

Senate Bill No. 193

Passed the Senate August 26, 2014

Secretary of the Senate

Passed the Assembly August 25, 2014

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, 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 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 HESIS by chemical manufacturers, formulators, suppliers, distributors, importers, and their agents, that would be required pursuant to the bill, as provided, but would 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.

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

SECTION 1. Section 6276.12 of the Government Code is amended to read:

6276.12. Conservatee, confidentiality of the conservatee's report, Section 1826, Probate Code.

Conservatee, estate plan of, confidentiality of, Section 2586, Probate Code.

Conservatee with disability, confidentiality of report, Section 1827.5, Probate Code.

Conservator, confidentiality of conservator's birthdate and driver's license number, Section 1834, Probate Code.

Conservator, supplemental information, confidentiality of, Section 1821, Probate Code.

Conservatorship, court review of, confidentiality of report, Section 1851, Probate Code.

Consumer fraud investigations, access to complaints and investigations, Section 26509.

Consumption or utilization of mineral materials, disclosure of, Section 2207.1, Public Resources Code.

Contractor, evaluations and contractor responses, confidentiality of, Section 10370, Public Contract Code.

Contractor, license applicants, evidence of financial solvency, confidentiality of, Section 7067.5, Business and Professions Code.

Controlled Substance Law violations, confidential information, Section 818.7.

Controlled substance offenders, confidentiality of registration information, Section 11594, Health and Safety Code.

Cooperative Marketing Association, confidential information disclosed to conciliator, Section 54453, Food and Agricultural Code.

Coroner, inquests, subpoena duces tecum, Section 27491.8.

County aid and relief to indigents, confidentiality of investigation, supervision, relief, and rehabilitation records, Section 17006, Welfare and Institutions Code.

County alcohol programs, confidential information and records, Section 11812, Health and Safety Code.

County Employees' Retirement, confidential statements and records, Section 31532.

County mental health system, confidentiality of client information, Section 5610, Welfare and Institutions Code.

County social services, investigation of applicant, confidentiality, Section 18491, Welfare and Institutions Code.

County social services rendered by volunteers, confidentiality of records of recipients, Section 10810, Welfare and Institutions Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) In accordance with Chapter 2 (commencing with Section 6350) of Part 1 of Division 5 of this code and Section 105175 of the Health and Safety Code, the Department of Industrial Relations, by interagency agreement with the State Department of Public Health, shall 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, known as the Hazard Evaluation System and Information Service, or HESIS.

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

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

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

(3) 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 the State Department of Public Health, determines that a substance may be in use in a place of employment, may pose a hazard under a reasonable anticipated condition of use, and potentially poses a serious new or unrecognized health hazard to an employee, including, but not limited to, cancer, reproductive or developmental harm, organ system impairment, or death, chemical manufacturers, formulators, suppliers, distributors, importers, and their agents, as specified in subparagraph (A), shall provide to HESIS the names and addresses of their customers who have purchased certain chemicals, as specified by HESIS, or commercial products containing those chemicals and information related to those shipments, including the quantities and dates of shipments, and the proportion of a specified chemical within a mixture containing the specified chemical, upon written request by HESIS, for every product the final destination of which may be a place of employment in California. This paragraph shall not apply to a retail seller of the substance, whether sold individually or as part of a commercial product to the public. The following shall apply to this paragraph:

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

(B) Unless, pursuant to other law or regulation the following persons, any other person, or any governmental entity is required to publicly disclose the following information, the names and addresses of customers, the quantities and dates of shipments, and the proportion of a specified chemical within a mixture provided by chemical manufacturers, formulators, suppliers, distributors, importers, and their agents pursuant to this paragraph shall be considered confidential and, except as specified in this subparagraph, exempt from public disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250))

of Division 7 of Title 1 of the Government Code). HESIS may disclose that information to officers or employees of the State Department of Public Health, to officers or employees of the state who are responsible for carrying out the purposes of Division 5 (commencing with Section 6300), or to the state agencies of the state officers specified in paragraphs (5) and (6). Any officer, employee, or agency to which the information is disclosed shall be subject to this subparagraph.

(C) 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 paragraph.

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

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

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

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

(e) Nothing in this section shall be construed to limit the ability of the State Department of Public Health to propose occupational

safety and health standards to the Occupational Safety and Health Standards Board.

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

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

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

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

Approved _____, 2014

Governor