

Date of Hearing: April 26, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Marc Berman, Chair

AB 2374 (Bauer-Kahan) – As Amended April 7, 2022

NOTE: This bill is double referred and passed out of the Assembly Public Safety Committee on April 5, 2022, by a vote of 7-0-0.

SUBJECT: Crimes against public health and safety: illegal dumping.

SUMMARY: Increases the maximum fines for illegal dumping for persons employing more than 10 full-time employees, and requires any person convicted of illegal dumping to remove or pay the cost of removing the waste matter they were convicted of illegally dumping.

EXISTING LAW:

- 1) States that it is unlawful to dump or cause to be dumped waste matter in or upon a public or private highway or road, including any portion of the right-of-way thereof, or in or upon private property into or upon which the public is admitted by easement or license, or upon private property without the consent of the owner, or in or upon a public park or other public property other than property designated or set aside for that purpose by the governing board or body having charge of that property. (Penal Code (PEN) § 374.3(a))
- 2) Provides it is unlawful to place, deposit, or dump, or cause to be placed, deposited, or dumped, rocks, concrete, asphalt, or dirt in or upon a private highway or road, including any portion of the right-of-way of the private highway or road, or private property, without the consent of the owner or a contractor under contract with the owner for the materials, or in or upon a public park or other public property, without the consent of the state or local agency having jurisdiction over the highway, road, or property. (PEN § 374.3(b))
- 3) States that a person violating dumping provisions is guilty of an infraction. Each day that waste is placed, deposited, or dumped in violation the law is a separate violation. (PEN § 374.3(c))
- 4) Provides that illegal dumping prohibitions do not restrict a private owner in the use of his or her own private property, unless the placing, depositing, or dumping of the waste matter on the property creates a public health and safety hazard, a public nuisance, or a fire hazard, as determined by a local health department, local fire department or district providing fire protection services, or the Department of Forestry and Fire Protection, in which case this section applies. (PEN § 374.3(d))
- 5) Punishes a person convicted of dumping shall by a mandatory fine of not less than \$250 nor more than \$1,000 upon a first conviction, by a mandatory fine of not less than \$500 nor more than \$1,500 upon a second conviction, and by a mandatory fine of not less than \$750 nor more than \$3,000 upon a third or subsequent conviction. If the court finds that the waste matter placed, deposited, or dumped was used tires, the fine prescribed in this subdivision shall be doubled. (PEN § 374.3(e))

- 6) Provides that the court may require, in addition to any fine imposed upon a conviction, that, as a condition of probation the probationer remove, or pay the cost of removing, any waste matter which the convicted person dumped or caused to be dumped upon public or private property. (PEN § 374.3(f))
- 7) States that except when the court requires the convicted person to remove waste matter for which he or she is responsible for dumping as a condition of probation, the court may require the probation to pick up waste matter at a time and place within the jurisdiction of the court for not less than 12 hours. (PEN § 374.3(g))
- 8) States that a person who illegally dumps waste matter in commercial quantities is guilty of a misdemeanor punishable by imprisonment in a county jail for not more than six months and by a fine. The fine is mandatory and shall amount to not less than \$1,000 nor more than \$3,000 upon a first conviction, not less than \$3,000 nor more than \$6,000 upon a second conviction, and not less than \$6,000 nor more than \$10,000 upon a third or subsequent conviction. (PEN § 374.3(h)(1))
- 9) Defines “commercial quantities” as an amount of waste matter generated in the course of a trade, business, profession, or occupation, or an amount equal to or in excess of one cubic yard. (PEN § 374.3(h)(2))
- 10) Defines “person” to mean an individual, trust, firm, partnership, joint stock company, joint venture, or corporation. (PEN § 374.3(i))
- 11) Specifies that except in unusual cases where the interests of justice would be best served by waiving or reducing a fine, the minimum fines shall not be waived or reduced. (PEN § 374.3(j))
- 12) Establishes the Contractors State License Board (CSLB) under the Department of Consumer Affairs (DCA) to license and regulate contractors and home improvement salespersons. (Business and Professions Code (BPC) §§ 7000 *et seq.*)
- 13) Requires the CSLB in consultation with the Director of DCA to appoint a registrar of contractors (Registrar) and sunsets the CSLB and its authority to appoint a registrar on January 1, 2024, as specified. (BPC § 7011)
- 14) Specifies that willful or deliberate disregard and violation of Penal Code Section 374.3 or any substantially similar law or ordinance that is promulgated by a local government agency as defined in Section 82041 of the Government Code, constitutes a cause for disciplinary action against a licensee. (BPC § 7110)
- 15) Requires a licensee to report to the registrar in writing the occurrence of any of the following within 90 days after the licensee obtains knowledge of the event:
 - a) The conviction of the licensee for any felony.
 - b) The conviction of the licensee for any other crime that is substantially related to the qualifications, functions, and duties of a licensed contractor.

(BPC § 7071.18)

- 16) States that a conviction of a crime substantially related to the qualifications, functions and duties of a contractor constitutes a cause for disciplinary action. (BPC § 7123)
- 17) Requires the Registrar to make available to the public the date, nature, and disposition of all legal actions, subject to the following:
- i) Limits the disclosure of legal actions for citations from the date of issuance for five years after the date of compliance if no additional disciplinary actions have been taken against the licensee during that period;
 - ii) Limits the disclosure of accusations that result in suspension, stayed suspension, or stayed revocation of the contractor's license from the date accusation is filed for seven years if no additional disciplinary actions have been taken against the licensee during that period; and
 - iii) All revocations that are not stayed shall be disclosed indefinitely from the effective date of the revocation.

(BPC § 7124.6(d)-(e))

- 18) Defines "waste matter" to mean discarded, used, or leftover substance including, but not limited to, a lighted or nonlighted cigarette, cigar, match, or any flaming or glowing material, or any garbage, trash, refuse, paper, container, packaging or construction material, carcass of a dead animal, any nauseous or offensive matter of any kind, or any object likely to injure any person or create a traffic hazard. (PEN § 374)

THIS BILL:

- 1) Increases the maximum mandatory fine for illegally placing, depositing, dumping, or causing to be placed, deposited or dumped, waste matter in commercial quantities by a person employing more than 10 full-time employees, as follows:
 - a) From not more than \$1,000 for the first offense to not more than \$5,000;
 - b) From not more than \$3,000 for the second conviction to not more than \$10,000; and,
 - c) From not more than \$6,000 for a third or subsequent conviction to not more than \$20,000.
- 2) Requires the court to order the person convicted of illegal dumping, as specified, to remove, or pay the cost of removing, any waste matter which the convicted person dumped or caused to be dumped on public or private property.
- 3) Requires the court, if that person holds a license or permit to conduct business that is substantially related to the conviction, to notify the applicable licensing or permitting entity, if any, that a licensee or permittee had been convicted of illegal dumping.
- 4) Requires the licensing or permitting entity to record and post the conviction on the public profile of the licensee or permittee on the entity's website.

- 5) Provides that when setting fines, the court shall consider the person's ability to pay, including but not limited to, consideration of:
 - a) The defendant's present financial position;
 - b) The defendant's reasonably discernible future financial position, as specified;
 - c) The likelihood that the defendant will be able to obtain employment within one year from the date of the hearing; and
 - d) Any other factor that may bear upon the defendant's financial capability to pay the fine.

FISCAL EFFECT: Unknown. This bill is keyed fiscal by Legislative Counsel.

COMMENTS:

Purpose. This bill is sponsored by *Contra Costa County*. According to the author, “[This bill] raises fines on illegal dumping of commercial quantities up to \$5,000 upon first conviction, up to \$10,000 on a second conviction, and up to \$20,000 on third or subsequent conviction. Additionally, the bill will give judges discretion to require the convicted to pay for the removal of their illegal dumping...and allow for that person's name and name of the business to be publicly displayed as convicted of illegal dumping. By upping the fines and providing tools for the courts to publicly hold violators accountable for committing these acts, we disincentivize actors and create public knowledge on who not to work with. The illegal dumping of trash, furniture, mattresses, appliances, and toxic materials is out of control in both our rural and urban areas – it isn't just unsightly, it is putting the health of our communities and environment at risk. Illegal dumping also contributes to a loss of community pride, discourages investment and development, decreases property values, and increases a community's vulnerability to crime. Every Californian deserves the right to live in clean, garbage-free neighborhoods and it is time we take action.”

Background.

Illegal Dumping. Illegal dumping is the disposal of waste matter, commonly mattresses, tires, appliances, and construction debris, at an unpermitted location. Often done out of convenience or for economic gain, illegal dumping causes significant social, environmental, and economic costs statewide. Local government spends tens of millions of dollars each year to remove illegally disposed materials, and private property owners also incur significant costs for the removal of dumped waste matter. If left undealt with, a single act of illegal dumping can often lead to more widely used illegal solid waste disposal sites.

Illegal dumping is subject to investigation, cleanup, and enforcement by CalRecycle and local code enforcement departments. No state or local entity is solely responsible for combatting and responding to illegal dumping, resulting in a wide variety of responses across the state from law enforcement, public works, and code enforcement.

In 2006, the California Integrated Waste Management Board (now CalRecycle) established an illegal dumping enforcement task force to evaluate the problem of illegal dumping and to consider potential abatement strategies. Now a technical advisory committee comprised of

voluntary members, the Illegal Dumping Technical Advisory Committee continues to assess the scope of illegal dumping in California and share its findings and best practices.

The Contractors State License Board (CSLB). This bill would require the court to notify the applicable licensing or permitting entity of a licensee or permittee's conviction related to illegal dumping and require the licensing or permitting entity to record and post the conviction on its website. Although this bill applies broadly to all professions and licensing entities, it largely pertains to CSLB, which is currently authorized to discipline the license of a contractor who unlawfully dumped construction debris. Under existing law, contractors are required to notify CSLB of a conviction within 90 days, and a conviction of a construction-related crime is a cause of disciplinary action, subject to public disclosure.

Current Related Legislation.

AB 2447 (Quirk) of 2022 would prohibit the disposal of produced wastewater into unlined ponds and the construction of new unlined ponds, except as conducted pursuant to a permit or other authorization lawfully issued before that date, and would also prohibit the issuance or renewal of a permit or other authorization for those activities. AB 2247 is currently pending in the Assembly Committee on Natural Resources.

SB 995 (Nielsen) of 2022 would make it a misdemeanor to place, deposit, or dump hazardous, medical, or human waste in or upon the navigable waters of this state, or to place, deposit, or load it upon a vessel, with intent that it be dumped or deposited in or upon the navigable waters of this state or at any point in the ocean within 20 miles of the coastline. SB 995 is currently pending in the Senate Committee on Environmental Quality.

Prior Related Legislation.

AB 246 (Quirk) Chapter 46, Statutes of 2021, made a licensed contractor's unlawful dumping of debris a cause for disciplinary action against the contractor.

AB 215 (Mathis) of 2019 would have made a fourth violation of illegal dumping on private property a misdemeanor punishable by up to 30 days in county jail or a fine of not less than \$750 nor more than \$3,000. AB 215 was held in the Assembly Appropriations Committee.

AB 1216 (Bauer-Kahan) of 2019 would have created a pilot program to employ a single law enforcement officer in both Alameda and Contra Costa counties to enforce laws prohibiting dumping. AB 1216 was held in the Assembly Appropriations Committee.

SB 409 (Wilk) of 2019 would have increased the fines for dumping of waste in non-commercial quantities and made it unlawful for a property owner to receive waste matter if a permit or license is required from a state or local agency and was not obtained prior to receiving the waste matter. SB 409 was held in the Assembly Appropriations Committee.

AB 144 (Mathis) of 2015 would have made a fourth violation of illegal dumping on private property a misdemeanor punishable by up to 30 days in the county jail. AB 144 was vetoed by the Governor.

AB 1992 (Canciamilla), Chapter 416, Statutes of 2006, imposed graduated penalties and increased fines for second and third violations of illegal dumping offenses.

ARGUMENTS IN SUPPORT:

As the sponsor of this bill, *Contra Costa County* writes, “Illegal dumping has been a serious problem in Contra Costa County—and throughout California—for many years. Illegal dumping occurs when solid wastes are discarded or caused to be dumped or placed on any property, either public or private, without proper authorization or legitimate purpose. Illegal dumping is a crime of convenience, usually done for economic gain, and often by repeat offenders. Illegal dumping is an increasing problem that poses significant health, social, environmental, and economic impacts to communities. Specifically, illegal dumping contributes to a loss of community pride, discourages investment and development, decreases property values, and increases a community’s vulnerability to crime. Unfortunately, existing penalties do not serve as an adequate deterrent and prosecuting these cases is challenging for a variety of reasons.”

The *California Police Chiefs Association* writes in support, “Illegal dumping continues to be a growing problem for our communities. In addition the negative environmental impacts, research has tied illegal dumping to quality of life issues and social disorganization. Increasing accountability to address these deleterious consequences will help hold those responsible accountable for their actions, and improve our efforts to combat this ongoing problem.”

The *East Bay Municipal Utility District* writes in support, “Illegal dumping is a problem throughout California. EBMUD manages approximately 50,000 acres in the East Bay and the Mokelumne River watersheds and recognizes that illegal dumping has the potential to impact EBMUD watersheds and water quality. AB 2374 provides additional enforcement tools that will disincentivize illegal dumping and could aid property owners, such as EBMUD, by reducing the costs of cleaning up illegally dumped waste.”

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

California District Attorneys Association
California Police Chiefs Association
California State Sheriffs' Association
Central Contra Costa Sanitary District
Contra Costa County
Contractors State License Board
East Bay Municipal Utility District
Los Angeles County Solid Waste Management Committee/Integrated Waste Management Task Force
Tri-valley Cities of Dublin, Livermore, Pleasanton, San Ramon, and Town of Danville

REGISTERED OPPOSITION:

None on file.

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