

AMENDED IN ASSEMBLY MAY 28, 2015
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 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. *The bill would also permit the department or a local officer or agency authorized to enforce the Hazardous Waste Control Law to require any person who has information regarding the activities of a person specified above relating to hazardous substances, hazardous wastes, hazardous materials, and the ability of the specified person to pay for or perform a response action to furnish and transmit that information.* 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.~~

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.

This bill would authorize the department to disclose 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 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.

(2) The Carpenter-Presley-Tanner Hazardous Substance Account Act authorizes the department to require any potentially 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.

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 make liable for the civil penalty 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.

(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 25185.6 of the Health and Safety Code
2 is amended to read:

3 25185.6. (a) The department or a local officer or agency
4 authorized to enforce this chapter pursuant to subdivision (a) of
5 Section 25180, in connection with any action authorized by this
6 chapter, may require any of the following persons to furnish and
7 ~~transmit~~ *transmit, upon reasonable notice*, to the designated offices
8 of the department or the local officer or agency any existing
9 information relating to hazardous substances, hazardous wastes,
10 hazardous materials, or the ability of those persons to pay for, or
11 to perform, a response action:

12 (1) Any person who owns or operates any hazardous waste
13 facility.

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

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

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

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

8 *(b) In addition, the department or a local officer or agency*
9 *described in subdivision (a) may require any person who has*
10 *information regarding the activities of a person described in*
11 *paragraphs (1) to (5), inclusive, of subdivision (a) relating to*
12 *hazardous substances, hazardous wastes, hazardous materials, or*
13 *the ability of the person described in those paragraphs to pay for*
14 *or to perform a response action to furnish and transmit, upon*
15 *reasonable notice, that information to the designated offices of*
16 *the department or the local officer or agency.*

17 ~~(b)~~

18 (c) Any person required to furnish ~~this~~ information pursuant to
19 this section shall pay any costs of photocopying or transmitting
20 this information.

21 ~~(c)~~

22 (d) When requested by the person furnishing ~~this~~ information
23 pursuant to this section, the department or the local officer or
24 agency shall follow the procedures established under Section
25 25173.

26 ~~(d)~~

27 (e) If a person intentionally or negligently fails to furnish and
28 transmit to the designated offices of the department or the local
29 officer or agency any existing information required pursuant to
30 this section, the department may issue an order pursuant to Section
31 25187 directing compliance with the request.

32 ~~(e)~~

33 (f) The department may disclose information submitted pursuant
34 to this section to authorized representatives, contractors, or other
35 governmental agencies only in connection with the department's
36 responsibilities pursuant to this chapter. The department shall
37 establish procedures to ensure that information submitted pursuant
38 to this section is used only in connection with these responsibilities
39 and is not otherwise disseminated without the consent of the person
40 who provided the information to the department.

1 (f)

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

9 (g)

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

15 (h)

16 (i) Notwithstanding Section 25190, a person who knowingly
17 and willfully disseminates information protected by Section 25173
18 or procedures established by the department pursuant to Section
19 25173 shall, upon conviction, be punished by a fine of not more
20 than five thousand dollars (\$5,000), imprisonment in a county jail
21 not to exceed one year, or by both that fine and imprisonment.

22 ~~(i) The department, or a local officer or agency authorized to~~
23 ~~enforce this chapter pursuant to subdivision (a) of Section 25180,~~
24 ~~may require a person described in subdivision (a) to furnish and~~
25 ~~transmit to the designated offices of the department or the local~~
26 ~~officer or agency any information relating to the person's ability~~
27 ~~to pay for, or to perform, a response action only if there is a~~
28 ~~reasonable basis to believe that there has been or may be a release~~
29 ~~or threatened release of a hazardous substance, and only for the~~
30 ~~purpose of determining under this chapter the need for a response~~
31 ~~action, the choosing or taking of a response action, or otherwise~~
32 ~~for the purpose of enforcing this chapter.~~

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

35 SEC. 2. Section 25190 of the Health and Safety Code is
36 amended to read:

37 25190. (a) Except as otherwise provided in Sections 25185.6,
38 25189.5, 25189.6, 25189.7, and 25191, any person who violates
39 any provision of this chapter, or any permit, rule, regulation,
40 standard, or requirement issued or adopted pursuant to this chapter,

1 is, upon conviction, guilty of a misdemeanor and shall be punished
 2 by a fine of not more than one thousand dollars (\$1,000) or by
 3 imprisonment for up to six months in a county jail or by both that
 4 fine and imprisonment.

5 (b) If the conviction is for a second or subsequent violation, the
 6 person shall, upon conviction, be punished by imprisonment in
 7 the county jail for not more than one year or by imprisonment
 8 pursuant to subdivision (h) of Section 1170 of the Penal Code for
 9 16, 20, or 24 months. The court shall also impose upon the person
 10 a fine of not less than five thousand dollars (\$5,000) or more than
 11 twenty-five thousand dollars (\$25,000).

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

14 25358.1. (a) The department, a representative of the
 15 department, or any person designated by the director may take the
 16 actions specified in this section only if there is a reasonable basis
 17 to believe that there has been or may be a release or threatened
 18 release of a hazardous substance, and only for the purpose of
 19 determining under this chapter the need for a response action, the
 20 choosing or taking of a response action, or otherwise for the
 21 purpose of enforcing this chapter.

22 (b) Any officer or employee of the department, a representative
 23 of the director, or a person designated by the director may require
 24 a *any* person who has or may have information ~~or documents~~
 25 relevant to any of the following ~~to furnish~~, *matters to furnish the*
 26 *information*, upon reasonable ~~notice~~, *the relevant information or*
 27 ~~documents~~: *notice*:

28 (1) The identification, nature, and quantity of materials which
 29 have been, or are, generated, treated, stored, or disposed of at a
 30 hazardous substance release site or which have been, or are,
 31 transported to a hazardous substance release site.

32 (2) The nature or extent of a release or a threatened release of
 33 a hazardous substance at, or from, a hazardous substance release
 34 site.

35 (3) The ability of a ~~responsible party or liable person to pay for,~~
 36 ~~for or to perform,~~ *perform* a response ~~action, consistent with~~
 37 ~~subsection (e) of Section 104 of the federal act (42 U.S.C. Sec.~~
 38 ~~9604 (e))~~: *action*.

39 (c) A person who is required to provide information pursuant
 40 to subdivision (b) shall, in accordance with subdivision (h), allow

1 the officer, employee, representative, or designee, upon reasonable
2 notice and at reasonable times, to have access to, and copy, all
3 records relating to the hazardous substances for purposes of
4 assisting the department in determining the need for an action in
5 response to a release or threatened release pursuant to this chapter.

6 (d) Any officer or employee of the department, representative
7 of the director, or person designated by the director may, in
8 accordance with subdivision (h), enter, at reasonable times, any
9 of the following properties:

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

13 (2) Any nonresidential establishment or other place or property
14 from which, or to which, a hazardous substance has been, or may
15 have been, released.

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

18 (4) Any nonresidential establishment or other place or property
19 where entry is needed to determine the need for a response action,
20 or the appropriate remedial action, to effectuate a response action
21 under this chapter.

22 (5) Any residential place or property which, if it were a
23 nonresidential establishment or other place or property, would
24 otherwise meet the criteria described in paragraphs (1) to (4),
25 inclusive, if the department, representative, or person designated
26 by the director is able to establish, based upon reasonably available
27 evidence, that hazardous substances have been released onto or
28 under the residential place or real property and if entry is made
29 only at reasonable times and after reasonable notification to the
30 owners and occupants.

31 (e) Any officer or employee of the department, representative
32 of the director, or person designated by the director may, in
33 accordance with subdivision (h), carry out any of the following
34 activities:

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

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

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

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

7 (5) Survey and determine the topographic, geologic, and
8 hydrogeologic features of the land.

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

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

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

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

18 (C) Upon the request of the person owning the facility, submit
19 a copy of any photograph to the person for the purpose of
20 determining whether trade secret information, as defined in Section
21 25358.2, or facility security, would be revealed by the photograph.

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

26 (g) An officer, employee, representative, or designee who enters
27 a place, establishment, or property pursuant to this section shall
28 make a reasonable effort to inform the owner or the owner’s
29 authorized representative of the inspection and shall provide split
30 samples to the owner or the representative upon request.

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

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

6 SEC. 4. Section 25358.2 of the Health and Safety Code is
7 amended to read:

8 25358.2. (a) "Trade secrets," as used in this section, may
9 include, but are not limited to, any formula, plan, pattern, process,
10 tool, mechanism, compound, procedure, production data, or
11 compilation of information that is not patented, that is known only
12 to certain individuals within a commercial concern who are using
13 it to fabricate, produce, develop, or compound an article of trade
14 or a service having commercial value, and that gives its user an
15 opportunity to obtain a business advantage over competitors who
16 do not know or use it.

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

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

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

38 (e) Any person who knowingly and willfully disseminates
39 information protected by this section or procedures established by
40 the department pursuant to subdivision (b) shall, upon conviction,

1 be punished by a fine of not more than five thousand dollars
2 (\$5,000), imprisonment in the county jail not to exceed one year,
3 or by both that fine and imprisonment.

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

O