to the department in writing, and to comply with specified manifest discrepancy reporting requirements. The bill would require the department to determine, within 24 hours after receiving notice of a missing hazardous waste of concern, whether there is a potential risk to public safety and to notify the Department of the California Highway Patrol and the Office of Emergency Services if the department determines that the missing hazardous waste of concern reported presents a significant potential risk to public safety from its use in a terrorist or other criminal act. The bill would authorize the Department of the California Highway Patrol to enter and investigate a hazardous waste facility, upon the department's request, for an investigation regarding missing hazardous waste.

The bill would require any person applying for a hazardous waste facilities permit or other grant of authorization to use and operate a hazardous waste facility that would handle hazardous waste of concern, or a person applying for registration as a hazardous waste transporter, on and after January 1, 2004, who would transport that waste, to submit a disclosure statement to the department, except as specified. The bill would also require any person owning or operating a hazardous waste facility that handles a hazardous waste of concern to submit a disclosure statement to the department by January 1, 2004, and would require any registered hazardous waste transportation to submit such a disclosure form upon the request of the department. The department would be required to conduct a background check, as defined, on or before 180 days after receiving a disclosure statement.

The bill would require the department to adopt emergency regulations, prior to July 1, 2003, to implement the bill's requirements and would require that the regulations be filed with, but not be repealed by, the Office of Administrative Law and remain in effect until revised by the department. The bill would require the regulations to be consistent with the federal Hazardous Materials Transportation Authorization Act of 1994, except as specified.

Since a violation of the bill's requirements would be a crime, the bill would impose a state-mandated local program.

(2) Existing law requires any application to use and operate a hazardous waste facility to include a specified disclosure statement and requires certain persons listed on the disclosure statement to submit properly completed fingerprint cards to the department.



This bill would instead require those persons to submit fingerprint images and related identification information. The bill would require the department to submit the fingerprint cards or electronic fingerprint images and related identification information to the Department of Justice for a specified criminal offender record information check.

(3) 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 25112.5 of the Health and Safety Code is amended to read:

25112.5. (a) “Disclosure statement” means a statement submitted to the department by an applicant, signed by the applicant under penalty of perjury, which includes all of the following information:

(1) The full name, any previous name or names, business address, social security number, and driver’s license number of all of the following:

(A) The applicant.

(B) Any officers, directors, or partners, if the applicant is a business concern.

(C) All persons or any officers, partners, or any directors if there are no officers, of business concerns holding more than 5 percent of the equity in, or debt liability of the applicant, except that if the debt liability is held by a lending institution, the applicant shall only supply the name and address of the lending institution.

(2) Except as provided in subdivision (b), the following persons listed on the disclosure statement shall properly submit fingerprint images and related identification information:

(A) The sole proprietor.

(B) The partners.

(C) Other persons listed in subparagraph (C) of paragraph (1) and any officers or directors of the applicant company as required by the department.

(3) If fingerprint images and related identification information are submitted for purposes of paragraph (2), the fingerprint images and related identification information shall be submitted for any person required by paragraph (2) only once. If there is a change in the person serving in a position for which fingerprint images and related



identification information are required to be submitted pursuant to paragraph (2), fingerprint images and related identification information shall be captured and submitted for that person. Fingerprint images and the related identification information may be obtained using the Department of Justice's electronic fingerprint network.

(4) The full name and business address of any business concern that generates, transports, treats, stores, recycles, disposes of, or handles hazardous waste and hazardous materials in which the applicant holds at least a 5 percent debt liability or equity interest.

(5) A description of any local, state, or federal licenses, permits, or registrations for the generation, transportation, treatment, storage, recycling, disposal, or handling of hazardous waste or hazardous materials applied for, or possessed by the applicant, or by the applicant under any previous name or names, in the five years preceding the filing of the statement, or, if the applicant is a business concern, by the officers, directors, or partners of the business concern, including the name and address of the issuing agency.

(6) A listing and explanation of any final orders or license revocations or suspensions issued or initiated by any local, state, or federal authority, in the five years immediately preceding the filing of the statement, or any civil or criminal prosecutions filed in the five years immediately preceding, or pending at the time of, the filing of the statement, with any remedial actions or resolutions if applicable, relating to the generation, transportation, treatment, storage, recycling, disposal, or handling of hazardous waste or hazardous materials by the applicant, or by the applicant under any previous name or names, or, if the applicant is a business concern, by any officer, director, or partner of the business concern.

(7) A listing of any agencies outside of the state that regulate, or had regulated, the applicant's, or the applicant's under any previous name or names, generation, transportation, treatment, storage, recycling, disposal, or handling of hazardous waste or hazardous materials in the five years preceding the filing of the disclosure statement.

(8) A listing and explanation of any federal or state conviction, judgment, or settlement, in the five years immediately preceding the filing of the statement, with any remedial actions or resolutions if applicable, relating to the generation, transportation, treatment, storage, recycling, disposal, or handling of hazardous waste or hazardous materials by the applicant, or by the applicant under any previous name or names, or if the applicant is a business concern, by any officer, director, or partner of the business concern.

(9) A listing of all owners, officers, directors, trustees, and partners of the applicant who have owned, or been an officer, director, trustee, or



partner of, any company that generated, transported, treated, stored, recycled, disposed of, or handled hazardous wastes or hazardous materials and which was the subject of any of the actions described in paragraphs (6) and (8) for the five years preceding the filing of the statement.

(b) Notwithstanding paragraph (2) of subdivision (a), a corporation, the stock of which is listed on a national securities exchange and registered under the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a et seq.), or a subsidiary of such a corporation, is not subject to the fingerprint requirements of subdivision (a).

(c) In lieu of the statement specified in subdivision (a), a corporation, the stock of which is listed on a national securities exchange or on the National Market System of the NASDAQ Stock Market and registered under the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a et seq.), or a subsidiary of that corporation, may submit to the department copies of all periodic reports, including, but not limited to, those reports required by Section 78m of Title 15 of the United States Code and Part 229 (commencing with Section 229.10) of Chapter II of Title 17 of the Code of Federal Regulations that the corporation or subsidiary has filed with the Securities and Exchange Commission in the three years immediately preceding the submittal, if the corporation or subsidiary thereof has held a hazardous waste facility permit or operated a hazardous waste facility under interim status pursuant to Section 25200 or 25200.5 since January 1, 1984.

(d) (1) Before issuing an authorization for which a disclosure statement is required pursuant to this chapter, the department shall submit the fingerprint cards or electronic fingerprint images and related identification information submitted pursuant to paragraph (2) of subdivision (a) to the Department of Justice for the purpose of obtaining information as to the existence and nature of a record of state and federal level convictions and state and federal level arrests for which the Department of Justice establishes that the applicant is incarcerated or was released on bail or on his or her own recognizance pending trial. The Department of Justice shall forward any request for federal level criminal offender record information, received by the Department of Justice, pursuant to this subdivision, to the Federal Bureau of Investigation.

(2) For each applicant or licensee whose fingerprint images and related identification information are submitted to the Department of Justice pursuant to this subdivision, the Department of Justice shall provide the following information to the department pursuant to this section:

(A) Every conviction rendered against that applicant or licensee.



(B) Every arrest for an offense for which that applicant or licensee is presently awaiting trial, whether the applicant or licensee is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(3) The department, pursuant to this subdivision, shall request subsequent arrest notification service from the Department of Justice as provided under Section 11105.2 of the Penal Code.

(4) The department shall reimburse the Department of Justice for the actual costs incurred by the Department of Justice for searching and furnishing state and federal level criminal offender record information pursuant to this subdivision.

SEC. 2. Article 6.6 (commencing with Section 25169.5) is added to Chapter 6.5 of Division 20 of the Health and Safety Code, to read:

Article 6.6. Hazardous Waste of Concern and Public Safety Act

25169.5. For purposes of this article, the following definitions shall apply:

(a) "Background check" means a criminal history background check obtained from fingerprint images submitted by the person or persons identified in the disclosure statement, pursuant to Section 25112.5. The background check shall include any previous name or names of the person submitting the fingerprint images.

(b) "Hazardous waste of concern" means a hazardous waste listed as a hazardous waste of concern by the department pursuant to Section 25169.6.

25169.6. (a) On or before July 1, 2003, the department shall adopt by regulation, and revise as appropriate, a list of hazardous wastes of concern and, for purposes of subdivision (a) of Section 25169.7, the minimum quantity of the hazardous waste of concern that is required to be reported when missing. The list shall include, at a minimum, any hazardous waste that the department, in consultation with the other agencies described in subdivision (b), determines requires special handling restrictions and requirements, beyond those restrictions and requirements generally applicable to hazardous wastes, because of the potential for a hazardous waste of concern to be intentionally and effectively used to harm the public in a terrorist or other criminal act.

(b) The department shall develop the list of hazardous wastes of concern and associated reportable quantities, in consultation with other affected local, state, and federal agencies that have technical expertise on the storage, transportation, and potential hazards of those hazardous wastes.



25169.7. Except as specified otherwise in subdivision (b), on and after July 1, 2003, all of the following requirements, including any regulations adopted by the department pursuant to Section 25169.8, shall apply to any person handling any hazardous waste of concern:

(a) (1) If a hazardous waste transporter or the owner or operator of a hazardous waste facility discovers that a hazardous waste of concern is missing during transportation or storage, and the amount of waste missing equals or exceeds the reportable quantity specified in the regulations adopted pursuant to Section 25169.6, the hazardous waste transporter or the owner or operator shall immediately, as specified in the regulations adopted by the department, provide a verbal notification to the department and report the discrepancy to the department in writing by letter within five days after the discovery. The transporter or the owner or operator shall also comply with the applicable manifest discrepancy reporting requirements specified in the regulations adopted by the department pursuant to this chapter.

(2) Within 24 hours after receiving a notification of a missing hazardous waste of concern pursuant to paragraph (1), the department shall make a preliminary determination whether there is a potential risk to public safety. If, after making that preliminary determination, or at any time thereafter, the department determines the missing hazardous waste of concern presents a significant potential risk to public safety from its use in a terrorist or other criminal act, the department shall notify the Office of Emergency Services and the Department of the California Highway Patrol.

(3) The Department of the California Highway Patrol may enter and inspect any hazardous waste facility at the department's request to perform an investigation of any hazardous waste that the department determines may be missing.

(b) (1) Notwithstanding Section 25200.4, any person applying for a hazardous waste facilities permit or other grant of authorization to use and operate a hazardous waste facility that would handle hazardous waste of concern shall submit to the department a disclosure statement containing the information specified in Section 25112.5.

(2) On or before January 1, 2004, and at any time upon the request of the department, any person owning or operating a hazardous waste facility that handles any hazardous waste of concern shall submit to the department a disclosure statement containing the information specified in Section 25112.5.

(3) (A) Except as provided in subparagraph (B), on and after January 1, 2004, any person applying for registration as a hazardous waste transporter who will transport hazardous waste of concern shall submit



to the department a disclosure statement containing the information specified in Section 25112.5.

(B) Subparagraph (A) does not apply to a transporter who has submitted a disclosure statement to the department within the two-year period immediately preceding the application for registration, unless there has been a change in the information required to be contained in the disclosure statement or the department requests the transporter to submit a disclosure statement.

(4) At any time upon the request of the department, any registered hazardous waste transporter who transports any hazardous waste of concern shall submit to the department a disclosure statement containing the information specified in Section 25112.5.

(5) Whenever any change pertaining to the information required to be contained in a disclosure statement filed pursuant to paragraphs (1) to (4), inclusive, occurs after the date of the filing of the disclosure statement, the transporter or the facility owner or operator shall provide the updated information in writing to the department within 30 days of the change.

(6) On or before 180 days after receiving a disclosure statement pursuant to this subdivision, the department shall conduct a background check, as defined in subdivision (a) of Section 25169.5.

(7) This subdivision does not apply to any federal, state, or local agency or any person operating pursuant to a permit-by-rule, conditional authorization, or conditional exemption.

25169.8. (a) On or before July 1, 2003, the department shall adopt emergency regulations to implement this article, with the concurrence of the California Highway Patrol.

(b) The regulations adopted by the department pursuant to this section shall be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, including subdivision (e) of Section 11349.1 of the Government Code, any emergency regulations adopted pursuant to this section shall be filed with, but not be repealed by, the Office of Administrative Law and shall remain in effect until revised by the department.

(c) Except as provided in subdivision (d), in adopting regulations pursuant to this section, the department shall ensure that the regulations



are consistent with the Hazardous Materials Transportation Authorization Act of 1994 (Chapter 51 (commencing with Section 5101) of Title 49 of the United States Code, and thereafter amended.

(d) If the department determines that a requirement imposed pursuant to Section 25169.7 could be preempted by the Hazardous Materials Transportation Authorization Act of 1994 pursuant to Section 5125 of Title 49 of the Code of Federal Regulations, the department shall apply to the Secretary of Transportation for a waiver of preemption pursuant to subsection (e) of Section 5125 of Title 49 of the United States Code.

SEC. 3. 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.

