

AMENDED IN ASSEMBLY APRIL 30, 2012

AMENDED IN ASSEMBLY MARCH 15, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2257

Introduced by Assembly Member Achadjian

February 24, 2012

An act to add ~~Sections 1102.18 and~~ *Section 3482.7* to the Civil Code, relating to nuisance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2257, as amended, Achadjian. Nuisance: landfill activities.

~~(1) Existing~~

Existing law defines a nuisance, in part, as anything that is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property. Existing law authorizes various remedies for nuisances, including remedies to effect abatement and damages. Existing law provides, among other things, that no agricultural activity, operation, or facility, or appurtenances thereof, as defined, in operation for more than 3 years, and conducted or maintained for commercial purposes in a manner consistent with proper and accepted customs and standards, shall become a nuisance due to any changed condition in the locality if it was not a nuisance at the time it began, except as specified.

This bill would provide that no ~~landfill~~ *waste management* activity, operation, or facility, or appurtenances thereof, as defined, in operation for more than 3 years, and conducted or maintained for commercial purposes in a manner consistent with proper and accepted customs and standards, shall become a nuisance due to any changed condition in the

locality if it was not a nuisance at the time it began, except as specified. *Under the bill, in an action or proceeding to abate the use of waste management activities, proof that the waste management activities have been in existence for 3 years will constitute a rebuttable presumption that the activities do not constitute a nuisance.*

~~(2) Existing law requires certain disclosures to be provided to the purchaser of specified residential real property consisting of not less than one or more than 4 dwelling units upon transfer of that property. Among other things, the seller of residential real property who has actual knowledge that the property is adjacent to, or zoned to allow, an industrial use, or affected by a nuisance created by that use, is required to give written notice of that knowledge as soon as practicable before transfer of title.~~

~~This bill would require the seller of any residential dwelling consisting of not less than one or more than 4 dwelling units that is in close proximity to a landfill activity, operation, or facility, or appurtenances thereof, to give written notice to the purchaser of that real property before transfer of title that the property is subject to the provisions described in (1) above. The bill would require the purchaser to sign the required disclosure.~~

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

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

- 1 SECTION 1. ~~Section 1102.18 is added to the Civil Code, to~~
- 2 ~~read:~~
- 3 ~~1102.18. The seller of any residential dwelling that is in close~~
- 4 ~~proximity to a landfill activity, operation, or facility, or~~
- 5 ~~appurtenances thereof, shall give written notice to the purchaser~~
- 6 ~~of that real property before transfer of title that the property is~~
- 7 ~~subject to Section 3482.7. The purchaser shall sign the disclosure~~
- 8 ~~required pursuant to this section.~~
- 9 SEC. 2.
- 10 SECTION 1. Section 3482.7 is added to the Civil Code, to read:
- 11 3482.7. (a) No ~~landfill~~ *waste management* activity, operation,
- 12 or facility, or appurtenances thereof, conducted or maintained for
- 13 commercial purposes, *operating in an established zone or district*
- 14 *where those activities are permitted*, and in a manner consistent
- 15 with proper and accepted customs and standards, as established

1 and followed by similar ~~landfill~~ *waste management* operations in
2 the same locality, shall become a nuisance, public or private, due
3 to any changed condition in or about the locality, after it has been
4 in operation for more than three years, if it was not a nuisance at
5 the time it began. *In an action or proceeding to abate the use of*
6 *waste management activities, proof that the activities have been*
7 *in existence for three years constitutes a rebuttable presumption*
8 *that the operation of the activities does not constitute a nuisance.*

9 (b) Subdivision (a) shall not apply if the ~~landfill~~ *waste*
10 *management* activity, operation, or facility, or appurtenances
11 thereof, obstructs the free passage or use, in the customary manner,
12 of any navigable lake, river, bay, stream, canal, or basin, or any
13 public park, square, street, or highway.

14 (c) Subdivision (a) shall not invalidate any provision contained
15 in the Health and Safety Code, Fish and Game Code, Food and
16 Agricultural Code, or Division 7 (commencing with Section 13000)
17 of the Water Code, if the ~~landfill~~ *waste management* activity,
18 operation, or facility, or appurtenances thereof, constitutes a
19 nuisance, public or private, as specifically defined or described in
20 any of those provisions.

21 (d) This section shall prevail over any contrary provision of an
22 ordinance or regulation of a city, county, city and county, or other
23 political subdivision of the state. However, nothing in this section
24 shall preclude a city, county, city and county, or other political
25 subdivision of this state, acting within its constitutional or statutory
26 authority and not in conflict with other provisions of state law,
27 from adopting an ordinance that allows notification to a prospective
28 homeowner that the dwelling is in close proximity to a ~~landfill~~
29 *waste management* activity, operation, or facility, or appurtenances
30 thereof, and is subject to the provisions of this section consistent
31 with Section 1102.6a.

32 (e) For purposes of this section, the term ~~“landfill~~ *“waste*
33 *management* activity, operation, or facility, or appurtenances
34 thereof” shall include, but not be limited to, a waste management
35 unit at which waste is *recycled, composted, diverted, converted*
36 *into energy, or* discharged in or on land for disposal. ~~“Landfill~~
37 *“Waste management* activity, operation, or facility, or
38 appurtenances thereof” does not include any surface impoundment,

- 1 waste pile, land treatment unit, *or* injection well,~~—or—soil~~
- 2 amendment.

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