

ASSEMBLY BILL

No. 305

Introduced by Assembly Member Nava

February 17, 2009

An act to amend Section 338.1 of the Code of Civil Procedure, and to amend Section 25515 of the Health and Safety Code, relating to hazardous materials.

LEGISLATIVE COUNSEL'S DIGEST

AB 305, as introduced, Nava. Hazardous materials: statute of limitations: penalties.

(1) Existing law of civil procedure relating to the time for commencing an action requires that actions for civil penalties or punitive damages under specified provisions relating to hazardous waste and hazardous substances be commenced within 5 years after the discovery by the agency bringing the action of the facts constituting the grounds for commencing the action.

This bill would include within that requirement certain actions relating to hazardous materials release response plans and inventory.

(2) Existing law requires the handler or an employee, authorized representative, agent, or designee of a handler to, upon discovery, immediately report any release or threatened release of a hazardous material to the administering agency, and to the Office of Emergency Services. The failure to report pursuant to this provision an oil spill occurring in waters of the state, other than marine waters, is punishable, upon conviction, by a fine of not more than \$50,000. Knowingly making a false or misleading report on an oil spill occurring in waters of the state, other than marine waters, is punishable, upon conviction, by a fine of not more than \$50,000.

This bill would make that a failure to report an oil spill or knowingly making a false or misleading report on an oil spill occurring in waters of the state punishable, upon conviction, by the \$50,000 fine, imprisonment in the county jail, or both the fine and imprisonment.

Because this bill would increase the penalty for a crime to include imprisonment in the county jail, it would create 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 338.1 of the Code of Civil Procedure is
2 amended to read:

3 338.1. An action for civil penalties or punitive damages
4 authorized under Chapter 6.5 (commencing with Section 25100),
5 Chapter 6.7 (commencing with Section 25280), ~~or~~ Chapter 6.8
6 (commencing with Section 25300), *or Chapter 6.95 (commencing*
7 *with Section 25500)* of Division 20 of the Health and Safety Code
8 shall be commenced within five years after the discovery by the
9 agency bringing the action of the facts constituting the grounds
10 for commencing the action.

11 SEC. 2. Section 25515 of the Health and Safety Code is
12 amended to read:

13 25515. (a) A person or business who violates Section 25507
14 shall, upon conviction, be punished by a fine of not more than
15 twenty-five thousand dollars (\$25,000) for each day of violation,
16 ~~or~~ by imprisonment in the county jail for not more than one year,
17 or by both the fine and imprisonment. If the conviction is for a
18 violation committed after a first conviction under this section, the
19 person shall be punished by a fine of not less than two thousand
20 dollars (\$2,000) or more than fifty thousand dollars (\$50,000) per
21 day of violation, ~~or~~ by imprisonment in the state prison for 16, 20,
22 or 24 months or in the county jail for not more than one year, or
23 by both the fine and imprisonment. Furthermore, if the violation

1 results in, or significantly contributes to, an emergency, including
2 a fire, to which the county or city is required to respond, the person
3 shall also be assessed the full cost of the county or city emergency
4 response, as well as the cost of cleaning up and disposing of the
5 hazardous materials.

6 (b) Notwithstanding subdivision (a), a person who fails to report,
7 pursuant to Section 25507, an oil spill occurring in waters of the
8 state, other than marine waters, shall, upon conviction, be punished
9 by a fine of not more than fifty thousand dollars (\$50,000), *by*
10 *imprisonment in the county jail for not more than one year, or by*
11 *both that fine and imprisonment.*

12 (c) Notwithstanding subdivision (a), a person who knowingly
13 makes a false or misleading report on an oil spill occurring in
14 waters of the state, other than marine waters, shall, upon conviction,
15 be punished by a fine of not more than fifty thousand dollars
16 (\$50,000), *by imprisonment in the county jail for not more than*
17 *one year, or by both that fine and imprisonment.*

18 (d) *This section does not preclude prosecution or sentencing*
19 *under other provisions of law.*

20 SEC. 3. No reimbursement is required by this act pursuant to
21 Section 6 of Article XIII B of the California Constitution because
22 the only costs that may be incurred by a local agency or school
23 district will be incurred because this act creates a new crime or
24 infraction, eliminates a crime or infraction, or changes the penalty
25 for a crime or infraction, within the meaning of Section 17556 of
26 the Government Code, or changes the definition of a crime within
27 the meaning of Section 6 of Article XIII B of the California
28 Constitution.