

AMENDED IN SENATE JUNE 11, 2015

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~~ *parties* to furnish and transmit certain information relating to hazardous substances, hazardous wastes, and hazardous materials. A violation of the Hazardous Waste Control Law is a crime.

This bill would authorize the department or local officer or agency to require ~~the persons specified above~~ *those parties* to furnish and transmit any information relating to ~~those persons'~~ *the parties'* abilities to pay for or perform a response ~~action.~~ *action 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. The bill would also ~~permit authorize~~ 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~~ *one of those parties* relating to hazardous substances, hazardous wastes, ~~or hazardous materials, and materials to furnish and transmit that information.~~ *The bill would authorize the department to require any person who has information regarding the activities of one of those parties relating to the ability of the ~~specified person~~ party to pay for or perform a response action to furnish and transmit that ~~information.~~ information 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.* 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.*

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 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) (1) 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, upon reasonable notice, to the designated offices of the
8 department or the local officer or agency any existing information
9 relating to hazardous substances, hazardous wastes, *or* hazardous
10 ~~materials, or the ability of those persons to pay for, or to perform,~~
11 ~~a response action:~~ *materials:*
12 (1)
13 (A) Any person who owns or operates any hazardous waste
14 facility.

1 (2)
 2 (B) Any person who generates, stores, treats, transports, disposes
 3 of, or otherwise handles hazardous waste.

4 (3)
 5 (C) Any person who has generated, stored, treated, transported,
 6 disposed of, or otherwise handled hazardous waste.

7 (4)
 8 (D) Any person who arranges, or has arranged, by contract or
 9 other agreement, to store, treat, transport, dispose of, or otherwise
 10 handle hazardous waste.

11 (5)
 12 (E) Any person who applies, or has applied, for any permit,
 13 registration, or certification under this chapter.

14 (2) (A) *The department, or a local officer or agency authorized*
 15 *to enforce this chapter pursuant to subdivision (a) of Section*
 16 *25180, may require a person described in paragraph (1) to furnish*
 17 *and transmit, upon reasonable notice, to the designated offices of*
 18 *the department or the local officer or agency, any information*
 19 *relating to the person’s ability to pay for, or to perform, a response*
 20 *action.*

21 (B) *This paragraph applies only if there is a reasonable basis*
 22 *to believe that there has been or may be a release or threatened*
 23 *release of a hazardous substance, and only for the purpose of*
 24 *determining under this chapter the need for a response action, the*
 25 *choosing or taking of a response action, or otherwise for the*
 26 *purpose of enforcing this chapter.*

27 (b) ~~In addition, the (1) The department or a local officer or~~
 28 ~~agency described in subdivision (a) may require any person who~~
 29 ~~has information regarding the activities of a person described in~~
 30 ~~paragraphs (1) to (5), subparagraphs (A) to (E), inclusive, of~~
 31 ~~paragraph (1) of subdivision (a) relating to hazardous substances,~~
 32 ~~hazardous wastes, or hazardous materials, or the ability of the~~
 33 ~~person described in those paragraphs to pay for or to perform a~~
 34 ~~response action to furnish and transmit, upon reasonable notice,~~
 35 ~~that information to the designated offices of the department or the~~
 36 ~~local officer or agency. department.~~

37 (2) (A) *The department may require any person who has*
 38 *information regarding the activities of a person described in*
 39 *subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision*
 40 *(a), relating to the ability of the person described in those*

1 *subparagraphs to pay for, or to perform, a response action, upon*
2 *reasonable notice, to furnish and transmit that information to the*
3 *designated offices of the department.*

4 (B) *This paragraph applies only if there is a reasonable basis*
5 *to believe that there has been or may be a release or threatened*
6 *release of a hazardous substance, and only for the purpose of*
7 *determining under this chapter the need for a response action, the*
8 *choosing or taking of a response action, or otherwise for the*
9 *purpose of enforcing this chapter.*

10 (c) Any person required to furnish information pursuant to this
11 section shall pay any costs of photocopying or transmitting this
12 information.

13 (d) When requested by the person furnishing information
14 pursuant to this section, the department or the local officer or
15 agency shall follow the procedures established under Section
16 25173.

17 (e) If a person intentionally or negligently fails to furnish and
18 transmit to the designated offices of the department or the local
19 officer or agency any existing information required pursuant to
20 this section, the department may issue an order pursuant to Section
21 25187 directing compliance with the request.

22 (f) The department may disclose information submitted pursuant
23 to this section to authorized representatives, contractors, or other
24 governmental agencies only in connection with the department's
25 responsibilities pursuant to this chapter. The department shall
26 establish procedures to ensure that information submitted pursuant
27 to this section is used only in connection with these responsibilities
28 and is not otherwise disseminated without the consent of the person
29 who provided the information to the department.

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

37 (h) A person providing information pursuant to subdivision (a)
38 or (b) shall, at the time of its submission, identify all information
39 that the person believes is a trade secret. Any information or record

1 not identified as a trade secret is available to the public, unless
2 exempted from disclosure by other provisions of law.

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

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

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

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

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

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

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

38 (b) Any officer or employee of the department, a representative
39 of the director, or a person designated by the director may require
40 any person who has or may have information relevant to any of

1 the following matters to furnish the information, upon reasonable
2 notice:

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

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

10 (3) The ability of a person to pay for or to perform a response
11 ~~action~~: *action, consistent with subsection (e) of Section 104 of the*
12 *federal act (42 U.S.C. Sec. 9604(e)).*

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

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

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

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

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

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

36 (5) Any residential place or property which, if it were a
37 nonresidential establishment or other place or property, would
38 otherwise meet the criteria described in paragraphs (1) to (4),
39 inclusive, if the department, representative, or person designated
40 by the director is able to establish, based upon reasonably available

1 evidence, that hazardous substances have been released onto or
2 under the residential place or real property and if entry is made
3 only at reasonable times and after reasonable notification to the
4 owners and occupants.

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

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

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

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

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

20 (5) Survey and determine the topographic, geologic, and
21 hydrogeologic features of the land.

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

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

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

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

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

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

39 (g) An officer, employee, representative, or designee who enters
40 a place, establishment, or property pursuant to this section shall

1 make a reasonable effort to inform the owner or the owner's
2 authorized representative of the inspection and shall provide split
3 samples to the owner or the representative upon request.

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

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

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

21 25358.2. (a) "Trade secrets," as used in this section, may
22 include, but are not limited to, any formula, plan, pattern, process,
23 tool, mechanism, compound, procedure, production data, or
24 compilation of information that is not patented, that is known only
25 to certain individuals within a commercial concern who are using
26 it to fabricate, produce, develop, or compound an article of trade
27 or a service having commercial value, and that gives its user an
28 opportunity to obtain a business advantage over competitors who
29 do not know or use it.

30 (b) The department may disclose trade secrets received by the
31 department pursuant to this chapter to authorized representatives,
32 contractors, or other governmental agencies only in connection
33 with the department's responsibilities pursuant to this chapter. The
34 department shall establish procedures to ensure that trade secrets
35 are utilized only in connection with these responsibilities and are
36 not otherwise disseminated without the consent of the person who
37 provided the information to the department.

38 (c) The department may also make available to the United States
39 Environmental Protection Agency any and all information required
40 by law to be furnished to that agency. The sharing of information

1 between the department and that agency pursuant to this section
2 does not constitute a waiver by the department or any affected
3 person of any privilege or confidentiality provided by law which
4 pertains to the information.

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

11 (e) Any person who knowingly and willfully disseminates
12 information protected by this section or procedures established by
13 the department pursuant to subdivision (b) shall, upon conviction,
14 be punished by a fine of not more than five thousand dollars
15 (\$5,000), imprisonment in the county jail not to exceed one year,
16 or by both that fine and imprisonment.

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

19 25367. (a) Any person who commits any of the following acts
20 shall be liable for a civil penalty not to exceed twenty-five thousand
21 dollars (\$25,000) for each separate violation, or for continuing
22 violations, for each day during which that violation continues:

23 (1) Intentionally or negligently makes any false statement or
24 representation in any report or information furnished pursuant to
25 Section 25358.1.

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

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

30 (b) If a person intentionally or negligently fails to furnish and
31 transmit to any officer or employee of the department, a
32 representative of the director, or a person designated by the director
33 any information required to be disclosed pursuant to Section
34 25358.1, the department may issue an order directing compliance
35 with the request. The order shall be issued only after notice and
36 opportunity for consultation as is reasonably appropriate under the
37 circumstances.

38 SEC. 6. No reimbursement is required by this act pursuant to
39 Section 6 of Article XIII B of the California Constitution because
40 the only costs that may be incurred by a local agency or school

1 district will be incurred because this act creates a new crime or
2 infraction, eliminates a crime or infraction, or changes the penalty
3 for a crime or infraction, within the meaning of Section 17556 of
4 the Government Code, or changes the definition of a crime within
5 the meaning of Section 6 of Article XIII B of the California
6 Constitution.

O