

Assembly Bill No. 289

CHAPTER 699

An act to add Sections 57018, 57019, and 57020 to the Health and Safety Code, relating to hazardous chemicals.

[Approved by Governor September 29, 2006. Filed with Secretary of State September 29, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

AB 289, Chan. Chemicals: testing methods.

Existing law required the California Environmental Protection Agency to initiate a scientific peer review of screening levels for certain contaminants and to complete the process by December 31, 2004. The agency was required to publish, by March 1, 2004, a list of screening numbers determined for specified contaminants, and to conduct public workshops in establishing and revising those levels.

This bill would authorize a state agency, as defined, to request a manufacturer, as defined, of a chemical, as defined, to provide the state agency with specified information regarding the chemical. The bill would provide that the information that a state agency may request, includes, but is not limited to, an analytical test method for that chemical in a specified matrix, the octanol-water partition coefficient and bioconcentration factor for humans for the chemical, and other information relevant to the fate and transport of the chemical into the environment. The bill would require the manufacturer to provide the requested information within one year, and would specify actions that a state agency is required to take before making the request. The bill would provide a procedure for when a manufacturer believes that information provided pursuant to a state agency request involves the release of a trade secret.

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

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

(a) Every year more than 55,000,000 pounds of all chemicals are released in the state.

(b) Over 85,000 chemicals are commercially available today, and many are known to cause cancer and damage to the brain and the nervous and reproductive systems.

(c) Many of these chemicals do not persist, but instead break down in the environment or are metabolized by humans or biota into different, more stable compounds, which can be used as chemical indicators or biomarkers of exposure to the parent compound.

(d) For a majority of chemicals in use today, the matrix by which the chemical is transported into biota and humans is unknown and it is impossible to determine the chemical's level in humans. Analytical test methods only exist for approximately 30 percent of all chemicals.

(e) It costs the federal and state governments time and money to develop analytical test methods for chemicals or their chemical biomarkers of exposure. It is conservatively estimated that developing analytical test methods for each chemical costs over one hundred thousand dollars (\$100,000).

(f) In the interests of human health, it should be the responsibility of those who manufacture or import a chemical to provide relevant information on the fate and transport of that chemical into the environment.

SEC. 2. Section 57018 is added to the Health and Safety Code, to read:

57018. (a) For purposes of Sections 57019 and 57020, the following definitions shall apply:

(1) "Analytical test method" means a procedure used to sample, prepare, and analyze a specific matrix to determine the identity and concentration of a specified chemical and its metabolites and degradation product. An analytical test method shall conform to the standards adopted by the National Environmental Laboratory Accreditation Conference.

(2) "Bioconcentration factor" means the concentration of a chemical in an organism divided by its concentration in a test solution or environment.

(3) "Chemical" has the same meaning as a chemical substance, as defined in Section 2602 of Title 15 of the United States Code.

(4) "Manufacturer" means a person who produces a chemical in this state or who imports a chemical into this state for sale in this state.

(5) "Matrix" includes, but is not limited to, water, air, soil, sediment, sludge, chemical waste, fish, blood, adipose tissue, and urine.

(6) "Octanol-water partition coefficient" means the ratio of the concentration of a chemical in octanol and in water at equilibrium and at a specified temperature.

(7) "State agency" means the State Air Resources Board, the Department of Toxic Substances Control, the Integrated Waste Management Board, the Office of Environmental Health Hazard Assessment, the State Water Resources Control Board, and the California Environmental Protection Agency. "State agency" does not include the Department of Pesticide Regulation.

SEC. 3. Section 57019 is added to the Health and Safety Code, to read:

57019. (a) The California Environmental Protection Agency shall coordinate all requests for information from manufacturers made pursuant to this section on behalf of the state agencies.

(b) In coordinating the requests made pursuant to this section, the California Environmental Protection Agency shall seek to accomplish the following objectives:

(1) Minimize or eliminate duplicate requests for the same or similar information.

(2) Coordinate with manufacturers of the same chemical to develop and submit the requested information in an equitable and resource-efficient manner.

(3) To the extent practicable minimize the cost burden on individual manufacturers.

(4) Maintain a record of requests made pursuant to this section.

(c) A state agency, before requesting any information from a manufacturer pursuant to subdivision (d), shall do all of the following:

(1) Post on its Internet Web site and the Internet Web site of the California Environmental Protection Agency an announcement that it seeks information pursuant to subdivision (d), including the chemical for which it seeks information, the type of information it is seeking, and the reason for seeking the information.

(2) Conduct a search for the information it seeks of all known public sources of information on the chemicals for which an announcement has been posted pursuant to paragraph (1). All known public sources include public and electronically searchable databases maintained by the federal government, state governments, and intergovernmental organizations.

(3) Make reasonable attempts to contact all manufacturers of chemicals listed for which an announcement has been posted pursuant to paragraph (1) to obtain any relevant information that may be held by those manufacturers but is not publicly available.

(4) Make reasonable attempts to consult with all manufacturers of chemicals listed for which an announcement has been posted pursuant to paragraph (1) to determine what additional information, if any, those manufacturers need to develop to assist the state agency in evaluating the fate and transport of those chemicals in the relevant matrices.

(5) Make reasonable attempts to consult with all manufacturers to evaluate the technical feasibility of developing the information requested by the agency.

(d) (1) A state agency may request a manufacturer to provide additional information on a chemical for which an announcement has been posted pursuant to paragraph (1) of subdivision (c).

(2) Upon request of a state agency, the manufacturer, within one year, shall provide the state agency with the additional information requested for the specified chemical.

(3) The information that the state agency requests may include, but is not limited to, any of the following:

(A) An analytical test method for that chemical, or for metabolites and degradation products for that chemical that are biologically relevant in the matrix specified by the state agency.

(B) The octanol-water partition coefficient and bioconcentration factor for humans for that chemical.

(C) Other relevant information on the fate and transport of that chemical in the environment.

(4) The manufacturer responding to a request pursuant to this subdivision shall collaborate and cooperate with the state agency making the request to the extent practicable for the following purposes:

(A) To ensure that the information being provided meets the needs of the state agency.

(B) To reduce disagreements over the information being provided.

(C) To decrease to the maximum extent possible the effort and resources the state agency must expend to verify and validate the information provided.

(e) The definitions in Section 57018 apply to this section.

(f) This section shall not be construed to limit the authority of a state agency to obtain information pursuant to any other provision of law.

SEC. 4. Section 57020 is added to the Health and Safety Code, to read:

57020. (a) Notwithstanding Section 6254.7 of the Government Code, if a manufacturer believes that information provided to a state agency pursuant to Section 57019 involves the release of a trade secret, the manufacturer shall make the disclosure to the state agency and notify the state agency in writing of that belief. In its written notice, the manufacturer shall identify the portion of the information submitted to the state agency that it believes is a trade secret and provide documentation supporting its conclusion.

(b) Subject to this section, the state agency shall protect from disclosure a trade secret designated as such by the manufacturer, if that trade secret is not a public record.

(c) Upon receipt of a request for the release of information to the public that includes information that the manufacturer has notified the state agency is a trade secret and that is not a public record, the following procedure applies:

(1) The state agency shall notify the manufacturer that disclosed the information to the state agency of the request, in writing by certified mail, return receipt requested.

(2) The state agency shall release the information to the public, but not earlier than 30 days after the date of mailing the notice of the request for information, unless, prior to the expiration of the 30-day period, the manufacturer obtains an action in an appropriate court for a declaratory judgment that the information is subject to protection under this section or for a preliminary injunction prohibiting disclosure of the information to the public and promptly notifies the state agency of that action. In order to prevent the state agency from releasing the information to the public, the manufacturer shall obtain a declaratory judgment or preliminary injunction within 30 days of filing an action for a declaratory judgment or preliminary injunction.

(d) This section does not authorize a manufacturer to refuse to disclose to the state agency information required by Section 57019.

(e) Any information that a court, pursuant to this section, determines is a trade secret and not a public record, or pending final judgment pursuant to subdivision (c), shall not be disclosed by the state agency to anyone,

except to an officer or employee of a city or county, the state, or the United States, or to a contractor with a city or county, or the state, and its employees, if, in the opinion of the state agency, disclosure is necessary and required for the satisfactory performance of a contract, for the performance of work, or to protect the health and safety of the employees of the contractor.

(f) The definitions in Section 57018 apply to this section.

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