
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 144 **Hearing Date:** June 9, 2015
Author: Mathis
Version: June 1, 2015
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Dumping*

HISTORY

Source: Tulare County Sheriff

Prior Legislation: AB 1992 (Canciamilla) Chapter 416, Stats. 2006
AB 2253 (Hancock) Chapter 765, Stats. 2006
AB 1802 (Bogh) Chapter 137, Stats. 2004
AB 1799 (Migden) Chapter 50, Stats. 1998

Support: Unknown

Opposition: None known

Assembly Floor Vote: 78 - 0

PURPOSE

The purpose of this bill is to increase the fines for dumping waste matter on private property under specified circumstances.

Existing law 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 § 374.3 (a).)

Existing law 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. (Penal Code, § 374.3 (b).)

Existing law states that a person violating dumping provisions is guilty of an infraction. Each day that waste placed, deposited, or dumped in violation the law is a separate violation. (Penal Code, § 374.3 (c).)

Existing law provides these provisions 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. (Penal Code, § 374.3 (d).)

Existing law specifies a person convicted of dumping 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. (Penal Code, § 374.3. (e).)

Existing law provides that the court may require, in addition to any fine imposed upon a conviction, that, as a condition of probation and in addition to any other condition of probation, 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. (Penal Code, § 374.3 (f).)

Existing law provides that except when the court requires the convicted person to remove waste matter which he or she is responsible for dumping as a condition of probation, the court may, in addition to the fine imposed upon a conviction, require as a condition of probation, in addition to any other condition of probation, 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. (Penal Code, § 374.3 (g).)

Existing law states that 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. (Penal Code § 374.3 (h)(1))

Existing law defines “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 residence. (Penal Code § 374.3(h)(2))

Existing law provides that a motor vehicle used for illegal dumping of waste matter on public or private property is subject to impoundment. (Vehicle Code § 23112.7)

This bill provides that a person who places, deposits or dumps or causes to be placed, deposited or dumped, waste matter on private property, including on any private highway or road, without the consent of the owner shall be punished by a fine as follows:

- First conviction: infraction with a fine of not less than \$250 nor more than \$1,000;
- Second conviction: infraction with a fine of not less than \$500 nor more than \$1,500;
- Third conviction: infraction with a fine of not less than \$750 nor more than \$3,000;
- Fourth conviction: misdemeanor with a penalty of up to 30 days in county jail and a fine of \$750-\$3,000.

This bill provides that if the court finds that waste matter placed, deposited or dumped includes used tires the fines listed above shall be doubled.

This bill provides that a separate fine in the same amount shall accrue for each day that the waste placed deposited or dumped remains unabated but shall not result in an additional conviction, except that a fourth or subsequent violation shall not result in the accrual of a separate fine or violation.

COMMENTS

1. Need for The Bill

According to the author:

Under existing law, dumping in non-commercial quantities on private property is only an infraction and subject to a minor fine and no jail time.

Illegal dumping on private property is a serious issue for property owners, law enforcement agencies, and communities as a whole.

Dumpers impose significant clean-up costs upon the owners of the afflicted property. Dumping also poses a costly burden on law enforcement officials whom are called to respond when an incident occurs. Communities also suffer more than a nuisance as property values and revenues to local government suffer due to blight from dumping.

While the costs and negative outcomes associated with illegal dumping on private property can be high, the penalties for offenders whom are apprehended are too minor to provide adequate deterrence from this behavior.

This bill would increase the penalty for illegal dumping on private property in non-commercial quantities from an infraction to a misdemeanor upon conviction for a 4th offense to discourage illegal dumping.

2. Dumping in Non-Commercial Quantities

Under current law dumping waste matter in commercial quantities is a misdemeanor. The dumping of other waste upon a public highway or road or upon private property in tow which the public is admitted is an infraction. It is also infraction to dump rocks, concrete, asphalt or dirt in or upon a private highway or road or private property without the consent of the owner or in a public park or public property. The infraction penalties for the above are:

- First conviction: infraction with a fine of not less than \$250 nor more than \$1,000; (with penalty assessments more than \$1,000-\$4,000)
- Second conviction: infraction with a fine of not less than \$500 nor more than \$1,500 (with penalty assessments more than \$2,000- \$6,000);
- Third conviction: infraction with a fine of not less than \$750 nor more than \$3,000 (with penalty more than \$3,000-\$12,00);

If the tires are among the items dumped, then the above fines are doubled.

This bill would make dumping on private property in non-commercial quantities and in a manner and type not currently covered an infraction with the same penalties for the first through third offense that exist currently for non-commercial dumping and make a fourth or subsequent offense a misdemeanor. Thus, the new fines for dumping on private land, that is not land upon which the public is permitted and what is dumped is not rock, concrete, asphalt, or dirt would be:

- First conviction: infraction with a fine of not less than \$250 nor more than \$1,000; (with penalty assessments more than \$1,000-\$4,000)
- Second conviction: infraction with a fine of not less than \$500 nor more than \$1,500 (with penalty assessments more than \$2,000- \$6,000);
- Third conviction: infraction with a fine of not less than \$750 nor more than \$3,000 (with penalty more than \$3,000-\$12,00);
- Fourth conviction: misdemeanor with a penalty of up to 30 days in county jail and a fine of \$750-\$3,000 (with penalty assessments more than \$3,000-\$12,000).

The above fines are doubled if the things dumped include used tires and accrued daily as long as the dumped material remains.

3. Same Fines/ Same Behavior?

This bill adopts a similar, but not identical, penalty structure for dumping on private land as exists for dumping on public or private land that the public has access to, or for dumping rocks, concrete asphalt or dirt. The penalty in this bill differs in two ways: it creates a misdemeanor for a fourth offense and it allows the fine to be imposed daily as long as the waste dumped remains unabated.

Should the fines be the same for dumping on private property as they are for dumping on private property onto which the public is admitted or for dumping rocks, concrete asphalt or dirt upon a private highway or road?

Should a fourth offense be a misdemeanor?

Should the fines accumulate per day? Is this behavior more serious than the existing dumping sections so that the daily accrual is necessary?

4. Infractions With High Fines

Penalty assessments currently are 310% plus at least \$79 in flat fees which are higher under specified circumstances. Thus, a \$1,000 fine is closer to \$4,100. According to the Senate Public Safety analysis, when the penalties for dumping of non-commercial quantities that this bill is

based on, passed with AB 1802(Bogh) in 2004, the penalty assessments were \$240% with a \$20 additional flat fee so at the time a \$1,000 fine was closer to \$3,400.

A person charged with an infraction has no right to have counsel appointed. Are fines this high appropriate for an infraction? Similar fines have existed but were substantially lower when instituted over 10 years ago because the penalty assessments were lower, does the increased penalty assessments change how new fines should be created?

A person charged with an infraction may ask for a judge trial but in some counties a person must pay the entire amount of the fine before he or she can have a hearing on the matter. Thus, under this bill who wants to challenge the charge of dumping could have to pay the entire fine, which could be very substantial if the items remained on the property for multiple days, before having the opportunity to argue before a judge that they were not the person who did the dumping. Will this cause a burden to those who have a legitimate challenge to charges?

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