

Senate Bill No. 1300

CHAPTER 519

An act to add Sections 7872 and 7873 to the Labor Code, relating to refineries.

[Approved by Governor September 20, 2014. Filed with
Secretary of State September 20, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1300, Hancock. Refineries: turnarounds.

Existing law, the California Refinery and Chemical Plant Worker Safety Act of 1990, states that its purpose is to prevent or minimize the consequences of catastrophic releases of toxic, flammable, or explosive chemicals. The act provides for the adoption by the Occupational Safety and Health Standards Board of specified process safety management standards for, among others, refineries that handle acutely hazardous material. The act declares the intent of the Legislature for the standards board and the Division of Occupational Safety and Health to promote worker safety through implementation of training and process safety management, as defined, in refineries and other facilities as deemed appropriate. A violation of the act is a crime.

This bill would require every petroleum refinery employer to, every September 15, submit to the division a full schedule for the following calendar year of planned turnarounds, meaning a planned, periodic shutdown of a refinery process unit or plant to perform maintenance, overhaul, and repair operations and to inspect, test, and replace process materials and equipment, as specified. The bill would also require a petroleum refinery employer, upon the request of the division, to provide access onsite and provide the division with specified documentation relating to a planned turnaround within a certain period of time, as provided. The bill would, except as specified, prohibit the division from releasing to the public any information submitted to the division pursuant to these provisions that is designated as a trade secret, as defined. The bill would require the division to notify a petroleum refinery employer in writing of a request for the release of information to the public that includes information that the petroleum refinery employer has notified the division is a trade secret, as provided. The bill would authorize an employer to seek a court order prohibiting public disclosure. The bill establishes misdemeanor penalties for knowingly and willfully disclosing trade secrets.

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

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 7872 is added to the Labor Code, to read:

7872. (a) As used in this section and in Section 7873, “turnaround” means a planned, periodic shutdown, total or partial, of a refinery process unit or plant to perform maintenance, overhaul, and repair operations and to inspect, test, and replace process materials and equipment. “Turnaround” does not include unplanned shutdowns that occur due to emergencies or other unexpected maintenance matters in a process unit or plant. “Turnaround” also does not include routine maintenance, where routine maintenance consists of regular, periodic maintenance on one or more pieces of equipment at a refinery process unit or plant that may require shutdown of such equipment.

(b) Every September 15, every petroleum refinery employer shall submit to the division a full schedule of planned turnarounds for all affected units for the following calendar year.

(c) At the request of the division, at least 60 days prior to the shutdown of a process unit or plant as part of a planned turnaround, a petroleum refinery employer shall provide access onsite and allow the division to review the following documentation for the process unit or plant scheduled to be shut down for that turnaround:

(1) All corrosion reports and risk-based inspection reports generated since the last turnaround.

(2) Process hazard analyses generated since the last turnaround.

(3) Boiler permit schedules.

(4) All management of change records related to repairs, design modifications, and process changes implemented since the last turnaround or scheduled to be completed in the planned turnaround referenced in this subdivision and identified in subdivision (b).

(5) Work orders scheduled to be completed in the planned turnaround referenced in this subdivision and identified in subdivision (b).

(6) All temporary repairs made since the last turnaround, including, but not limited to, clamps and encapsulations. As used in this section, “temporary repairs” means repairs made to piping systems in order to restore sufficient integrity to continue safe operation until permanent repairs can be scheduled.

(7) Notification and description of all repairs, design modifications, or process changes described in a corrosion report, risk-based inspection report, process hazard analysis, boiler permit schedule, management of change record, work order, or other document listed in paragraphs (1) to (6),

inclusive, that the petroleum refinery employer has deferred to a subsequent operational period or turnaround.

(d) The division may request additional information as necessary to perform its responsibilities in this part pursuant to Section 6314.

(e) At the request of the division, at least 30 days before the shutdown of a process unit or plant as part of a planned turnaround, a petroleum refinery employer shall provide access onsite and allow the division to review any changes to the information or documents reviewed by the division pursuant to subdivision (c) and relevant supporting documents.

(f) At the division's request, a petroleum refinery employer shall provide the division with physical copies, or, at the division's discretion, electronic copies if available, of the documentation reviewed by the division pursuant to subdivisions (c), (d), and (e).

(g) By agreement with a petroleum refinery employer, the division may modify the reporting period as to any individual item of information.

(h) This section is not intended to limit or increase the division's authority in Part 1 (commencing with Section 6300) to prohibit use of a place of employment, machine, device, apparatus, or equipment or any part thereof that constitutes an imminent hazard to employees.

(i) The Legislature finds and declares that the purpose of this section is to improve the ability of the state to conduct inspections of petroleum refining operations.

SEC. 2. Section 7873 is added to the Labor Code, to read:

7873. (a) As used in this section, "trade secret" means a trade secret as defined in subdivision (d) of Section 6254.7 of the Government Code or Section 1061 of the Evidence Code, and shall include the schedule submitted to the division pursuant to subdivision (b) of Section 7872 of this code, and the scheduling, duration, layout, configuration, and type of work to be performed during a turnaround. Upon completion of a turnaround, the scheduling and duration of that turnaround shall no longer be considered a trade secret. The wages, hours, benefits, job classifications, and training standards for employees performing work for petroleum refinery employers is not a trade secret.

(b) (1) If a petroleum refinery employer believes that information submitted to the division pursuant to Section 7872 may involve the release of a trade secret, the petroleum refinery employer shall nevertheless provide this information to the division. The petroleum refinery employer may, at the time of submission, identify all or a portion of the information submitted to the division as trade secret and, to the extent feasible, segregate records designated as trade secret from the other records.

(2) Subject to subdivisions (c), (d), and (e), the division shall not release to the public any information designated as a trade secret by the petroleum refinery employer pursuant to paragraph (1).

(c) (1) Upon the receipt of a request for the release of information to the public that includes information that the petroleum refinery employer has notified the division is a trade secret pursuant to paragraph (1) of subdivision

(b), the division shall notify the petroleum refinery employer in writing of the request by certified mail, return receipt requested.

(2) The division shall release the requested information to the public, unless both of the following occur:

(A) Within 30 days of receipt of the notice of the request for information, the refinery petroleum employer files an action in an appropriate court for a declaratory judgment that the information is subject to protection under subdivision (b) and promptly notifies the division of that action.

(B) Within 120 days of receipt of the notice of the request for information, the refinery petroleum employer obtains an order prohibiting disclosure of the information to the public and promptly notifies the division of that action.

(3) This subdivision shall not be construed to allow a petroleum refinery employer to refuse to disclose the information required pursuant to this section to the division.

(d) (1) Except as provided in subdivision (c), any information that has been designated as a trade secret by a petroleum refinery employer shall not be released to any member of the public, except that such information may be disclosed to other officers or employees of the division when relevant in any proceeding of the division.

(2) If the person requesting the release of the information or the petroleum refinery employer files an action to order or prohibit disclosure of trade secret information, the person instituting the proceeding shall name the person or the petroleum refinery employer as a real party in interest.

(A) The petroleum refinery employer filing an action pursuant to paragraph (2) of subdivision (c) shall provide notice of the action to the person requesting the release of the information at the same time that the defendant in the action is served.

(B) The person filing an action to compel the release of information that includes information that the petroleum refinery employer has notified the division is a trade secret pursuant to paragraph (1) of subdivision (b) shall provide notice of the action to the petroleum refinery employer that submitted the information at the same time that the defendant in the action is served.

(3) The court shall award costs and reasonable attorneys' fees to the party that prevails in litigation filed pursuant to this section. The public agency shall not bear the court costs for any party named in litigation filed pursuant to this section.

(e) This section shall not be construed to prohibit the exchange of trade secrets between local, state, or federal public agencies or state officials when those trade secrets are relevant and reasonably necessary to the exercise of their authority.

(f) An officer or employee of the division who, by virtue of that employment or official position, has possession of, or has access to, trade secret information, and who, knowing that disclosure of the information to the general public is prohibited by this section, knowingly and willfully discloses the information in any manner to a person he or she knows is not entitled to receive it, is guilty of a misdemeanor. A contractor with the division and an employee of the contractor, who has been furnished

information as authorized by this section, shall be considered an employee of the division for purposes of this section.

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.