

AMENDED IN ASSEMBLY MARCH 17, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

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 amended, 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 *require the persons specified above to furnish and transmit information relating to those persons' ability to pay for or perform a response action 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.*

~~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 information received pursuant to the above-specified provisions 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 trade secret information protected by these specified 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~~ *responsible* 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~~ *make liable for* the civil penalty ~~to a person who acted negligently~~ *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)~~

~~(3) 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 those trade secrets are not~~
9 ~~otherwise disseminated by the director, the department, or any~~
10 ~~authorized representative of the department without the consent~~
11 ~~of the person. However, any information shall be made available~~
12 ~~to governmental agencies for use in making studies and for use in~~
13 ~~judicial review or enforcement proceedings involving the person~~
14 ~~furnishing the information.~~

15 ~~(b) "Trade secrets," as used in this section, may include, but are~~
16 ~~not limited to, any formula, plan, pattern, process, tool, mechanism,~~
17 ~~compound, procedure, production data, or compilation of~~
18 ~~information that is not patented, that is known only to certain~~
19 ~~individuals within a commercial concern who are using it to~~
20 ~~fabricate, produce, or compound an article of trade or a service~~
21 ~~having commercial value, and that gives its user an opportunity~~
22 ~~to obtain a business advantage over competitors who do not know~~
23 ~~or use it. "Trade secrets" may also include information related to~~
24 ~~the ability of any person to pay for, or perform, a response action.~~

25 ~~SEC. 2.~~

26 ~~SECTION 1. Section 25185.6 of the Health and Safety Code~~
27 ~~is amended to read:~~

28 ~~25185.6. (a) The department or a local officer or agency~~
29 ~~authorized to enforce this chapter pursuant to subdivision (a) of~~
30 ~~Section 25180, in connection with any action authorized by this~~
31 ~~chapter, may require any of the following persons to furnish and~~
32 ~~transmit to the designated offices of the department or the local~~
33 ~~officer or agency any existing information relating to hazardous~~
34 ~~substances, hazardous wastes, hazardous materials, or the ability~~
35 ~~of those persons to pay for, or to perform, a response action:~~

36 ~~(1) Any person who owns or operates any hazardous waste~~
37 ~~facility.~~

- 1 (2) Any person who generates, stores, treats, transports, disposes
2 of, or otherwise handles hazardous waste.
- 3 (3) Any person who has generated, stored, treated, transported,
4 disposed of, or otherwise handled hazardous waste.
- 5 (4) Any person who arranges, or has arranged, by contract or
6 other agreement, to store, treat, transport, dispose of, or otherwise
7 handle hazardous waste.
- 8 (5) Any person who applies, or has applied, for any permit,
9 registration, or certification under this chapter.
- 10 (b) Any person required to furnish this information shall pay
11 any costs of photocopying or transmitting this information.
- 12 (c) When requested by the person furnishing this information
13 the department or the local officer or agency shall follow the
14 procedures established under Section 25173.
- 15 (d) If a person intentionally or negligently fails to furnish and
16 transmit to the designated offices of the department or the local
17 officer or agency any existing information required pursuant to
18 this section, the department may issue an order pursuant to Section
19 25187 directing compliance with the request.
- 20 (e) The department may disclose information submitted pursuant
21 to this section ~~that is a trade secret, as defined in Section 25173,~~
22 to authorized representatives, contractors, or other governmental
23 agencies only in connection with the department's responsibilities
24 pursuant to this chapter. The department shall establish procedures
25 to ensure that ~~the trade secret information submitted pursuant to~~
26 *this section* is used only in connection with these responsibilities
27 and ~~are~~ is not otherwise disseminated without the consent of the
28 person who provided the information to the department.
- 29 (f) The department may also make available to the United States
30 Environmental Protection Agency any and all information required
31 by law to be furnished to that agency. The sharing of information
32 between the department and that agency pursuant to this section
33 does not constitute a waiver by the department or any affected
34 person of any privilege or confidentiality provided by law which
35 pertains to the information.
- 36 (g) A person providing information pursuant to subdivision (a)
37 shall, at the time of its submission, identify all information that
38 the person believes is a trade secret. Any information or record
39 not identified as a trade secret is available to the public, unless
40 exempted from disclosure by other provisions of law.

1 (h) Notwithstanding Section 25190, a person who knowingly
 2 and willfully disseminates information protected by Section 25173
 3 or procedures established by the department pursuant to Section
 4 25173 shall, upon conviction, be punished by a fine of not more
 5 than five thousand dollars (\$5,000), imprisonment in a county jail
 6 not to exceed one year, or by both that fine and imprisonment.

7 (i) The department, or a local officer or agency authorized to
 8 enforce this chapter pursuant to subdivision (a) of Section 25180,
 9 ~~may take the actions specified in this section~~ *require a person*
 10 *described in subdivision (a) to furnish and transmit to the*
 11 *designated offices of the department or the local officer or agency*
 12 *any information relating to the person's ability to pay for, or to*
 13 *perform, a response action* only if there is a reasonable basis to
 14 believe that there has been or may be a release or threatened release
 15 of a hazardous substance, and only for the purpose of determining
 16 under this chapter the need for a response action, the choosing or
 17 taking of a response action, or otherwise for the purpose of
 18 enforcing this chapter.

19 (j) For the purposes of this section, "trade secret" has the same
 20 meaning as set forth in Section 25173.

21 ~~SEC. 3.~~

22 *SEC. 2.* Section 25190 of the Health and Safety Code is
 23 amended to read:

24 25190. (a) Except as otherwise provided in Sections 25185.6,
 25 25189.5, 25189.6, 25189.7, and 25191, any person who violates
 26 any provision of this chapter, or any permit, rule, regulation,
 27 standard, or requirement issued or adopted pursuant to this chapter,
 28 is, upon conviction, guilty of a misdemeanor and shall be punished
 29 by a fine of not more than one thousand dollars (\$1,000) or by
 30 imprisonment for up to six months in a county jail or by both that
 31 fine and imprisonment.

32 (b) If the conviction is for a second or subsequent violation, the
 33 person shall, upon conviction, be punished by imprisonment in
 34 the county jail for not more than one year or by imprisonment
 35 pursuant to subdivision (h) of Section 1170 of the Penal Code for
 36 16, 20, or 24 months. The court shall also impose upon the person
 37 a fine of not less than five thousand dollars (\$5,000) or more than
 38 twenty-five thousand dollars (\$25,000).

1 ~~SEC. 4.~~

2 *SEC. 3.* Section 25358.1 of the Health and Safety Code is
3 amended to read:

4 25358.1. (a) The department, a representative of the
5 department, or any person designated by the director may take the
6 actions specified in this section only if there is a reasonable basis
7 to believe that there has been or may be a release or threatened
8 release of a hazardous substance, and only for the purpose of
9 determining under this chapter the need for a response action, the
10 choosing or taking of a response action, or otherwise for the
11 purpose of enforcing this chapter.

12 (b) Any officer or employee of the department, a representative
13 of the director, or a person designated by the director may require
14 a person who has or may have information or documents relevant
15 to any of the following to furnish, upon reasonable notice, the
16 relevant information or documents:

17 (1) The identification, nature, and quantity of materials which
18 have been, or are, generated, treated, stored, or disposed of at a
19 hazardous substance release site or which have been, or are,
20 transported to a hazardous substance release site.

21 (2) The nature or extent of a release or a threatened release of
22 a hazardous substance at, or from, a hazardous substance release
23 site.

24 (3) The ability of a responsible party or liable person to pay for,
25 or to perform, a response action, consistent with ~~the requirements~~
26 ~~of~~ subsection (e) of Section 104 of the federal act (42 U.S.C. Sec.
27 9604 (e)).

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

35 (d) Any officer or employee of the department, representative
36 of the director, or person designated by the director may, in
37 accordance with subdivision (h), enter, at reasonable times, any
38 of the following properties:

- 1 (1) Any nonresidential establishment or other place or property
2 where any hazardous substances may be, or have been, produced,
3 stored, treated, disposed of, or transported from.
- 4 (2) Any nonresidential establishment or other place or property
5 from which, or to which, a hazardous substance has been, or may
6 have been, released.
- 7 (3) Any nonresidential establishment or other place or property
8 where a hazardous substance release is, or may be, threatened.
- 9 (4) Any nonresidential establishment or other place or property
10 where entry is needed to determine the need for a response action,
11 or the appropriate remedial action, to effectuate a response action
12 under this chapter.
- 13 (5) Any residential place or property which, if it were a
14 nonresidential establishment or other place or property, would
15 otherwise meet the criteria described in paragraphs (1) to (4),
16 inclusive, if the department, representative, or person designated
17 by the director is able to establish, based upon reasonably available
18 evidence, that hazardous substances have been released onto or
19 under the residential place or real property and if entry is made
20 only at reasonable times and after reasonable notification to the
21 owners and occupants.
- 22 (e) 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), carry out any of the following
25 activities:
- 26 (1) Inspect and obtain samples from any establishment or other
27 place or property specified in subdivision (d) or from any location
28 of any suspected hazardous substance.
- 29 (2) Inspect and obtain samples of any substances from any
30 establishment or place or property specified in subdivision (d).
- 31 (3) Inspect and obtain samples of any containers or labeling for
32 the suspected hazardous substances, and samples of the soil,
33 vegetation, air, water, and biota on the premises.
- 34 (4) Set up and maintain monitoring equipment for the purpose
35 of assessing or measuring the actual or potential migration of
36 hazardous substances.
- 37 (5) Survey and determine the topographic, geologic, and
38 hydrogeologic features of the land.

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

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

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

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

10 (C) Upon the request of the person owning the facility, submit
11 a copy of any photograph to the person for the purpose of
12 determining whether trade secret information, as defined in Section
13 25358.2, or facility security, would be revealed by the photograph.

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

18 (g) An officer, employee, representative, or designee who enters
19 a place, establishment, or property pursuant to this section shall
20 make a reasonable effort to inform the owner or the ~~owners’~~
21 *owner’s* authorized representative of the inspection and shall
22 provide split samples to the owner or the representative upon
23 request.

24 (h) If the owner or the owner’s authorized representative does
25 not voluntarily grant access to a place, establishment, or property
26 pursuant to this section, the officer, employee, representative, or
27 designee shall first obtain a warrant pursuant to Title 13
28 (commencing with Section 1822.50) of Part 3 of the Code of Civil
29 Procedure. However, if there is an emergency posing an immediate
30 threat to public health and safety, the officer, employee,
31 representative, or designee may enter the place, establishment, or
32 property without the consent of the owner or owner’s authorized
33 representative and without the issuance of a warrant.

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

1 ~~SEC. 5.~~

2 *SEC. 4.* Section 25358.2 of the Health and Safety Code is
3 amended to read:

4 25358.2. (a) “Trade secrets,” as used in this section, may
5 include, but are not limited to, any formula, plan, pattern, process,
6 tool, mechanism, compound, procedure, production data, or
7 compilation of information that is not patented, that is known only
8 to certain individuals within a commercial concern who are using
9 it to fabricate, produce, develop, or compound an article of trade
10 or a service having commercial value, and that gives its user an
11 opportunity to obtain a business advantage over competitors who
12 do not know or use it. ~~“Trade secrets” may also include information
13 related to the ability of any person to pay for, or perform, a
14 response action.~~

15 (b) The department may disclose trade secrets received by the
16 department pursuant to this chapter to authorized representatives,
17 contractors, or other governmental agencies only in connection
18 with the department’s responsibilities pursuant to this chapter. The
19 department shall establish procedures to ensure that trade secrets
20 are utilized only in connection with these responsibilities and are
21 not otherwise disseminated without the consent of the person who
22 provided the information to the department.

23 (c) The department may also make available to the United States
24 Environmental Protection Agency any and all information required
25 by law to be furnished to that agency. The sharing of information
26 between the department and that agency pursuant to this section
27 does not constitute a waiver by the department or any affected
28 person of any privilege or confidentiality provided by law which
29 pertains to the information.

30 (d) Any person providing information pursuant to subdivision
31 (b) of Section 25358.1 shall, at the time of its submission, identify
32 all information which the person believes is a trade secret. Any
33 information or record not identified as a trade secret is available
34 to the public, unless exempted from disclosure by other provisions
35 of law.

36 (e) Any person who knowingly and willfully disseminates
37 information protected by this section or procedures established by
38 the department pursuant to subdivision (b) shall, upon conviction,
39 be punished by a fine of not more than five thousand dollars

1 (\$5,000), imprisonment in the county jail not to exceed one year,
2 or by both that fine and imprisonment.

3 ~~SEC. 6.~~

4 *SEC. 5.* Section 25367 of the Health and Safety Code is
5 amended to read:

6 25367. (a) Any person who commits any of the following acts
7 shall be liable for a civil penalty not to exceed twenty-five thousand
8 dollars (\$25,000) for each separate violation, or for continuing
9 violations, for each day during which that violation continues:

10 (1) Intentionally or negligently makes any false statement or
11 representation in any report or information furnished pursuant to
12 Section 25358.1.

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

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

17 (b) If a person intentionally or negligently fails to furnish and
18 transmit to any officer or employee of the department, a
19 representative of the director, or a person designated by the director
20 any information required to be disclosed pursuant to Section
21 25358.1, the department may issue an order directing compliance
22 with the request. The order shall be issued only after notice and
23 opportunity for consultation as is reasonably appropriate under the
24 circumstances.

25 ~~SEC. 7.~~ ~~The Legislature finds and declares that Sections 1 and~~
26 ~~5 of this act, which amend Sections 25173 and 25358.2 of the~~
27 ~~Health and Safety Code, respectively, impose a limitation on the~~
28 ~~public's right of access to the meetings of public bodies or the~~
29 ~~writings of public officials and agencies within the meaning of~~
30 ~~Section 3 of Article I of the California Constitution. Pursuant to~~
31 ~~that constitutional provision, the Legislature makes the following~~
32 ~~findings to demonstrate the interest protected by this limitation~~
33 ~~and the need for protecting that interest:~~

34 ~~The need to protect the competitiveness of entities providing to~~
35 ~~the Department of Toxic Substances Control financial information~~
36 ~~that may affect the business of the provider of the information if~~
37 ~~it becomes known to competitors outweighs the interest in public~~
38 ~~disclosure of that information.~~

1 ~~SEC. 8.~~
2 *SEC. 6.* No reimbursement is required by this act pursuant to
3 Section 6 of Article XIII B of the California Constitution because
4 the only costs that may be incurred by a local agency or school
5 district will be incurred because this act creates a new crime or
6 infraction, eliminates a crime or infraction, or changes the penalty
7 for a crime or infraction, within the meaning of Section 17556 of
8 the Government Code, or changes the definition of a crime within
9 the meaning of Section 6 of Article XIII B of the California
10 Constitution.

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