

AMENDED IN ASSEMBLY AUGUST 6, 2013

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 *Health (DPH)*, 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 repository is known as the *Hazard Evaluation System and Information Service (HESIS)*. Existing law requires the repository, HESIS, 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 Existing 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, when there is new scientific or medical information and the Chief of HESIS, in consultation with the Chief of the Division of Environmental and Occupational Disease Control in DPH, makes a specified determination, would require~~ chemical manufacturers, formulators, suppliers, distributors,

importers, and their agents to provide to the repository *HESIS* 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, *upon written request of HESIS, for every product the final destination of which may be a place of employment in California.* The bill would deem the names and addresses of customers, *the quantities and dates of shipments, and the proportion of a specified chemical within a mixture* to be confidential. The bill would also provide that ~~the State Department of Public Health shall~~ *DPH would* 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, *the quantities and dates of shipments, and the proportion of a specified chemical within a mixture* provided to the repository by chemical manufacturers, formulators, suppliers, distributors, importers, and their agents, that would be required pursuant to the bill, as ~~confidential~~ *provided*, but would provide that ~~those names and addresses may be disclosed~~ *specifically authorize HESIS to disclose that information* to officers or employees of the *DPH, 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 information.~~

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.

- 1 Conservatee with disability, confidentiality of report, Section
- 2 1827.5, Probate Code.
- 3 Conservator, confidentiality of conservator's birthdate and
- 4 driver's license number, Section 1834, Probate Code.
- 5 Conservator, supplemental information, confidentiality of,
- 6 Section 1821, Probate Code.
- 7 Conservatorship, court review of, confidentiality of report,
- 8 Section 1851, Probate Code.
- 9 Consumer fraud investigations, access to complaints and
- 10 investigations, Section 26509.
- 11 Consumption or utilization of mineral materials, disclosure of,
- 12 Section 2207.1, Public Resources Code.
- 13 Contractor, evaluations and contractor responses, confidentiality
- 14 of, Section 10370, Public Contract Code.
- 15 Contractor, license applicants, evidence of financial solvency,
- 16 confidentiality of, Section 7067.5, Business and Professions Code.
- 17 Controlled Substance Law violations, confidential information,
- 18 Section 818.7.
- 19 Controlled substance offenders, confidentiality of registration
- 20 information, Section 11594, Health and Safety Code.
- 21 Cooperative Marketing Association, confidential information
- 22 disclosed to conciliator, Section 54453, Food and Agricultural
- 23 Code.
- 24 Coroner, inquests, subpoena duces tecum, Section 27491.8.
- 25 County aid and relief to indigents, confidentiality of
- 26 investigation, supervision, relief, and rehabilitation records, Section
- 27 17006, Welfare and Institutions Code.
- 28 County alcohol programs, confidential information and records,
- 29 Section 11812, Health and Safety Code.
- 30 County Employees' Retirement, confidential statements and
- 31 records, Section 31532.
- 32 County mental health system, confidentiality of client
- 33 information, Section 5610, Welfare and Institutions Code.
- 34 County social services, investigation of applicant, confidentiality,
- 35 Section 18491, Welfare and Institutions Code.
- 36 County social services rendered by volunteers, confidentiality
- 37 of records of recipients, Section 10810, Welfare and Institutions
- 38 Code.

1 County special commissions, disclosure of health care peer
2 review and quality assessment records not required, Section
3 14087.58, Welfare and Institutions Code.

4 County special commissions, disclosure of records relating to
5 the commission's rates of payment for publicly assisted medical
6 care not required, Section 14087.58, Welfare and Institutions Code.

7 Court files, access to, restricted for 60 days, Section 1161.2,
8 Code of Civil Procedure.

9 Court reporters, confidentiality of records and reporters, Section
10 68525.

11 Court-appointed special advocates, confidentiality of information
12 acquired or reviewed, Section 105, Welfare and Institutions Code.

13 Crane employers, previous business identities, confidentiality
14 of, Section 7383, Labor Code.

15 Credit unions, confidentiality of investigation and examination
16 reports, Section 14257, Financial Code.

17 Credit unions, confidentiality of employee criminal history
18 information, Section 14409.2, Financial Code.

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

21 Criminal offender record information, access to, Sections 11076
22 and 13202, Penal Code.

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

24 Customer list of chemical manufacturers, formulators, suppliers,
25 distributors, importers, and their agents, *the quantities and dates*
26 *of shipments, and the proportion of a specified chemical within a*
27 *mixture*, confidential, Section 147.2, Labor Code.

28 Customer list of employment agency, trade secret, Section 16607,
29 Business and Professions Code.

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

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

33 147.2. (a) *As used in this section, "Hazard Evaluation System*
34 *and Information Service" or "HESIS" means the repository*
35 *established pursuant to subdivision (b).*

36 (b) In accordance with Chapter 2 (commencing with Section
37 6350) of Part 1 of Division 5 of this code and Section 105175 of
38 the Health and Safety Code, the Department of Industrial Relations,
39 by interagency agreement with the State Department of Public
40 Health, shall establish a repository of current data on toxic

1 materials and harmful physical agents in use or potentially in use
2 in places of employment in the ~~state~~: *state, known as the Hazard*
3 *Evaluation System and Information Service, or HESIS.*

4 ~~(b) The repository~~

5 (c) *HESIS* shall fulfill all of the following functions:

6 (1) Provide reliable information of practical use to employers,
7 employees, representatives of employees, and other governmental
8 agencies on the possible hazards to employees of exposure to toxic
9 materials or harmful physical agents.

10 (2) Collect and evaluate toxicological and epidemiological data
11 and any other information that may be pertinent to establishing
12 harmful effects on health of exposure to toxic materials or harmful
13 physical agents. Nothing in this subdivision shall be construed as
14 authorizing ~~the repository~~ *HESIS* to require employers, other than
15 chemical manufacturers, formulators, suppliers, distributors,
16 importers, and their agents, to report any information not otherwise
17 required by law.

18 (3) ~~For every product the final destination of which may be a~~
19 ~~place of employment within the state, upon written request by the~~
20 ~~repository,~~ *When there is new scientific or medical information*
21 *and the Chief of HESIS, in consultation with the Chief of the*
22 *Division of Environmental and Occupational Disease Control in*
23 *the State Department of Public Health, determines that a substance*
24 *potentially poses a serious new or unrecognized health hazard to*
25 *an employee, including, but not limited to, cancer, reproductive*
26 *or developmental harm, organ system impairment, or death,*
27 chemical manufacturers, formulators, suppliers, distributors,
28 importers, and their agents, *as specified in subparagraph (A),* shall
29 provide to ~~the repository~~ *HESIS* the names and addresses of their
30 customers who have purchased certain chemicals, as specified by
31 ~~the repository,~~ *HESIS*, or commercial products containing those
32 chemicals and information related to those shipments, including
33 ~~the quantity~~ *quantities* and dates of shipments, and the proportion
34 of a specified chemical within a mixture containing the specified
35 ~~chemical:~~ *chemical, upon written request by HESIS, for every*
36 *product the final destination of which may be a place of*
37 *employment in California.* This paragraph shall not apply to a retail
38 seller if ~~the sale of the chemical or mixture is in the same form,~~
39 ~~approximate amount, concentration, and manner as the chemical~~
40 ~~or mixture is sold to the general of the substance, whether sold~~

1 *individually or as part of a commercial product to the public. The*
2 *following shall apply to this paragraph:*

3 (A) On or after January 1, 2015, the information requested shall
4 include current and past customers for not more than a one-year
5 period prior to the date the request is ~~received~~ *issued*. The
6 information shall be provided within a reasonable ~~timeframe as~~
7 ~~determined by the State Department of Public Health, timeframe,~~
8 not to exceed 30 calendar days from the date the request is ~~received.~~
9 *issued*. The information shall be provided in a format specified by
10 the State Department of Public Health but consistent with the
11 responding entity's current data system.

12 (B) ~~The~~ *Unless, pursuant to other law or regulation the*
13 *following persons, any other person, or any governmental entity*
14 *is required to publicly disclose the following information, the*
15 *names and addresses of* ~~customers~~ *customers, the quantities and*
16 *dates of shipments, and the proportion of a specified chemical*
17 *within a mixture* provided by chemical manufacturers, formulators,
18 suppliers, distributors, importers, and their agents pursuant to this
19 paragraph shall be considered confidential and, except as specified
20 in this subparagraph, exempt from public disclosure under the
21 California Public Records Act (Chapter 3.5 (commencing with
22 Section 6250) of Division 7 of Title 1 of the Government Code).
23 ~~The department HESIS may disclose those names and addresses~~
24 ~~only that information to officers or employees of the State~~
25 *Department of Public Health, to officers or employees of the state*
26 *not affiliated with the repository* who are responsible for carrying
27 out the purposes of Division 5 (commencing with Section ~~6300~~)
28 ~~6300~~, or to the state agencies of the state officers specified in
29 paragraphs (5) and (6).

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

33 (4) Recommend to the Chief of the Division of Occupational
34 Safety and Health Administration that an occupational safety and
35 health standard be developed whenever it has been determined
36 that a substance in use or potentially in use in places of employment
37 is potentially toxic at the concentrations or under the conditions
38 used.

39 (5) Notify the ~~Secretary of Food and Agriculture~~ *Director of*
40 *Pesticide Regulation* of any information developed by the

1 repository that is relevant to carrying out his or her responsibilities
2 under Chapters 2 (commencing with Section 12751) and 3
3 (commencing with Section 14001) of Division 7 of the Food and
4 Agricultural Code.

5 (6) Notify the Secretary for Environmental Protection of any
6 information developed by ~~the repository~~ *HESIS* that is relevant to
7 carrying out his or her responsibilities.

8 (e)

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

23 (d)

24 (e) Nothing in this section shall be construed to limit the ability
25 of the State Department of Public Health to propose occupational
26 safety and health standards to the Occupational Safety and Health
27 Standards Board.

28 (e)

29 (f) Policies and procedures shall be developed to assure, to the
30 extent possible, that ~~the repository~~ *HESIS* uses and does not
31 duplicate the resources of the federal government and other states.

32 (f)

33 (g) On or before December 31 of each year, the Department of
34 Industrial Relations shall submit a report to the Legislature
35 detailing the implementation and operation of ~~the repository~~ *HESIS*
36 including, but not limited to, the amount and source of funds
37 allocated and spent on repository activities, the toxic materials and
38 harmful physical agents investigated during the past year and
39 recommendations made concerning them, actions taken to inform
40 interested persons of the possible hazards of exposure to toxic

1 materials and harmful physical agents, and any recommendations
2 for legislative changes relating to the functions of ~~the repository~~
3 *HESIS*.

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

12 In order to protect the names and addresses of customers who
13 have purchased chemicals from chemical manufacturers,
14 formulators, suppliers, distributors, importers, and their agents,
15 *the quantities and dates of shipments, and the proportion of a*
16 *specified chemical within a mixture*, it is necessary that lists
17 containing ~~those names and addresses~~ *that information* be exempt
18 from disclosure, *as provided in Section 147.2 of the Labor Code*,
19 under the California Public Records Act (Chapter 3.5 (commencing
20 with Section 6250) of Division 7 of Title 1 of the Government
21 Code).