

ASSEMBLY BILL

No. 2893

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

February 29, 2016

An act to amend Sections 25185.6, 25358.1, 25358.2, and 25390.5 of the Health and Safety Code, relating to hazardous materials.

LEGISLATIVE COUNSEL'S DIGEST

AB 2893, as introduced, Committee on Environmental Safety and Toxic Materials. Department of Toxic Substances Control: enforcement.

(1) The Hazardous Waste Control Law authorizes the Department of Toxic Substances Control and authorized local enforcement officers and agencies to require specified persons to furnish and transmit certain information relating to the person's ability to pay for or perform a response action, and further authorizes those entities to require any person who has information regarding another person's activities that relate to the ability of the person to pay for or perform a response action to also furnish and transmit the information. Existing law makes those provisions applicable 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 how to finance a response action or otherwise for the purpose of enforcing the Hazardous Waste Control Law. A violation of the Hazardous Waste Control Law is a crime.

This bill would make those provisions applicable also if there is a reasonable basis to believe that there has been or may be a release or

threatened release of hazardous wastes or hazardous material and also for the purpose of determining how to finance a corrective action.

(2) Existing law authorizes an officer or employee of the department and specified other persons to require any person who has or may have information relevant to specified matters relating to the release of hazardous substances to furnish and transmit that information. Existing law authorizes the department to disclose trade secrets received by the department pursuant to the Hazardous Waste Control Law only under specified circumstances.

This bill would require the person required to furnish and transmit the information to pay for any costs of photocopying and transmitting the information. The bill would limit the disclosure by the department of information, including trade secrets, received by the department pursuant to these provisions of the Hazardous Waste Control Law, specifying the parties to whom that disclosure is proper and requiring the disclosures be in connection with the department’s responsibilities under that law. The bill would require this information to be made available to governmental agencies for use in making studies and for use in judicial review or enforcement proceedings involving the person furnishing the information. The bill would make conforming and other nonsubstantive changes. Because the bill’s provisions would expand the scope of a crime, the bill would impose a state-mandated local program.

(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

1 relating to hazardous substances, hazardous wastes, or hazardous
2 materials:

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

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

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

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

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 25180,
16 may require a person described in paragraph (1) to furnish and
17 transmit, upon reasonable notice, to the designated offices of the
18 department or the local officer or agency, any information relating
19 to the person's ability to pay for, or to perform, a response *or*
20 *corrective* action.

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

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

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

1 (B) This paragraph applies only if there is a reasonable basis to
2 believe that there has been or may be a release or threatened release
3 of a hazardous substance, *hazardous wastes*, or *hazardous material*,
4 and only for the purpose of determining under this chapter how to
5 finance a response or *corrective* action or otherwise for the purpose
6 of enforcing this chapter.

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

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

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

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

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

34 (h) A person providing information pursuant to subdivision (a)
35 or (b) shall, at the time of its submission, identify all information
36 that the person believes is a trade secret. Any information or record
37 not identified as a trade secret is available to the public, unless
38 exempted from disclosure by other provisions of law. *For purposes*
39 *of this subdivision, "trade secret" is defined as in Section 25173.*

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

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

11 25358.1. (a) The department, a representative of the
12 department, or any person designated by the director may take the
13 actions specified in this section only if there is a reasonable basis
14 to believe that there has been or may be a release or threatened
15 release of a hazardous substance, and only for the purpose of
16 determining under this chapter the need for a response action, the
17 choosing or taking of a response action, or otherwise for the
18 purpose of enforcing this chapter.

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

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

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

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

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

37 ~~(e)~~

38 (d) A person who is required to provide information pursuant
39 to subdivision (b) shall, in accordance with subdivision ~~(h)~~, (i),
40 allow the officer, employee, representative, or designee, upon

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

6 ~~(d)~~

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

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

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

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

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

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

32 ~~(e)~~

33 (f) Any officer or employee of the department, representative
34 of the director, or person designated by the director may, in
35 accordance with subdivision ~~(h)~~; (i), carry out any of the following
36 activities:

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

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

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

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

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

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

15 ~~(f)~~

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

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

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

22 (C) Upon the request of the person owning the facility, submit
23 a copy of any photograph to the person for the purpose of
24 determining whether trade secret information, as defined in Section
25 25358.2, or facility security, would be revealed by the photograph.

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

30 ~~(g)~~

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

36 ~~(h)~~

37 ~~(i)~~ (i) If the owner or the owner's authorized representative does
38 not voluntarily grant access to a place, establishment, or property
39 pursuant to this section, the officer, employee, representative, or
40 designee shall first obtain a warrant pursuant to Title 13

1 (commencing with Section 1822.50) of Part 3 of the Code of Civil
2 Procedure. However, if there is an emergency posing an immediate
3 threat to public health and safety, the officer, employee,
4 representative, or designee may enter the place, establishment, or
5 property without the consent of the owner or owner’s authorized
6 representative and without the issuance of a warrant.

7 (j) *The department may disclose information submitted pursuant*
8 *to this section to authorized representatives, contractors, or other*
9 *governmental agencies only in connection with the department’s*
10 *responsibilities pursuant to this chapter. The department shall*
11 *establish procedures to ensure that information submitted pursuant*
12 *to this section is used only in connection with these responsibilities*
13 *and is not otherwise disseminated without the consent of the person*
14 *who provided the information to the department.*

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

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

29 SEC. 3. Section 25358.2 of the Health and Safety Code is
30 amended to read:

31 25358.2. (a) “Trade secrets,” as used in this section, may
32 include, but are not limited to, any formula, plan, pattern, process,
33 tool, mechanism, compound, procedure, production data, or
34 compilation of information that is not patented, that is known only
35 to certain individuals within a commercial concern who are using
36 it to fabricate, produce, develop, or compound an article of trade
37 or a service having commercial value, and that gives its user an
38 opportunity to obtain a business advantage over competitors who
39 do not know or use it.

1 (b) ~~The department may disclose trade secrets received by the~~
2 ~~department pursuant to this chapter to authorized representatives,~~
3 ~~contractors, or other governmental agencies only in connection~~
4 ~~with the department's responsibilities pursuant to this chapter. The~~
5 ~~department shall establish procedures to ensure that trade secrets~~
6 ~~are secret information is utilized by the department only in~~
7 ~~connection with these the responsibilities of the department~~
8 ~~pursuant to this chapter and are is not otherwise disseminated~~
9 ~~without the consent of the person who provided the information~~
10 ~~to the department. However, any information shall be made~~
11 ~~available to governmental agencies for use in making studies and~~
12 ~~for use in judicial review or enforcement proceedings involving~~
13 ~~the person furnishing the information.~~

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

21 ~~(d)~~

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

28 ~~(e)~~

29 (d) Any person who knowingly and willfully disseminates
30 information protected by this section or procedures established by
31 the department pursuant to subdivision (b) shall, upon conviction,
32 be punished by a fine of not more than five thousand dollars
33 (\$5,000), imprisonment in the county jail not to exceed one year,
34 or by both that fine and imprisonment.

35 SEC. 4. Section 25390.5 of the Health and Safety Code is
36 amended to read:

37 25390.5. For the purposes of this article, the orphan share shall
38 be determined in the following manner:

1 (a) The orphan share shall be expressed as a percentage in
2 multiples of five, up to, and, including, but not greater than, 75
3 percent.

4 (b) The potentially responsible party filing a claim for
5 reimbursement of the orphan share shall provide the administrator
6 of the fund with a written potentially responsible party search
7 report that shall include a list of all potentially responsible parties
8 identified for the site, the factual and legal basis for identifying
9 those parties, and a proposed orphan share percentage. The
10 potentially responsible party shall also provide the administrator
11 with the factual documentation necessary to support the proposed
12 orphan share percentage.

13 (c) Upon receipt of the information required by subdivision (a),
14 the administrator of the fund shall invite all identified potentially
15 responsible parties and the department and the regional board to
16 submit any additional information relating to the proposed orphan
17 share percentage or to the list of identified potentially responsible
18 parties.

19 (d) The administrator of the fund, in consultation with the
20 department or the regional board, shall determine a final orphan
21 share percentage based on the volume, toxicity, and difficulty of
22 removal of the contaminants contributed to the site by the party
23 or parties responsible for the orphan share. The administrator shall
24 determine the orphan share timely and efficiently and is not
25 required to precisely determine all relevant factors, as long as the
26 determination is generally equitable. In addition, the administrator
27 may consider the results of any apportionment or allocation
28 conducted by voluntary arbitration or mediation or by a civil action
29 filed by a potentially responsible party, or any other apportionment
30 or allocation decision that is helpful when determining the orphan
31 share percentage.

32 (e) A potentially responsible party shall not assert, and the
33 administrator of the fund shall not determine, that the orphan share
34 percentage includes the share of liability attributable to a potentially
35 responsible party's acts that occurred before January 1, 1982,
36 unless that share of responsibility is attributable to a person who
37 is defunct or insolvent.

38 (f) In determining the orphan share percentage under this section,
39 the administrator of the fund may perform any of the activities
40 authorized in subdivisions (b) and ~~(e)~~ (d) of Section 25358.1.

1 (g) The administrator of the fund shall issue all orphan share
2 percentage determinations in writing, with notification to all
3 appropriate parties. The decision of the administrator with respect
4 to either apportionment or payment of claims is a final agency
5 action for the purposes of judicial review of the decision by any
6 party to the proceedings resulting in the decision; however, judicial
7 review of the administrator's decision is limited to a showing of
8 fraud by a party submitting information under this subdivision.
9 The administrator shall be represented by the Attorney General in
10 any action brought under this article.

11 SEC. 5. No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 the only costs that may be incurred by a local agency or school
14 district will be incurred because this act creates a new crime or
15 infraction, eliminates a crime or infraction, or changes the penalty
16 for a crime or infraction, within the meaning of Section 17556 of
17 the Government Code, or changes the definition of a crime within
18 the meaning of Section 6 of Article XIII B of the California
19 Constitution.