

AMENDED IN SENATE APRIL 17, 2006

SENATE BILL

No. 1458

Introduced by Senator Simitian
(Coauthor: Senator Chesbro)

February 23, 2006

An act to add Article 7.3 (commencing with Section 25383) to Chapter 6.8 of Division 20 of the Health and Safety Code, relating to hazardous substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 1458, as amended, Simitian. Hazardous substances: illegal drug labs: cleanup funding.

Existing law requires the Department of Toxic Substances Control to take removal actions with respect to a hazardous substance that is an illegal controlled substance, a precursor of a controlled substance, or a material intended to be used in the unlawful manufacture of controlled substances, and the department is authorized to expend funds appropriated from the Illegal Drug Lab Cleanup Account in the General Fund for this purpose. Existing law requires the account to be funded by moneys appropriated directly from the General Fund.

This bill would enact the Illegal Drug Lab Waste Cleanup Act, define terms, and establish a procedure to determine the annual cost for taking removal and remedial actions to clean up drug lab waste, as defined, by requiring the development of an annual work plan and cost estimate. The bill would require the department, by September 1, 2007, and by every September 1 annually thereafter, to set the amount of a fee upon the first manufacturing or importation of pseudoephedrine by a manufacturer or importer, in this state, at an

amount sufficient to fund the annual work plan, but not more than a specified amount.

The bill would require the fee revenues to be deposited in the Illegal Drug Lab Cleanup Subaccount, which the bill would create in the Toxic Substances Control Account in the General Fund. The bill would authorize the revenues in the subaccount to be expended, upon appropriation by the Legislature, to pay the administrative costs of the State Board of Equalization (board) in collecting the fee, to pay refunds, and to provide funding to the department to take removal and remedial actions to clean up drug lab waste. The bill would authorize the department to expend those funds by entering into a contract with a city or county to take or oversee removal or remedial actions to clean up drug lab waste.

The bill would require a person who manufactures pseudoephedrine in this state or who imports pseudoephedrine into this state to register with the Department of Justice, unless the person imports less than an unspecified amount. The bill would prohibit a person from selling or distributing a product containing pseudoephedrine in the state if the product is received or purchased from a manufacturer or importer who is not registered as required by the act. The bill would require a registrant to file a quarterly report with the Department of Justice containing specified information, and would require the Department of Justice to charge a fee to cover the costs incurred in maintaining the list of registrants. The bill would authorize the Department of Justice to take specified actions with regard to ascertaining the information required in the quarterly reports.

The bill would require the Department of Justice to send a report to the board, in a specified manner, containing information, as specified, regarding persons who owe the fee. The board would be required to mail each person listed in the report a notice of determination containing the amount of the fee due, in accordance with the information contained in the Department of Justice's report. The bill would specify procedures for the collection of the fee, including specifying a procedure when the Department of Justice determines that a person who is required to register has failed to register or to file a correct quarterly report.

The bill would authorize the Department of Justice to exempt a product containing pseudoephedrine from the fee, if the Department of Justice makes a specified determination.

The bill would authorize the board to impose specified penalties for a failure to file a correct and timely quarterly report. The bill would also impose a civil penalty of not more than \$10,000 upon a person who fails to properly register with the Department of Justice or upon a person who is a retailer or distributor and who receives or purchases products containing pseudoephedrine intended for sale in this state from an unregistered manufacturer or importer. The bill would require the civil penalties to be deposited into the Environmental Enforcement and Training Account, which is available upon appropriation for expenditure by the ~~Environment~~ *Environmental* Protection Agency for environmental enforcement purposes.

The bill would provide that when the department and the Department of Justice provide the Department of Finance with a joint letter that contains a specific finding, the act would become inoperative and be repealed on the date the Secretary of State receives that letter from the Department of Finance.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

- 1 SECTION 1. The Legislature finds and declares all of the
2 following:
- 3 (a) Methamphetamine is a powerful and addictive stimulant
4 that affects the central nervous system.
 - 5 (b) The drug is made in clandestine laboratories with relatively
6 inexpensive over-the-counter ingredients.
 - 7 (c) The primary ingredient in methamphetamine production is
8 pseudoephedrine, which is found in many over-the-counter cold
9 medicines. It has become the new precursor for making
10 methamphetamine. Criminals have easy access to
11 pseudoephedrine, which has led to a rapid increase in clandestine
12 “kitchen” methamphetamine labs.
 - 13 (d) If a typical box of pseudoephedrine decongestants contains
14 24 tablets, a methamphetamine manufacturer would need 29
15 boxes of tablets to make an ounce of methamphetamine.
 - 16 (e) The chemicals specified in subdivision (c) are harmful if
17 ingested, inhaled, or absorbed through the skin. In Arizona,
18 police frequently charge methamphetamine makers with felony

1 child abuse if any minors are in the home where manufacturing is
2 taking place.

3 (f) The chemicals specified in subdivision (c) can contaminate
4 structural materials, furnishings, wastewater systems, and soils.

5 (g) Chemicals found in methamphetamine labs can cause
6 cancer, short-term and permanent brain damage, developmental
7 and growth problems in children and teens, reproductive system
8 toxicity, internal and external chemical burns, immune system
9 problems, heart problems, and respiratory system problems.
10 Young children breathe and develop faster than adults and
11 therefore can be much more susceptible to the chemicals used to
12 manufacture methamphetamine.

13 (h) Methamphetamine labs can be set up in almost any
14 location, including a motel, house, apartment, storage unit,
15 vehicle, kitchen, or barn, using instructions that are easily
16 available on the Internet. If methamphetamine is cooked within a
17 building, the chemicals from the cooking process are conducted
18 and spread throughout the entire building.

19 (i) The Department of Toxic Substances Control has
20 completed emergency cleanups of over 15,000 methamphetamine
21 labs in the past 10 years. Under existing law, the gross removal
22 of an illegal drug lab is the emergency cleanup of a hazardous
23 substance that poses an immediate threat to public health or
24 safety. The Department of Toxic Substances Control is
25 responsible for this portion of the cleanup, which is paid for
26 using General Fund moneys.

27 (j) The deep-cleaning or remedial action of a
28 methamphetamine lab is the responsibility of local health and
29 human services departments, environmental health divisions,
30 hazardous materials divisions, or fire departments. The local
31 agency issues a notice to the property owner to clean up the
32 property, but the standard for cleanup of those labs varies from
33 local agency to local agency and from property owner to property
34 owner.

35 (k) Existing law places the ultimate responsibility for the
36 remedial cleanup of a former methamphetamine lab in the hands
37 of the property owner.

38 (l) The Legislature declares that the imposition of a fee upon
39 ~~the sale~~ *first manufacturing or importation* of pseudoephedrine
40 by this act would not result in the imposition of a tax within the

1 meaning of Article XIII A of the California Constitution, because
2 the amount and nature of the fee has a fair and reasonable
3 relationship to the adverse environmental burdens imposed by
4 the disposal of pseudoephedrine at methamphetamine labs and
5 there is a sufficient nexus between the fee imposed and the use of
6 those fees to support the cleanup of drug lab waste at
7 methamphetamine lab sites.

8 SEC. 2. Article 7.3 (commencing with Section 25383) is
9 added to Chapter 6.8 of Division 20 of the Health and Safety
10 Code, to read:

11
12 Article 7.3. Illegal Drug Lab Waste Cleanup Act

13
14 25383. (a) For purposes of this article, the following
15 definitions shall apply:

16 (1) "Board" means the State Board of Equalization.

17 (2) "Importer" means a person who imports pseudoephedrine
18 into this state, for sale or distribution in this state.

19 (3) "Drug lab waste" means the contamination resulting from
20 the use of pseudoephedrine in the unlawful manufacture of a
21 controlled substance.

22 (4) "Fee" means the fee imposed pursuant to Section 25383.1.

23 (5) "Manufacturer" means a person who manufactures
24 pseudoephedrine sold in this state.

25 (6) "Quarterly report" means the report that a registrant is
26 required to file with the Department of Justice pursuant to
27 Section 25383.4.

28 (7) "Registrant" means a manufacturer or importer of
29 pseudoephedrine who is required to annually provide certain
30 information to the Department of Justice pursuant to Section
31 25383.3.

32 (8) "Subaccount" means the Illegal Drug Lab Cleanup
33 Subaccount created pursuant to subdivision (c) of Section
34 25383.1.

35 (b) This article shall be known, and may be cited, as the
36 "Illegal Drug Lab Waste Cleanup Act."

37 25383.1. (a) On or before September 1, 2007, and on or
38 before September 1 annually thereafter, the department shall set
39 the amount of a fee upon the first manufacturing or importation
40 of pseudoephedrine in this state by a manufacturer or importer,

1 who is required to register pursuant to Section 25383.3, at an
2 amount sufficient to fund the annual work plan developed
3 pursuant to Section 25383.2, but in an amount of not more than
4 .0232 cent (\$0.000232) per milligram of pseudoephedrine.

5 (b) On and after September 1, 2007, the board shall collect the
6 fee imposed pursuant to this section from each registrant.

7 (c) The fee revenues collected pursuant to this section shall be
8 deposited in the Illegal Drug Lab Cleanup Subaccount, which is
9 hereby created in the Toxic Substances Control Account in the
10 General Fund, for expenditure, upon appropriation by the
11 Legislature, solely for the following purposes:

12 (1) To pay for the administrative costs of the board for
13 collecting and making refunds associated with the collection of
14 the fee imposed pursuant to this section.

15 (2) To pay for refunds of the fee.

16 (3) (A) To provide funding to the department to take removal
17 and remedial actions to clean up drug lab waste.

18 (B) The department may expend the funds authorized for
19 expenditure pursuant to this paragraph by entering into a contract
20 with a city or county to take or oversee removal or remedial
21 actions to clean up drug lab waste.

22 25383.2. The following procedure shall be used to determine
23 the annual cost for the department to take removal or remedial
24 actions to clean up drug lab waste pursuant to this article:

25 (a) On or before March 1, 2007, and on or before March 1
26 annually thereafter, the department shall submit to the
27 Department of Finance an annual work plan for taking removal
28 or remedial action to clean up drug lab waste, including the
29 estimated costs to complete that work plan. In determining the
30 annual cost of implementing the work plan, no more than 3
31 percent of the annual cost shall include the department's costs for
32 overhead and administration.

33 (b) On or before April 1, 2007, and on or before April 1
34 annually thereafter, the Department of Finance shall certify that
35 the proposed work plan is feasible and that the estimated cost for
36 implementing the work plan is within 25 percent of the estimate
37 determined by the Department of Finance to implement the
38 annual work plan.

39 (c) If the Department of Finance does not certify the
40 department's proposed work plan and the cost estimate pursuant

1 to subdivision (b), the Department of Finance and the department
2 shall meet and confer and produce a final work plan and cost
3 estimate on or before the subsequent May 1 after the date that the
4 decision not to certify the work plan and cost estimate was made.

5 (d) If, after conducting a meeting pursuant to subdivision (c),
6 the Director of Finance and the director do not agree on the work
7 plan and cost estimate, the Governor shall submit a work plan
8 and cost estimate to the department on or before that subsequent
9 May 15.

10 25383.3. (a) A person who manufactures pseudoephedrine in
11 this state, or who imports pseudoephedrine into this state shall
12 register with the Department of Justice.

13 (b) This section does not apply to a person who imports less
14 than _____ of pseudoephedrine into this state during a
15 calendar year and who does not manufacture any
16 pseudoephedrine in this state.

17 (c) A person shall not sell or distribute a product containing
18 pseudoephedrine in the state if the product is received or
19 purchased from a manufacturer or importer who is not registered
20 in accordance with this article.

21 25383.4. (a) A person required to register with the
22 Department of Justice pursuant to Section 25383.3 shall file a
23 quarterly report with the Department of Justice. The quarterly
24 report shall be due on the last day of the month following each
25 quarterly period and shall provide all of the following
26 information:

27 (1) The name, address, and telephone number of the person
28 required to register.

29 (2) The number of milligrams of pseudoephedrine the person
30 manufactured in this state during that quarterly reporting period.

31 (3) The number of milligrams of pseudoephedrine the person
32 imported into this state during that quarterly reporting period.

33 (4) The number of milligrams of pseudoephedrine the person
34 sold, transferred, or otherwise furnished to other persons in this
35 state during that quarterly reporting period.

36 (5) Any other information the Department of Justice deems
37 necessary.

38 (b) (1) The registration form required by Section 25383.3 and
39 the quarterly reports required by this section shall be submitted in
40 an electronic form prescribed by the Attorney General.

1 (2) A quarterly report may be amended as provided in
2 subdivision (a) of Section 25384.1.

3 (c) The Department of Justice shall charge a fee to each
4 registrant sufficient to cover the costs incurred in maintaining the
5 list of registrants, including administrative costs.

6 (d) The Department of Justice shall maintain the list of
7 registrants electronically where feasible, and shall make the list
8 available to the board and law enforcement agencies throughout
9 the state where necessary for a legitimate state purpose,
10 including, but not limited to, fee collection and criminal
11 investigation.

12 25383.5. For the purpose of ascertaining whether a person is
13 required to file a quarterly report required by Section 25383.4 or
14 whether the information contained in the quarterly report is
15 correct, or for purposes of preparing a quarterly report pursuant
16 to subdivision (a) of Section 25384, the Department of Justice
17 may take any of the following actions:

18 (a) Require a person having knowledge of the business or
19 custody of the books, accounts, and papers of a person who is or
20 may be required to register pursuant to Section 25383.3 to appear
21 before the Department of Justice, to bring for inspection any
22 books, accounts, or papers of the person or in the person's
23 possession and under the person's control, and to testify under
24 oath touching any matter relating to the organization or business
25 of the person.

26 (b) Examine the books, accounts, and papers of a person who
27 is or may be required to register pursuant to Section 25383.3.

28 25383.6. (a) ~~Except as provided in Section 25383.9, a~~
29 person who is required to register pursuant to Section 25383.3
30 shall pay the fee imposed pursuant to Section 25383.1 in
31 accordance with this article.

32 (b) The fee owed by a person pursuant to subdivision (a) shall
33 be calculated by multiplying the rate established by the
34 department pursuant to Section 25383.1 by the number of
35 milligrams of pseudoephedrine manufactured in this state or
36 imported into this state by that person.

37 25383.7. (a) On the last day of each month following the due
38 date for filing a quarterly report pursuant to Section 25383.4, the
39 Department of Justice shall send to the board a report containing
40 all of the following information:

1 (1) The name, address, and telephone number of each person
2 required to register with the Department of Justice pursuant to
3 Section 25383.3 and who owes a fee in an amount that exceeds
4 _____ for the previous quarterly period.

5 (2) The number of milligrams of pseudoephedrine the
6 registrant manufactured in this state or imported into this state.

7 (b) After the board receives the report submitted by the
8 Department of Justice pursuant to subdivision (a), the board shall
9 mail each person listed in the report a notice of determination
10 pursuant to Section 55061 of the Revenue and Taxation Code.
11 Each notice of determination shall contain the amount of the
12 person's fee due in accordance with the information contained in
13 the report submitted to the board.

14 25383.8. (a) The fee imposed pursuant to this article is due
15 and payable 30 days after the board mails a notice of
16 determination pursuant to subdivision (b) of Section 25383.7.

17 (b) (1) Except as provided in paragraph (2), the board shall
18 collect the fee imposed pursuant to this article in accordance with
19 the Fee Collection Procedures Law (Part 30 (commencing with
20 Section 55001) of Division 2 of the Revenue and Taxation
21 Code).

22 (2) Article 3 (commencing with Section 55081) of Chapter 3
23 of, and Article 1 (commencing with Section 55221) of Chapter 5
24 of, Part 30 of Division 2 of the Revenue and Taxation Code do
25 not apply to the collection of the fee imposed pursuant to this
26 article.

27 (c) For purposes of the application of Article 2 (commencing
28 with Section 55061) of Chapter 3 of Part 30 of Division 2 of the
29 Revenue and Taxation Code, "deficiency" includes the amount of
30 the fee that is contained in the notice of determination.

31 (d) Notwithstanding subdivision (b), and except as provided in
32 subdivision (c) of Section 25384.1, with regard to the fee
33 imposed pursuant to this article, the board may issue a refund
34 pursuant to Section 55221 of the Revenue and Taxation Code
35 only to correct a mathematical error contained in a notice of
36 determination issued pursuant to subdivision (b) of Section
37 25383.7.

38 25383.9. *The Department of Justice may exempt a product*
39 *containing pseudoephedrine from the fee imposed pursuant to*
40 *Section 25383.6, if the Department of Justice determines the*

1 *presence of pseudoephedrine in that product is not feasibly*
2 *available for use in the production of methamphetamine.*

3 25384. (a) If the Department of Justice determines that a
4 person who is required to register pursuant to Section 25383.3
5 has failed to register in accordance with that section, or has failed
6 to file a correct quarterly report in accordance with Section
7 25383.4, the Department of Justice may register that person,
8 prepare and file a correct quarterly report, and mail a copy of that
9 quarterly report to that person.

10 (b) If a person who receives a quarterly report prepared by the
11 Department of Justice pursuant to subdivision (a) disagrees with
12 the quarterly report, the person shall notify the Department of
13 Justice and shall specifically identify the areas of disagreement in
14 writing within 60 days after the date the Department of Justice
15 mails the quarterly report to the person.

16 (c) Upon receiving a notice of disagreement pursuant to
17 subdivision (b), the Department of Justice shall do all of the
18 following:

19 (1) Investigate each area of disagreement.

20 (2) Mail a responsive letter to the person who submitted the
21 notice of disagreement addressing each area of disagreement.

22 (3) Revise the quarterly report as necessary.

23 (d) Unless the Department of Justice receives a timely notice
24 of disagreement pursuant to subdivision (b), the Department of
25 Justice shall forward to the board the information in the
26 registration and the quarterly report described in subdivision (a),
27 including a recommendation as to whether the board should
28 impose a penalty pursuant to Section 25384.2. Upon receiving
29 this information, the board shall issue a notice of determination
30 in the manner prescribed in subdivision (b) of Section 25383.7.

31 (e) If a timely notice of disagreement is received pursuant to
32 subdivision (b), the Department of Justice shall, after taking the
33 actions required by subdivision (c), forward to the board the
34 revised information in the registration and the quarterly report
35 described in subdivision (a) and a recommendation to the board
36 as to whether the board should impose a penalty pursuant to
37 Section 25384.2.

38 25384.1. (a) A person may amend a quarterly report filed
39 with the Department of Justice pursuant to Section 25383.4 any
40 time prior to one year from its due date.

1 (b) If an amendment to a quarterly report made in accordance
2 with subdivision (a) would require an increase or decrease in the
3 amount of the fee owed by that person, the Department of Justice
4 shall transmit that information to the board and direct the board
5 to issue a supplemental notice pursuant to subdivision (b) of
6 Section 25383.7 to assess the increased amount or to issue a
7 refund for the decreased amount.

8 (c) Notwithstanding subdivision (d) of Section 25383.8, the
9 board may issue a refund as directed by the Department of
10 Justice pursuant to this section.

11 25384.2. (a) The board may impose any of the following
12 civil penalties:

13 (1) A penalty equal to 10 percent of a person's quarterly fee
14 for each failure of the person to file a correct and timely quarterly
15 report required by Section 25383.4.

16 (2) A penalty equal to 25 percent of a person's quarterly fee
17 for each failure by a person to file a correct and timely quarterly
18 report in accordance with Section 25383.4, after being notified
19 by the Department of Justice pursuant to Section 25384 that the
20 person previously has failed to file a correct and timely quarterly
21 report.

22 (3) A penalty equal to 50 percent of a person's fee for each
23 failure to file a correct and timely quarterly report required by
24 Section 25383.4 with the intent to evade the fee imposed
25 pursuant to this article or to defraud the state.

26 (b) The board shall not relieve any penalties imposed pursuant
27 to this section.

28 25384.3. (a) A person who fails to properly register with the
29 Department of Justice pursuant to Section 25383.3 is subject to a
30 civil penalty in an amount not to exceed ten thousand dollars
31 (\$10,000).

32 (b) A person who is a retailer or distributor and who receives
33 or purchases a product containing pseudoephedrine intended for
34 sale in the state from a manufacturer or importer who is not
35 registered pursuant to this article, in violation of subdivision (c)
36 of Section 25383.3, is subject to a civil penalty in an amount not
37 to exceed ten thousand dollars (\$10,000).

38 25384.4. All civil penalties assessed and collected pursuant to
39 this article shall be deposited into the Environmental
40 Enforcement and Training Account and the revenues shall be

1 available for expenditure pursuant to Title 13 (commencing with
2 Section 14300) of Part 14 of the Penal Code.
3 25384.5. When the department and the Department of Justice
4 provide the Department of Finance with a joint letter that
5 contains a specific finding that the number of sites contaminated
6 with drug lab waste has been reduced to a number that can be
7 remediated in the work plan submitted for that next year, this
8 article shall become inoperative on the date the Secretary of State
9 receives that letter from the Department of Finance, and this
10 article shall be repealed on that date.

O