

Assembly Bill No. 276

CHAPTER 459

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

[Approved by Governor October 2, 2015. Filed with
Secretary of State October 2, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 276, 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 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 those parties to furnish and transmit any information relating to the parties' abilities to pay for or perform a response 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 how to finance a response action or otherwise for the purpose of enforcing the Hazardous Waste Control Law. The bill would also authorize the department to require any person who has information regarding the activities of one of those parties relating to hazardous substances, hazardous wastes, or hazardous 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 party to pay for or perform a response action to furnish and transmit that 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 how to finance 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.

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

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

25185.6. (a) (1) The department or a local officer or agency authorized to enforce this chapter pursuant to subdivision (a) of Section 25180, in connection with any action authorized by this chapter, may require any of the following persons to furnish and transmit, upon reasonable notice, to the designated offices of the department or the local officer or agency any

existing information relating to hazardous substances, hazardous wastes, or hazardous materials:

(A) Any person who owns or operates any hazardous waste facility.

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

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

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

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

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

(B) This paragraph applies 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 this chapter how to finance a response action or otherwise for the purpose of enforcing this chapter.

(b) (1) The department may require any person who has information regarding the activities of a person described in subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a) relating to hazardous substances, hazardous wastes, or hazardous materials, to furnish and transmit, upon reasonable notice, that information to the designated offices of the department.

(2) (A) The department may require any person who has information regarding the activities of a person described in subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a), relating to the ability of the person described in those subparagraphs to pay for, or to perform, a response action, upon reasonable notice, to furnish and transmit that information to the designated offices of the department.

(B) This paragraph applies 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 this chapter how to finance a response action or otherwise for the purpose of enforcing this chapter.

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

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

(e) If a person intentionally or negligently fails to furnish and transmit to the designated offices of the department or the local officer or agency

any existing information required pursuant to this section, the department may issue an order pursuant to Section 25187 directing compliance with the request.

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

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

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

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

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

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

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

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

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

25358.1. (a) The department, a representative of the department, or any person designated by the director may take the actions specified in this section 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 this chapter the need for a response action, the choosing or taking of a response action, or otherwise for the purpose of enforcing this chapter.

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

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

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

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

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

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

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

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

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

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

(5) Any residential place or property which, if it were a nonresidential establishment or other place or property, would otherwise meet the criteria described in paragraphs (1) to (4), inclusive, if the department, representative, or person designated by the director is able to establish, based upon reasonably available evidence, that hazardous substances have been released onto or under the residential place or real property and if entry is made only

at reasonable times and after reasonable notification to the owners and occupants.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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