
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: AB 2374 **Hearing Date:** June 14, 2022
Author: Bauer-Kahan
Version: April 7, 2022
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Crimes against public health and safety: illegal dumping*

HISTORY

Source: Contra Costa County

Prior Legislation: SB 409 (Wilk) held Assembly Appropriations 2020
AB 215 (Mathis) held Assembly Appropriations 2019
AB 1216 (Bauer-Kahan) held Assembly Appropriations 2019
AB 144 (Mathis) Vetoed 2015
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: California District Attorneys Association; California State Sheriffs' Association; Contractors State License Board; East Bay Municipal Utility District; Los Angeles County District Attorneys Association; Los Angeles County Solid Waste Management Committee/integrated Waste Management Task Force; Rural County Representatives of California (RCRC)

Opposition: None known

Assembly Floor Vote: 69 - 0

PURPOSE

This bill 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 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 is placed, deposited, or dumped in violation the law is a separate violation. (Penal Code § 374.3 (c).)

Existing law 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. Code § 374.3 (d).)

Existing law 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. (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 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. (Penal Code § 374.3 (f).)

Existing law 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. (Penal Code § 374.3 (g).)

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

Existing law 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. (Penal Code § 374.3 (h)(2).)

This bill 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 \$3,000 for the first offense to not more than \$5,000;
- b) From not more than \$6,000 for the second conviction to not more than \$10,000; and,
- c) From not more than \$10,000 for a third or subsequent conviction to not more than \$20,000.

This bill requires the court to order 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.

This bill 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.

This bill 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.

This bill provides that any fine shall be based on the person's ability to pay including, but not limited to, consideration of the following:

- a) The defendant's present financial position;
- b) 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;
- 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.

COMMENTS

1. Need for This Bill

According to the author:

Illegal dumping has been a serious problem in 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 often by repeat offenders for economic gain. Materials illegally dumped range from household items such as mattresses, furniture, and large appliances to other more traditional commercial business items such as tires, hazardous waste, rock, concrete, asphalt, and dirt.

Illegal dumping is an increasing problem that poses significant health, social, environmental, and economic impacts on communities. Illegal dumping contributes to a loss of community pride, discourages investment and development, decreases property values, and increases a community's vulnerability to crime.

Existing law prohibits the dumping of waste matter upon a road or highway or in other locations. A violation of this prohibition, generally, is an infraction punishable by specific 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 is punishable as a misdemeanor and includes escalating fines.

Commercial businesses have been caught illegally dumping in an attempt to “cut corners” and maximize their total profit. Violators assume little risk in doing so because it is economically feasible, as the fines for violating illegal dumping laws are relatively minimal.

Existing penalties do not serve as an adequate deterrent. Additionally, district attorneys throughout California report having difficulty in prosecuting cases.

2. 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.

According to recent reports, California communities have experienced an increase in illegal dumping. The Los Angeles Controller recently stated that “businesses and individuals are illegally dumping garbage and debris...with increasing frequency.” (L.A. Controller, Piling Up: Addressing L.A.’s Illegal Dumping Problem (Mar. 24, 2021) at p. 1 <<https://lacontroller.org/audits-and-reports/illegaldumping/>> .) The City of Oakland found that illegal dumping increased 100% between 2012 and 2017. (<<https://www.oaklandca.gov/resources/illegal-dumping-data>> .) And, according to one recent article, “Rural land and roadsides have become dumping grounds. Old mattresses, sofas, appliances, tires and household garbage are routinely dumped along the sides of rural roadways, causing an unsightly mess and bringing added cost for the farmer or the county, who must pay to have the mess cleared or taken to the dump.” (Souza, *Illegal dumping plagues rural California*, The Sun-Gazette (May 1, 2019) <<https://thesungazette.com/article/news/2019/05/01/illegal-dumping-plagues-rural-california/>>;

3. Increase in penalties for commercial dumping.

This bill increases the maximum fines for the misdemeanor of illegal dumping if the person is the owner or operator of the business involved in the illegal dumping and that business employs

more than 10 full time employees. The county jail time of up to six months remains the same but the increased fines are as follows:

- a) From not more than \$3,000 for the first offense to not more than \$5,000;
- b) From not more than \$6,000 for the second conviction to not more than \$10,000; and,
- c) From not more than \$10,000 for a third or subsequent conviction to not more than \$20,000.

The bill specifies that the court shall consider an ability to pay when imposing the fine including the person's current and potential future financial position as well as other factors.

The court shall also require that the illegally dumped material be removed.

4. Notice to licensing agency

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 Contractors State Licensing Board, which is currently authorized to discipline the license of a contractor who unlawfully dumped construction debris. Under existing law, contractors are required to notify CLSB of a conviction within 90 days, and a conviction of a construction-related crime is a cause of disciplinary action, subject to public disclosure.

5. Argument in Support

East Bay Municipal Utility District supports this bill stating:

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.

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