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AB-2374 Crimes against public health and safety: illegal dumping. (2021-2022)

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Assembly Bill No. 2374

CHAPTER 784

An act to amend Section 374.3 of the Penal Code, relating to crimes.

[Approved by Governor September 29, 2022. Filed with Secretary of State September 29, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2374, Bauer-Kahan. Crimes against public health and safety: illegal dumping.

Existing law prohibits the dumping of waste matter upon a road or highway or in other locations, as specified. A violation of this prohibition, generally, is an infraction punishable by specified fines that escalate for subsequent convictions. Under existing law, the court may, as a condition of probation, order the convicted person to remove, or pay for the removal of, the waste matter.

Under existing law, the dumping of commercial quantities of waste, as defined, is punishable as a misdemeanor and also includes escalating fines.

This bill would increase the maximum fine for the dumping of commercial quantities of waste by a business that employs more than 10 employees from \$3,000 to \$5,000 for the first conviction, from \$6,000 to \$10,000 for the second conviction, and from \$10,000 to \$20,000 for the third and any subsequent convictions. The bill would require a court, when imposing a fine, to consider the defendant's ability to pay, as specified.

This bill would also require, instead of authorize, the court to order a person convicted of dumping commercial quantities of waste to remove, or pay for the removal of, the waste matter that was illegally dumped. The bill would require the court to notify the issuing entity of certain professional or business licenses or permits held by the convicted person, that are related to the illegal dumping activity for which the person has been convicted, if applicable, and would require those entities to post information regarding these convictions on their internet website, as specified.

The bill would retain the authorization for the court to order the defendant to pay for cleanup or perform specified community service, but would remove the requirement that it be ordered as a condition of probation.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 374.3 of the Penal Code is amended to read:

374.3. (a) 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.

(b) 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.

(c) A person violating this section is guilty of an infraction. Each day that waste placed, deposited, or dumped in violation of subdivision (a) or (b) remains is a separate violation.

(d) This section does not restrict a private owner in the use of their 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.

(e) A person convicted of a violation of this section shall be punished by a mandatory fine of not less than two hundred fifty dollars (\$250) nor more than one thousand dollars (\$1,000) upon a first conviction, by a mandatory fine of not less than five hundred dollars (\$500) nor more than one thousand five hundred dollars (\$1,500) upon a second conviction, and by a mandatory fine of not less than seven hundred fifty dollars (\$750) nor more than three thousand dollars (\$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.

(f) The court may require, in addition to any fine imposed upon a conviction, that a person convicted under this section 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.

(g) The court may, in addition to the fine imposed upon a conviction, require that a person convicted of a violation of this section pick up waste matter at a time and place within the jurisdiction of the court for not less than 12 hours.

(h) (1) Except as otherwise provided in paragraph (2), a person who places, deposits, or dumps, or causes to be placed, deposited, or dumped, waste matter in violation of this section in commercial quantities shall be 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 one thousand dollars (\$1,000) nor more than three thousand dollars (\$3,000) upon a first conviction, not less than three thousand dollars (\$3,000) nor more than six thousand dollars (\$6,000) upon a second conviction, and not less than six thousand dollars (\$6,000) nor more than ten thousand dollars (\$10,000) upon a third or subsequent conviction.

(2) If a person convicted under paragraph (1) is the owner or operator of the business involved in the illegal dumping, and that business employs more than 10 full-time employees, the fine shall amount to not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) upon a first conviction, not less than three thousand dollars (\$3,000) nor more than ten thousand dollars (\$10,000) upon a second conviction, and not less than six thousand dollars (\$6,000) nor more than twenty thousand dollars (\$20,000) upon a third or subsequent conviction.

(3) The court shall require, in addition to the fine imposed upon a conviction, that a person convicted under this subdivision 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.

(4) (A) If a person convicted under this subdivision holds a license or permit to conduct business that is substantially related to the illegal dumping for which the person was convicted, the court shall notify the applicable licensing or permitting entity subject to the jurisdiction of the Department of Consumer Affairs as set forth in Section 101 of the Business and Professions Code, if any, of the conviction.

(B) The licensing or permitting entity shall record and post the offense on the public profile of the license or permitholder on the internet website of the entity.

(5) "Commercial quantities" means 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. This subdivision does not apply to the dumping of household waste at a person's own residence.

(i) For purposes of this section, "person" means an individual, trust, firm, partnership, joint stock company, joint venture, or corporation.

(j) When setting fines pursuant to this section, the court shall consider the defendant's ability to pay, including consideration of, without limitation, all of the following:

(1) The defendant's present financial position.

(2) The defendant's reasonably discernible future financial position, provided that the court shall not consider a period of more than one year from the date of the hearing for purposes of determining the reasonably discernible future financial position of the defendant.

(3) The likelihood that the defendant will be able to obtain employment within one year from the date of the hearing.

(4) Any other factor that may bear upon the defendant's financial capability to pay the fine.