
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: SB 409 **Hearing Date:** April 2, 2019
Author: Wilk
Version: February 20, 2019
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Illegal Dumping*

HISTORY

Source: Author

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

Support: Unknown

Opposition: ACLU of California; California Public Defenders Association

PURPOSE

The purpose of this bill is to: 1) expand the crime of illegal dumping to include the transporting of waste matter, rocks, concrete, asphalt, or dirt for the purpose of dumping; 2) make it a crime to dump, deposit or receive waste matter, rocks, concrete or asphalt, or dirt on private property with the consent of the owner if a permit or license was required but not obtained; and 3) increase the fines for illegal dumping and make the violations a misdemeanor not an infraction; and, to make it illegal to transport commercial quantities to dump in specified locations.

Existing law provides 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))

This bill also provides that it unlawful to transport for the purpose of dumping.

This bill provides that it is unlawful to dump, cause to be dumped, or transport for the purpose of dumping, waste matter upon private property with the consent of the owner or an agent of the owner if the permit or license is required by state or local agency and was not obtained.

This bill provides that it is unlawful for a property owner or an agent of the 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.

Existing law states it is unlawful to place, deposit, 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 of the highway, road or property. (Penal Code § 374.3 (b))

This bill provides that it is also unlawful to transport the items for the purpose of placing, depositing or dumping.

This bill provides that it is unlawful to place, deposit, or dump, or cause to be placed, deposited or dumped, or transport for the purpose of placing depositing or dumping, rocks, concrete, asphalt, or dirt upon private property with the consent of the owner or agent of the owner if a permit or license is required by a state or local agency and was not obtained.

This bill provides that it is unlawful for a property owner or an agent of the property owner to receive rocks, concrete, asphalt, or dirt if a permit or license is required from a state or local agency and was not obtained prior to receiving the rocks, concrete, asphalt, or dirt.

Existing law provides that a violation of the above is an infraction punishable by: a fine of \$250-\$1,000 for a first offense; a fine of \$500-\$1,500 as a second offense; and, a fine of \$750-\$3,000 for a second offense.

Existing law provides that if the waste matter dumped was tires the above fines shall be doubled.

Existing law provides that if a person convicted of the above can be ordered to remove or pay the cost of removing the waste matter or be required to pick up waste matter at a time or place in the jurisdiction of the court for not less than 12 hours.

This bill provides instead that a violation of the above is a misdemeanor punishable by: a fine of \$500-\$1,000 for a first offense; a fine of \$1,000-\$2,500 for a second offense; and a fine of \$2,500 to \$4,000 for a third or subsequent offense.

COMMENTS

1. Need for the Bill

According to the author:

Existing law addresses situations in which a *property owner does not give permission* to unlawfully dump waste matter on her/his property. However, with the increased costs of licensed dumpsites in Los Angeles County and throughout the State, many property owners are giving truck owners/operators permission to dump waste matter on their land without first obtaining the required permits from state, county, and/or local agencies. A property owner profits from collecting cash, while a truck owner/operator profits from charging the high cost for the transportation of waste intended for a licensed dumpsite, and instead delivering the waste to a property owner's land for a far lower amount of money, thereby pocketing the difference. The environmental damage would dramatically be reduced if the property owner is responsible for complying with all state or local

agency laws, codes and ordinances and if truck owners/operators were added to the unlawful dumping statute.

Existing monetary fine amounts are also low enough that violators consider it cheaper to offend, serving little to no incentive to stopping this unlawful practice. Prosecutors and those responsible with protecting the safety and health of our communities are often left with few effective options to stopping bad actors and closing down unlicensed dumpsites.

Existing law also severely limits which local departments can declare that illegal dumping creates a public safety hazard or nuisance, leaving many counties respective local agencies that directly and frequently respond to unlawful dumping complaints with no statutory authority to enforce charges against violators.

2. Expansion of the definition of illegal dumping

Existing law makes it unlawful to dump waste matter, rocks, concrete, asphalt or dirt in or upon any public or private highway or road or any private property without consent of the owner, or in any public park or other public property. This bill expands that definition to include transporting for the purpose of dumping.

This bill further prohibits dumping on private property with the owner's permission if the dumping would have required a permit or license and that permit or license was not obtained.

3. Changes in penalties

Existing law makes the penalty for dumping an infraction with the following penalties:

- First offense a fine of \$250-\$1,000 (approximately \$1,025-\$4,100 with penalty assessments.)
- Second offense a fine of \$500-\$1,500 (approximately \$2,050-\$6,150 with penalty assessments.)
- Third or subsequent offense a fine of \$750-\$3,000 (approximately \$3,075-\$12,300 with penalty assessments.)

If the items dumped were tires then the fines are doubled. Each day the item is dumped is a separate violation so these fine can be applied daily.

This bill changes the penalty from an infraction to a fine only misdemeanor and increases the fines as follows:

- First offense a fine of \$500-\$1,000 (approximately \$2,050-\$4,100 with penalty assessments.)
- Second offense a fine of \$1,000-\$2,500 (approximately \$4,100-\$10,250 with penalty assessments.)
- Third or subsequent offense a fine of \$2,500-\$4,000 (approximately \$10,250-\$16,400 with penalty assessments.)

By changing the penalty to a misdemeanor, the person accused of illegal dumping will now have the right to an attorney and a jury trial, which may be appropriate for these high fines. However, it is unusual to have a misdemeanor with no jail time.

The fines in this section have not been increased since 2006, however the penalty assessments have increased approximately 40% since 2006 thus increasing the fine that a person actually pays.

Are these new higher fines appropriate? If the penalty is to be a misdemeanor should jail time be an option?

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