

ASSEMBLY BILL

No. 276

**Introduced by Committee on Environmental Safety and Toxic
Materials (Assembly Members Alejo (Chair), Gonzalez, McCarty,
and Ting)**

February 11, 2015

An act to amend Sections 25173, 25185.6, 25190, 25358.1, 25358.2, and 25367 of the Health and Safety Code, relating to hazardous materials.

LEGISLATIVE COUNSEL'S DIGEST

AB 276, as introduced, Committee on Environmental Safety and Toxic Materials. Department of Toxic Substances Control: response actions: cleanup ability information.

(1) The Hazardous Waste Control Law regulates the use and disposal of hazardous materials. Existing law permits the Department of Toxic Substances Control or any local officer or agency authorized to enforce the Hazardous Waste Control Law to require specified persons to furnish and transmit certain information relating to hazardous substances, hazardous wastes, and hazardous materials. Existing law defines information that constitutes a trade secret and requires the department to establish procedures to ensure that trade secrets provided to the department are used only in connection with the responsibilities of the department under the Hazardous Waste Control Law and are not otherwise disseminated without the consent of the persons submitting the information. A violation of the Hazardous Waste Control Law is a crime.

This bill would also authorize the department or local officer or agency to require the persons specified above to furnish and transmit any

information relating to those persons' abilities to pay for or perform a response action. By expanding the scope of a crime, this bill would impose a state-mandated local program. The bill would authorize the department to issue an order directing compliance if a person intentionally or negligently fails to furnish and transmit the above-described information. The bill would authorize the department or a local officer or agency to

This bill would revise the definition of "trade secret" to include information related to a person's ability to pay for, or to perform a response action. The bill would authorize the department to disclose trade secrets to specified persons in connection with the department's responsibilities under the Hazardous Waste Control Law. The bill would subject any person who knowingly and willfully disseminates information protected by these provisions and procedures established by the department to a fine, imprisonment in a county jail, or both. By creating a new crime, this bill would impose a state-mandated local program.

This bill would authorize the department or a local officer or agency to take the above-described actions only if there is a reasonable basis to believe that there has been or may be a release or threatened release of a hazardous substance, and only for the purpose of determining under the Hazardous Waste Control Law the need for a response action, the choosing or taking of a response action, or otherwise for the purpose of enforcing the Hazardous Waste Control Law.

(2) The Carpenter-Presley-Tanner Hazardous Substance Account Act authorizes the department to require any potentially responsibly party, or any person who has, or may have, acquired certain information relating to hazardous substances and hazardous substance release sites in the course of a commercial, ownership, or contractual relationship with a potentially responsible party, to furnish that information. Existing law makes any person who intentionally makes a false statement or representation in any report or information furnished, or fails to provide information requested, pursuant to these provisions liable for a civil penalty. Existing law authorizes the department to disclose trade secrets received by the department to specified persons in connection with the department's responsibilities under the act and requires the department to establish procedures to ensure that the trade secrets are only utilized in connection with its responsibilities under the act. Any person who knowingly and willfully disseminates information protected by these provisions is subject to a fine, imprisonment in a county jail, or both.

This bill would instead authorize the department to require any person who has or may have information relating to hazardous substances or hazardous substance release sites, regardless of how acquired, to furnish the information, including information relating to the ability of a responsible party or liable person to pay for or to perform a response action. The bill would expand the liability of a person subject to the civil penalty to a person who acted negligently and would authorize the department to issue an order directing compliance if a person intentionally or negligently fails to furnish information required to be disclosed pursuant to these provisions.

The bill would additionally include as trade secrets information relating to the ability of any person to pay for or to perform a response action. By expanding the scope of a crime, this bill would impose a state-mandated local program.

(3) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

(4) 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.

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

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

1 SECTION 1. Section 25173 of the Health and Safety Code is
2 amended to read:
3 25173. (a) The department shall establish procedures to ensure
4 that trade secrets used by a person regarding methods of hazardous
5 waste handling and disposal are utilized by the director, the
6 department, or any authorized representative of the department
7 only in connection with the responsibilities of the department
8 pursuant to this chapter and that ~~such~~ those trade secrets are not
9 otherwise disseminated by the director, the department, or any
10 authorized representative of the department without the consent

1 of the person. However, any information shall be made available
2 to governmental agencies for use in making studies and for use in
3 judicial review or enforcement proceedings involving the person
4 furnishing the information.

5 “Trade

6 (b) “Trade secrets,” as used in this section, may include, but
7 are not limited to, any formula, plan, pattern, process, tool,
8 mechanism, compound, procedure, production data, or compilation
9 of information ~~which that~~ is not patented, ~~which that~~ is known
10 only to certain individuals within a commercial concern who are
11 using it to fabricate, produce, or compound an article of trade or
12 a service having commercial value, and ~~which that~~ gives its user
13 an opportunity to obtain a business advantage over competitors
14 who do not know or use it. “Trade secrets” may also include
15 information related to the ability of any person to pay for, or
16 perform, a response action.

17 SEC. 2. Section 25185.6 of the Health and Safety Code is
18 amended to read:

19 25185.6. (a) The department or ~~any~~ a local officer or agency
20 authorized to enforce this chapter pursuant to subdivision (a) of
21 Section 25180, in connection with any action authorized by this
22 chapter, may require any of the following persons to furnish and
23 transmit to the designated offices of the department or the local
24 officer or agency any existing information relating to hazardous
25 substances, hazardous wastes, ~~or hazardous materials:~~ materials,
26 or the ability of those persons to pay for, or to perform, a response
27 action:

28 (1) Any person who owns or operates any hazardous waste
29 facility.

30 (2) Any person who generates, stores, treats, transports, disposes
31 of, or otherwise handles hazardous waste.

32 (3) Any person who has generated, stored, treated, transported,
33 disposed of, or otherwise handled hazardous waste.

34 (4) Any person who arranges, or has arranged, by contract or
35 other agreement, to store, treat, transport, dispose of, or otherwise
36 handle hazardous waste.

37 (5) Any person who applies, or has applied, for any permit,
38 registration, or certification under this chapter.

39 (b) Any person required to furnish this information shall pay
40 any costs of photocopying or transmitting this information.

1 (c) When requested by the person furnishing this information
2 the department or the local officer or agency shall follow the
3 procedures established under Section 25173.

4 (d) *If a person intentionally or negligently fails to furnish and*
5 *transmit to the designated offices of the department or the local*
6 *officer or agency any existing information required pursuant to*
7 *this section, the department may issue an order pursuant to Section*
8 *25187 directing compliance with the request.*

9 (e) *The department may disclose information submitted pursuant*
10 *to this section that is a trade secret, as defined in Section 25173,*
11 *to authorized representatives, contractors, or other governmental*
12 *agencies only in connection with the department's responsibilities*
13 *pursuant to this chapter. The department shall establish procedures*
14 *to ensure that the trade secret is used only in connection with these*
15 *responsibilities and are not otherwise disseminated without the*
16 *consent of the person who provided the information to the*
17 *department.*

18 (f) *The department may also make available to the United States*
19 *Environmental Protection Agency any and all information required*
20 *by law to be furnished to that agency. The sharing of information*
21 *between the department and that agency pursuant to this section*
22 *does not constitute a waiver by the department or any affected*
23 *person of any privilege or confidentiality provided by law which*
24 *pertains to the information.*

25 (g) *A person providing information pursuant subdivision (a)*
26 *shall, at the time of its submission, identify all information that*
27 *the person believes is a trade secret. Any information or record*
28 *not identified as a trade secret is available to the public, unless*
29 *exempted from disclosure by other provisions of law.*

30 (h) *Notwithstanding Section 25190, a person who knowingly*
31 *and willfully disseminates information protected by Section 25173*
32 *or procedures established by the department pursuant to Section*
33 *25173 shall, upon conviction, be punished by a fine of not more*
34 *than five thousand dollars (\$5,000), imprisonment in a county jail*
35 *not to exceed one year, or by both that fine and imprisonment.*

36 (i) *The department, or a local officer or agency authorized to*
37 *enforce this chapter pursuant to subdivision (a) of Section 25180,*
38 *may take the actions specified in this section only if there is a*
39 *reasonable basis to believe that there has been or may be a release*
40 *or threatened release of a hazardous substance, and only for the*

1 *purpose of determining under this chapter the need for a response*
 2 *action, the choosing or taking of a response action, or otherwise*
 3 *for the purpose of enforcing this chapter.*

4 (j) *For the purposes of this section, “trade secret” has the same*
 5 *meaning as set forth in Section 25173.*

6 SEC. 3. Section 25190 of the Health and Safety Code is
 7 amended to read:

8 25190. (a) Except as otherwise provided in Sections 25185.6,
 9 25189.5, 25189.6, 25189.7, and 25191, any person who violates
 10 any provision of this chapter, or any permit, rule, regulation,
 11 standard, or requirement issued or adopted pursuant to this chapter,
 12 is, upon conviction, guilty of a misdemeanor and shall be punished
 13 by a fine of not more than one thousand dollars (\$1,000) or by
 14 imprisonment for up to six months in a county jail or by both that
 15 fine and imprisonment.

16 ¶

17 (b) *If the conviction is for a second or subsequent violation, the*
 18 *person shall, upon conviction, be punished by imprisonment in*
 19 *the county jail for not more than one year or by imprisonment*
 20 *pursuant to subdivision (h) of Section 1170 of the Penal Code for*
 21 *16, 20, or 24 months. The court shall also impose upon the person*
 22 *a fine of not less than five thousand dollars (\$5,000) or more than*
 23 *twenty-five thousand dollars (\$25,000).*

24 SEC. 4. Section 25358.1 of the Health and Safety Code is
 25 amended to read:

26 25358.1. (a) The department, a representative of the
 27 department, or any person designated by the director may take the
 28 actions specified in this section only if there is a reasonable basis
 29 to believe that there *has been or* may be a release or threatened
 30 release of a hazardous substance, and only for the purpose of
 31 determining under this chapter the need for a response action, the
 32 choosing or taking of a response action, or otherwise for the
 33 purpose of enforcing this chapter.

34 (b) Any officer or employee of the department, a representative
 35 of the director, or a person designated by the director may require
 36 ~~any potentially responsible party, or any person who has, or may~~
 37 ~~have, acquired information relevant to any of the following matters~~
 38 ~~in the course of a commercial, ownership, or contractual~~
 39 ~~relationship with any potentially responsible party, a person who~~
 40 *has or may have information or documents relevant to any of the*

1 *following* to furnish, upon reasonable notice, *the relevant*
2 *information or documents relating to the following matters:*
3 *documents:*

4 (1) The identification, nature, and quantity of materials which
5 have been, or are, generated, treated, stored, or disposed of at a
6 hazardous substance release site or which have been, or are,
7 transported to a hazardous substance release site.

8 (2) The nature or extent of a release or a threatened release of
9 a hazardous substance at, or from, a hazardous substance release
10 site.

11 (3) *The ability of a responsible party or liable person to pay*
12 *for, or to perform, a response action, consistent with the*
13 *requirements of subsection (e) of Section 104 of the federal act*
14 *(42 U.S.C. Sec. 9604 (e)).*

15 (c) A person who is required to provide information pursuant
16 to subdivision (b) shall, in accordance with subdivision (h), allow
17 the officer, employee, representative, or designee, upon reasonable
18 notice and at reasonable times, to have access to, and copy, all
19 records relating to the hazardous substances for purposes of
20 assisting the department in determining the need for an action in
21 response to a release or threatened release pursuant to this chapter.

22 (d) Any officer or employee of the department, representative
23 of the director, or person designated by the director may, in
24 accordance with subdivision (h), enter, at reasonable times, any
25 of the following properties:

26 (1) Any nonresidential establishment or other place or property
27 where any hazardous substances may be, or have been, produced,
28 stored, treated, disposed of, or transported from.

29 (2) Any nonresidential establishment or other place or property
30 from which, or to which, a hazardous substance has been, or may
31 have been, released.

32 (3) Any nonresidential establishment or other place or property
33 where a hazardous substance release is, or may be, threatened.

34 (4) Any nonresidential establishment or other place or property
35 where entry is needed to determine the need for a response action,
36 or the appropriate remedial action, to effectuate a response action
37 under this chapter.

38 (5) Any residential place or property which, if it were a
39 nonresidential establishment or other place or property, would
40 otherwise meet the criteria described in paragraphs (1) to (4),

1 inclusive, if the department, representative, or person designated
2 by the director is able to establish, based upon reasonably available
3 evidence, that hazardous substances have been released onto or
4 under the residential place or real property and if entry is made
5 only at reasonable times and after reasonable notification to the
6 owners and occupants.

7 (e) Any officer or employee of the department, representative
8 of the director, or person designated by the director may, in
9 accordance with subdivision (h), carry out any of the following
10 activities:

11 (1) Inspect and obtain samples from any establishment or other
12 place or property specified in subdivision (d) or from any location
13 of any suspected hazardous substance.

14 (2) Inspect and obtain samples of any substances from any
15 establishment or place or property specified in subdivision (d).

16 (3) Inspect and obtain samples of any containers or labeling for
17 the suspected hazardous substances, and samples of the soil,
18 vegetation, air, water, and biota on the premises.

19 (4) Set up and maintain monitoring equipment for the purpose
20 of assessing or measuring the actual or potential migration of
21 hazardous substances.

22 (5) Survey and determine the topographic, geologic, and
23 hydrogeologic features of the land.

24 (6) Photograph any equipment, sample, activity, or
25 environmental condition described in paragraphs (2) to (5)
26 inclusive.

27 (f) (1) If photographs are to be taken pursuant to paragraph (6)
28 of subdivision (e), the department shall do all of the following:

29 (A) Comply with all procedures established pursuant to
30 subdivision (b) of Section 25358.2.

31 (B) Notify the person whose facility is photographed prior to
32 public disclosure of the photographs.

33 (C) Upon the request of the person owning the facility, submit
34 a copy of any photograph to the person for the purpose of
35 determining whether trade secret information, as defined in Section
36 25358.2, or facility security, would be revealed by the photograph.

37 (2) “Disclosure,” as used in Section 25358.2, for purposes of
38 this paragraph, does not include the review of the photograph by
39 a court of competent jurisdiction or by an administrative law judge.
40 A court or judge may review the photograph in camera.

1 (g) An officer, employee, representative, or designee who enters
2 a place, establishment, or property pursuant to this section shall
3 make a reasonable effort to inform the owner or the owners'
4 authorized representative of the inspection and shall provide split
5 samples to the owner or the representative upon request.

6 (h) If the owner or the owner's authorized representative does
7 not voluntarily grant access to a place, establishment, or property
8 pursuant to this section, the officer, employee, representative, or
9 designee shall first obtain a warrant pursuant to Title 13
10 (commencing with Section 1822.50) of Part 3 of the Code of Civil
11 Procedure. However, if there is an emergency posing an immediate
12 threat to public health and safety, the officer, employee,
13 representative, or designee may enter the place, establishment, or
14 property without the consent of the owner or owner's authorized
15 representative and without the issuance of a warrant.

16 (i) The department, and any person authorized by the department
17 to enter upon any lands for the purpose of taking removal or
18 remedial action pursuant to this chapter, shall not be held liable,
19 in either a civil or criminal proceeding, for trespass or for any other
20 acts which are necessary to carry out the corrective action.

21 SEC. 5. Section 25358.2 of the Health and Safety Code is
22 amended to read:

23 25358.2. (a) "Trade secrets," as used in this section, may
24 include, but are not limited to, any formula, plan, pattern, process,
25 tool, mechanism, compound, procedure, production data, or
26 compilation of information ~~which~~ *that* is not patented, ~~which~~ *that*
27 is known only to certain individuals within a commercial concern
28 who are using it to fabricate, produce, develop, or compound an
29 article of trade or a service having commercial value, and ~~which~~
30 *that* gives its user an opportunity to obtain a business advantage
31 over competitors who do not know or use it. "*Trade secrets*" may
32 also include information related to the ability of any person to pay
33 for, or perform, a response action.

34 (b) The department may disclose trade secrets received by the
35 department pursuant to this chapter to authorized representatives,
36 contractors, or other governmental agencies only in connection
37 with the department's responsibilities pursuant to this chapter. The
38 department shall establish procedures to ensure that ~~these~~ trade
39 secrets are utilized only in connection with these responsibilities

1 and are not otherwise disseminated without the consent of the
2 person who provided the information to the department.

3 (c) The department may also make available to the *United States*
4 Environmental Protection Agency any and all information required
5 by law to be furnished to that agency. The sharing of information
6 between the department and that agency pursuant to this section
7 does not constitute a waiver by the department or any affected
8 person of any privilege or confidentiality provided by law which
9 pertains to the information.

10 (d) Any person providing information pursuant to subdivision
11 ~~(a)~~ (b) of Section 25358.1 shall, at the time of its submission,
12 identify all information which the person believes is a trade secret.
13 Any information or record not identified as a trade secret is
14 available to the public, unless exempted from disclosure by other
15 provisions of law.

16 (e) Any person who knowingly and willfully disseminates
17 information protected by this section or procedures established by
18 the department pursuant to subdivision (b) shall, upon conviction,
19 be punished by a fine of not more than five thousand dollars
20 (\$5,000), imprisonment in the county jail not to exceed one year,
21 or by both that fine and imprisonment.

22 SEC. 6. Section 25367 of the Health and Safety Code is
23 amended to read:

24 25367. (a) Any person who commits any of the following
25 acts shall be liable for a civil penalty not to exceed twenty-five
26 thousand dollars (\$25,000) for each separate violation, or for
27 continuing violations, for each day during which that violation
28 continues:

29 ~~(a)~~

30 (1) Intentionally or negligently makes any false statement or
31 representation in any report or information furnished pursuant to
32 Section 25358.1.

33 ~~(b)~~

34 (2) Intentionally or negligently fails to provide any information
35 requested pursuant to Section 25358.1.

36 ~~(c)~~

37 (3) Refuses or prevents, without sufficient cause, any activity
38 authorized pursuant to Section 25358.1 or 25358.3.

39 (b) If a person intentionally or negligently fails to furnish and
40 transmit to any officer or employee of the department, a

1 *representative of the director, or a person designated by the*
2 *director any information required to be disclosed pursuant to*
3 *Section 25358.1, the department may issue an order directing*
4 *compliance with the request. The order shall be issued only after*
5 *notice and opportunity for consultation as is reasonably*
6 *appropriate under the circumstances.*

7 SEC. 7. The Legislature finds and declares that Sections 1 and
8 5 of this act, which amend Sections 25173 and 25358.2 of the
9 Health and Safety Code, respectively, impose a limitation on the
10 public’s right of access to the meetings of public bodies or the
11 writings of public officials and agencies within the meaning of
12 Section 3 of Article I of the California Constitution. Pursuant to
13 that constitutional provision, the Legislature makes the following
14 findings to demonstrate the interest protected by this limitation
15 and the need for protecting that interest:

16 The need to protect the competitiveness of entities providing to
17 the Department of Toxic Substances Control financial information
18 that may affect the business of the provider of the information if
19 it becomes known to competitors outweighs the interest in public
20 disclosure of that information.

21 SEC. 8. No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 the only costs that may be incurred by a local agency or school
24 district will be incurred because this act creates a new crime or
25 infraction, eliminates a crime or infraction, or changes the penalty
26 for a crime or infraction, within the meaning of Section 17556 of
27 the Government Code, or changes the definition of a crime within
28 the meaning of Section 6 of Article XIII B of the California
29 Constitution.