

AMENDED IN SENATE APRIL 9, 2013

SENATE BILL

No. 193

Introduced by Senator Monning

February 7, 2013

An act to amend Section 6276.12 of the Government Code, and to amend Section 147.2 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 193, as amended, Monning. Hazard evaluation system and information service.

Existing law requires the Department of Industrial Relations, with the State Department of Public Health, to establish a repository of current data on toxic materials and harmful physical agents in use or potentially in use in places of employment in the state. That law requires the repository, among other things, to provide information and collect and evaluate data relating to possible hazards to employees resulting from exposure to toxic materials or harmful physical agents. That law expressly does not require employers to report any information not otherwise required by law.

This bill, *except as specified*, would require, *for every product the final destination of which may be a place of employment within the state*, upon written request from the repository, chemical manufacturers, *formulators*, suppliers, distributors, importers, and their agents to provide to the repository the names and addresses of their customers who have purchased specified chemicals or commercial products containing those chemicals, and certain other information related to those shipments. The bill would deem the names and addresses of customers to be confidential. The bill would also provide that the State Department of

Public Health shall be entitled to reimbursement of attorney's fees and costs incurred in seeking an injunction to enforce this requirement.

The California Public Records Act requires certain public records to be made available for public inspection, and lists records that are exempt from disclosure under the act.

The bill would exempt from public disclosure under the act the names and addresses of customers provided to the repository by chemical manufacturers, *formulators*, suppliers, distributors, importers, and their agents, that would be required pursuant to ~~this act~~ *the bill*, as confidential, but would provide that those names and addresses may be disclosed to officers or employees of the state not affiliated with the repository who are responsible for carrying out the provisions of the Labor Code relating to safety in employment *or to specified state agencies*. The bill would also state findings and declarations of the Legislature for limiting the public's right of access to the names and addresses of those customers.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6276.12 of the Government Code is
2 amended to read:
3 6276.12. Conservatee, confidentiality of the conservatee's
4 report, Section 1826, Probate Code.
5 Conservatee, estate plan of, confidentiality of, Section 2586,
6 Probate Code.
7 Conservatee with disability, confidentiality of report, Section
8 1827.5, Probate Code.
9 Conservator, confidentiality of conservator's birthdate and
10 driver's license number, Section 1834, Probate Code.
11 Conservator, supplemental information, confidentiality of,
12 Section 1821, Probate Code.
13 Conservatorship, court review of, confidentiality of report,
14 Section 1851, Probate Code.
15 Consumer fraud investigations, access to complaints and
16 investigations, Section 26509.
17 Consumption or utilization of mineral materials, disclosure of,
18 Section 2207.1, Public Resources Code.

- 1 Contractor, evaluations and contractor responses, confidentiality
- 2 of, Section 10370, Public Contract Code.
- 3 Contractor, license applicants, evidence of financial solvency,
- 4 confidentiality of, Section 7067.5, Business and Professions Code.
- 5 Controlled Substance Law violations, confidential information,
- 6 Section 818.7.
- 7 Controlled substance offenders, confidentiality of registration
- 8 information, Section 11594, Health and Safety Code.
- 9 Cooperative Marketing Association, confidential information
- 10 disclosed to conciliator, Section 54453, Food and Agricultural
- 11 Code.
- 12 Coroner, inquests, subpoena duces tecum, Section 27491.8.
- 13 County aid and relief to indigents, confidentiality of
- 14 investigation, supervision, relief, and rehabilitation records, Section
- 15 17006, Welfare and Institutions Code.
- 16 County alcohol programs, confidential information and records,
- 17 Section 11812, Health and Safety Code.
- 18 County Employees' Retirement, confidential statements and
- 19 records, Section 31532.
- 20 County mental health system, confidentiality of client
- 21 information, Section 5610, Welfare and Institutions Code.
- 22 County social services, investigation of applicant, confidentiality,
- 23 Section 18491, Welfare and Institutions Code.
- 24 County social services rendered by volunteers, confidentiality
- 25 of records of recipients, Section 10810, Welfare and Institutions
- 26 Code.
- 27 County special commissions, disclosure of health care peer
- 28 review and quality assessment records not required, Section
- 29 14087.58, Welfare and Institutions Code.
- 30 County special commissions, disclosure of records relating to
- 31 the commission's rates of payment for publicly assisted medical
- 32 care not required, Section 14087.58, Welfare and Institutions Code.
- 33 Court files, access to, restricted for 60 days, Section 1161.2,
- 34 Code of Civil Procedure.
- 35 Court reporters, confidentiality of records and reporters, Section
- 36 68525.
- 37 Court-appointed special advocates, confidentiality of information
- 38 acquired or reviewed, Section 105, Welfare and Institutions Code.
- 39 Crane employers, previous business identities, confidentiality
- 40 of, Section 7383, Labor Code.

1 Credit unions, confidentiality of investigation and examination
2 reports, Section 14257, Financial Code.

3 Credit unions, confidentiality of employee criminal history
4 information, Section 14409.2, Financial Code.

5 Criminal defendant, indigent, confidentiality of request for funds
6 for investigators and experts, Section 987.9, Penal Code.

7 Criminal offender record information, access to, Sections 11076
8 and 13202, Penal Code.

9 Crop reports, confidential, subdivision (e), Section 6254.

10 Customer list of chemical manufacturers, *formulators*, suppliers,
11 distributors, importers, and their agents, confidential, Section 147.2,
12 Labor Code.

13 Customer list of employment agency, trade secret, Section 16607,
14 Business and Professions Code.

15 Customer list of telephone answering service, trade secret,
16 Section 16606, Business and Professions Code.

17 SEC. 2. Section 147.2 of the Labor Code is amended to read:

18 147.2. (a) In accordance with Chapter 2 (commencing with
19 Section 6350) of Part 1 of Division 5 of this code and Section
20 105175 of the Health and Safety Code, the Department of Industrial
21 Relations, by interagency agreement with the State Department of
22 Public Health, shall establish a repository of current data on toxic
23 materials and harmful physical agents in use or potentially in use
24 in places of employment in the state.

25 (b) The repository shall fulfill all of the following functions:

26 (1) Provide reliable information of practical use to employers,
27 employees, representatives of employees, and other governmental
28 agencies on the possible hazards to employees of exposure to toxic
29 materials or harmful physical agents.

30 (2) Collect and evaluate toxicological and epidemiological data
31 and any other information that may be pertinent to establishing
32 harmful effects on health of exposure to toxic materials or harmful
33 physical agents. Nothing in this subdivision shall be construed as
34 authorizing the repository to require employers, other than chemical
35 manufacturers, *formulators*, suppliers, distributors, importers, and
36 their agents, to report any information not otherwise required by
37 law.

38 (3) ~~Upon~~ *For every product the final destination of which may*
39 *be a place of employment within the state, upon* written request
40 by the repository, chemical manufacturers, *formulators*, suppliers,

1 distributors, importers, and their agents shall provide to the
2 repository the names and addresses of their customers who have
3 purchased certain chemicals, as specified by the repository, or
4 commercial products containing those chemicals and information
5 related to those shipments, including the quantity and dates of
6 shipments, and the proportion of a specified chemical within a
7 mixture containing the specified chemical. *This paragraph shall*
8 *not apply to a retail seller if the sale of the chemical or mixture is*
9 *in the same form, approximate amount, concentration, and manner*
10 *as the chemical or mixture is sold to the general public. The*
11 *following shall apply to this paragraph:*

12 (A) *On or after January 1, 2015, the information requested shall*
13 *include current and past customers for not more than a one-year*
14 *period prior to the date the request is received. The information*
15 *shall be provided within a reasonable timeframe as determined*
16 *by the State Department of Public Health, not to exceed 30*
17 *calendar days from the date the request is received. The*
18 *information shall be provided in a format specified by the State*
19 *Department of Public Health but consistent with the responding*
20 *entity's current data system.*

21 ~~(A)~~

22 (B) The names and addresses of customers provided by chemical
23 manufacturers, *formulators*, suppliers, distributors, importers, and
24 their agents pursuant to this paragraph shall be considered
25 confidential and, *except as specified in this subparagraph*, exempt
26 from public disclosure under the California Public Records Act
27 (Chapter 3.5 (commencing with Section 6250) of Division 7 of
28 Title 1 of the Government Code), ~~except that those names and~~
29 ~~addresses may be disclosed to officers or employees of the state~~
30 ~~not affiliated with the repository who are responsible for carrying~~
31 ~~out the purposes of Division 5 (commencing with Section 6300)~~
32 *Code). The department may disclose those names and addresses*
33 *only to officers or employees of the state not affiliated with the*
34 *repository who are responsible for carrying out the purposes of*
35 *Division 5 (commencing with Section 6300) or to the state agencies*
36 *of the state officers specified in paragraphs (5) and (6).*

37 ~~(B)~~

38 (C) The State Department of Public Health shall be entitled to
39 reimbursement of attorney's fees and costs incurred in seeking an
40 injunction to enforce this paragraph.

1 (4) Recommend to the Chief of the Division of Occupational
2 Safety and Health Administration that an occupational safety and
3 health standard be developed whenever it has been determined
4 that a substance in use or potentially in use in places of employment
5 is potentially toxic at the concentrations or under the conditions
6 used.

7 (5) Notify the Secretary of Food and Agriculture of any
8 information developed by the repository that is relevant to carrying
9 out his or her responsibilities under Chapters 2 (commencing with
10 Section 12751) and 3 (commencing with Section 14001) of
11 Division 7 of the Food and Agricultural Code.

12 (6) *Notify the Secretary for Environmental Protection of any*
13 *information developed by the repository that is relevant to carrying*
14 *out his or her responsibilities.*

15 (c) The Director of Industrial Relations shall appoint an
16 ~~Advisory Committee~~ *advisory committee* to the repository. The
17 ~~Advisory Committee~~ *advisory committee* shall consist of four
18 representatives from labor, four representatives from management,
19 four active practitioners in the occupational health field, and three
20 persons knowledgeable in biomedical statistics or information
21 storage and retrieval systems. ~~The Advisory Committee~~ *advisory*
22 *committee* shall meet on a regular basis at the request of the
23 director. The committee shall be consulted by, and shall advise
24 the director at each phase of the structuring and functioning of the
25 repository and alert system with regard to, the procedures,
26 methodology, validity, and practical utility of collecting,
27 evaluating, and disseminating information concerning hazardous
28 substances, consistent with the primary goals and objectives of the
29 repository.

30 (d) Nothing in this section shall be construed to limit the ability
31 of the State Department of Public Health to propose occupational
32 safety and health standards to the Occupational Safety and Health
33 Standards Board.

34 (e) Policies and procedures shall be developed to assure, to the
35 extent possible, that the repository uses and does not duplicate the
36 resources of the federal government and other states.

37 (f) On or before December 31 of each year, the Department of
38 Industrial Relations shall submit a report to the Legislature
39 detailing the implementation and operation of the repository
40 including, but not limited to, the amount and source of funds

1 allocated and spent on repository activities, the toxic materials and
2 harmful physical agents investigated during the past year and
3 recommendations made concerning them, actions taken to inform
4 interested persons of the possible hazards of exposure to toxic
5 materials and harmful physical agents, and any recommendations
6 for legislative changes relating to the functions of the repository.

7 SEC. 3. The Legislature finds and declares that Section 1 of
8 this act, which amends Section 6276.12 of the Government Code,
9 imposes a limitation on the public's right of access to the meetings
10 of public bodies or the writings of public officials and agencies
11 within the meaning of Section 3 of Article I of the California
12 Constitution. Pursuant to that constitutional provision, the
13 Legislature makes the following findings to demonstrate the interest
14 protected by this limitation and the need for protecting that interest:

15 In order to protect the names and addresses of customers who
16 have purchased chemicals from chemical manufacturers,
17 *formulators*, suppliers, distributors, importers, and their agents, it
18 is necessary that lists containing those names and addresses be
19 exempt from disclosure under the California Public Records Act
20 (Chapter 3.5 (commencing with Section 6250) of Division 7 of
21 Title 1 of the Government Code).