

AMENDED IN ASSEMBLY AUGUST 14, 2014

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 (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~~ 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. Existing law expressly does not require employers to report any information not otherwise required by law.

This bill, except as specified, when there is new scientific or medical information and the Chief of HESIS, in consultation with *the Director of Industrial Relations* and 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 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 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~~ *HESIS* by chemical manufacturers, formulators, suppliers, distributors, importers, and their agents, that would be required pursuant to the bill, as provided, but would ~~provide that~~ specifically authorize HESIS to disclose that information to officers or employees of the DPH, to officers or employees of the state 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 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.
- 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.

- 1 Conservator, supplemental information, confidentiality of,
- 2 Section 1821, Probate Code.
- 3 Conservatorship, court review of, confidentiality of report,
- 4 Section 1851, Probate Code.
- 5 Consumer fraud investigations, access to complaints and
- 6 investigations, Section 26509.
- 7 Consumption or utilization of mineral materials, disclosure of,
- 8 Section 2207.1, Public Resources Code.
- 9 Contractor, evaluations and contractor responses, confidentiality
- 10 of, Section 10370, Public Contract Code.
- 11 Contractor, license applicants, evidence of financial solvency,
- 12 confidentiality of, Section 7067.5, Business and Professions Code.
- 13 Controlled Substance Law violations, confidential information,
- 14 Section 818.7.
- 15 Controlled substance offenders, confidentiality of registration
- 16 information, Section 11594, Health and Safety Code.
- 17 Cooperative Marketing Association, confidential information
- 18 disclosed to conciliator, Section 54453, Food and Agricultural
- 19 Code.
- 20 Coroner, inquests, subpoena duces tecum, Section 27491.8.
- 21 County aid and relief to indigents, confidentiality of
- 22 investigation, supervision, relief, and rehabilitation records, Section
- 23 17006, Welfare and Institutions Code.
- 24 County alcohol programs, confidential information and records,
- 25 Section 11812, Health and Safety Code.
- 26 County Employees' Retirement, confidential statements and
- 27 records, Section 31532.
- 28 County mental health system, confidentiality of client
- 29 information, Section 5610, Welfare and Institutions Code.
- 30 County social services, investigation of applicant, confidentiality,
- 31 Section 18491, Welfare and Institutions Code.
- 32 County social services rendered by volunteers, confidentiality
- 33 of records of recipients, Section 10810, Welfare and Institutions
- 34 Code.
- 35 County special commissions, disclosure of health care peer
- 36 review and quality assessment records not required, Section
- 37 14087.58, Welfare and Institutions Code.
- 38 County special commissions, disclosure of records relating to
- 39 the commission's rates of payment for publicly assisted medical
- 40 care not required, Section 14087.58, Welfare and Institutions Code.

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

3 Court reporters, confidentiality of records and reporters, Section
4 68525.

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

7 Crane employers, previous business identities, confidentiality
8 of, Section 7383, Labor Code.

9 Credit unions, confidentiality of investigation and examination
10 reports, Section 14257, Financial Code.

11 Credit unions, confidentiality of employee criminal history
12 information, Section 14409.2, Financial Code.

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

15 Criminal offender record information, access to, Sections 11076
16 and 13202, Penal Code.

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

18 Customer list of chemical manufacturers, formulators, suppliers,
19 distributors, importers, and their agents, the quantities and dates
20 of shipments, and the proportion of a specified chemical within a
21 mixture, confidential, Section 147.2, Labor Code.

22 Customer list of employment agency, trade secret, Section 16607,
23 Business and Professions Code.

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

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

27 147.2. (a) As used in this section, “Hazard Evaluation System
28 and Information Service” or “HESIS” means the repository
29 established pursuant to subdivision (b).

30 (b) In accordance with Chapter 2 (commencing with Section
31 6350) of Part 1 of Division 5 of this code and Section 105175 of
32 the Health and Safety Code, the Department of Industrial Relations,
33 by interagency agreement with the State Department of Public
34 Health, shall establish a repository of current data on toxic
35 materials and harmful physical agents in use or potentially in use
36 in places of employment in the state, known as the Hazard
37 Evaluation System and Information Service, or HESIS.

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

39 (1) Provide reliable information of practical use to employers,
40 employees, representatives of employees, and other governmental

1 agencies on the possible hazards to employees of exposure to toxic
2 materials or harmful physical agents.

3 (2) Collect and evaluate toxicological and epidemiological data
4 and any other information that may be pertinent to establishing
5 harmful effects on health of exposure to toxic materials or harmful
6 physical agents. Nothing in this subdivision shall be construed as
7 authorizing HESIS to require employers, other than chemical
8 manufacturers, formulators, suppliers, distributors, importers, and
9 their agents, to report any information not otherwise required by
10 law.

11 (3) When there is new scientific or medical information and the
12 Chief of HESIS, in consultation with *the Director of Industrial*
13 *Relations* and the Chief of the Division of Environmental and
14 Occupational Disease Control in the State Department of Public
15 Health, determines that a substance potentially poses a serious new
16 or unrecognized health hazard to an employee, including, but not
17 limited to, cancer, reproductive or developmental harm, organ
18 system impairment, or death, chemical manufacturers, formulators,
19 suppliers, distributors, importers, and their agents, as specified in
20 subparagraph (A), shall provide to HESIS the names and addresses
21 of their customers who have purchased certain chemicals, as
22 specified by HESIS, or commercial products containing those
23 chemicals and information related to those shipments, including
24 the quantities and dates of shipments, and the proportion of a
25 specified chemical within a mixture containing the specified
26 chemical, upon written request by HESIS, for every product the
27 final destination of which may be a place of employment in
28 California. This paragraph shall not apply to a retail seller of the
29 substance, whether sold individually or as part of a commercial
30 product to the public. The following shall apply to this paragraph:

31 (A) On or after January 1, ~~2015~~, 2016, the information requested
32 shall include current and past customers for not more than a
33 one-year period prior to the date the request is issued. The
34 information shall be provided within a reasonable timeframe, not
35 to exceed 30 calendar days from the date the request is issued. The
36 information shall be provided in a format specified by the State
37 Department of Public Health but consistent with the responding
38 entity's current data system.

39 (B) Unless, pursuant to other law or regulation the following
40 persons, any other person, or any governmental entity is required

1 to publicly disclose the following information, the names and
2 addresses of customers, the quantities and dates of shipments, and
3 the proportion of a specified chemical within a mixture provided
4 by chemical manufacturers, formulators, suppliers, distributors,
5 importers, and their agents pursuant to this paragraph shall be
6 considered confidential and, except as specified in this
7 subparagraph, exempt from public disclosure under the California
8 Public Records Act (Chapter 3.5 (commencing with Section 6250)
9 of Division 7 of Title 1 of the Government Code). HESIS may
10 disclose that information to officers or employees of the State
11 Department of Public Health, to officers or employees of the state
12 who are responsible for carrying out the purposes of Division 5
13 (commencing with Section 6300), or to the state agencies of the
14 state officers specified in paragraphs (5) and (6). *Any officer,
15 employee, or agency to which the information is disclosed shall
16 be subject to this subparagraph.*

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

20 (4) Recommend to the Chief of the Division of Occupational
21 Safety and Health Administration that an occupational safety and
22 health standard be developed whenever it has been determined
23 that a substance in use or potentially in use in places of employment
24 is potentially toxic at the concentrations or under the conditions
25 used.

26 (5) Notify the Director of Pesticide Regulation of any
27 information developed by ~~the repository~~ HESIS that is relevant to
28 carrying out his or her responsibilities under Chapters 2
29 (commencing with Section 12751) and 3 (commencing with
30 Section 14001) of Division 7 of the Food and Agricultural Code.

31 (6) Notify the Secretary for Environmental Protection of any
32 information developed by HESIS that is relevant to carrying out
33 his or her responsibilities.

34 (d) The Director of Industrial Relations shall appoint an advisory
35 committee to HESIS. The advisory committee shall consist of four
36 representatives from labor, four representatives from management,
37 four active practitioners in the occupational health field, and three
38 persons knowledgeable in biomedical statistics or information
39 storage and retrieval systems. The advisory committee shall meet
40 on a regular basis at the request of the director. The committee

1 shall be consulted by, and shall advise the director at each phase
2 of the structuring and functioning of the repository and alert system
3 with regard to, the procedures, methodology, validity, and practical
4 utility of collecting, evaluating, and disseminating information
5 concerning hazardous substances, consistent with the primary goals
6 and objectives of the repository.

7 (e) Nothing in this section shall be construed to limit the ability
8 of the State Department of Public Health to propose occupational
9 safety and health standards to the Occupational Safety and Health
10 Standards Board.

11 (f) Policies and procedures shall be developed to assure, to the
12 extent possible, that HESIS uses and does not duplicate the
13 resources of the federal government and other states.

14 (g) On or before December 31 of each year, the Department of
15 Industrial Relations shall submit a report to the Legislature
16 detailing the implementation and operation of HESIS including,
17 but not limited to, the amount and source of funds allocated and
18 spent on repository activities, the toxic materials and harmful
19 physical agents investigated during the past year and
20 recommendations made concerning them, actions taken to inform
21 interested persons of the possible hazards of exposure to toxic
22 materials and harmful physical agents, and any recommendations
23 for legislative changes relating to the functions of HESIS.

24 SEC. 3. The Legislature finds and declares that Section 1 of
25 this act, which amends Section 6276.12 of the Government Code,
26 imposes a limitation on the public's right of access to the meetings
27 of public bodies or the writings of public officials and agencies
28 within the meaning of Section 3 of Article I of the California
29 Constitution. Pursuant to that constitutional provision, the
30 Legislature makes the following findings to demonstrate the interest
31 protected by this limitation and the need for protecting that interest:

32 In order to protect the names and addresses of customers who
33 have purchased chemicals from chemical manufacturers,
34 formulators, suppliers, distributors, importers, and their agents,
35 the quantities and dates of shipments, and the proportion of a
36 specified chemical within a mixture, it is necessary that lists
37 containing that information be exempt from disclosure, as provided
38 in Section 147.2 of the Labor Code, under the California Public

- 1 Records Act (Chapter 3.5 (commencing with Section 6250) of
- 2 Division 7 of Title 1 of the Government Code).

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