

AMENDED IN SENATE MAY 14, 1998

SENATE BILL

No. 1430

Introduced by Senator Solis

January 26, 1998

An act to amend Section 138.7 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1430, as amended, Solis. Workers' Compensation: privacy.

Existing law provides that a person not a party to a workers' compensation claim may not obtain individually identifiable information maintained by the Division of Workers' Compensation, except as specified. However, this provision does not exempt ~~records~~ *a record* from disclosure if it is a public record under the Public Records Act, once an application for adjudication has been filed.

This bill would provide that individually identifiable information shall not be provided to any person *or public or private entity who is not a party to the claim* unless the requester ~~states the purpose to which the information will be put.~~ It would provide that individually identifiable information shall not be provided if the requester intends to furnish the information to any other person or private or public entity unless the requester enters into a written agreement with the administrative director that the information shall be furnished solely to parties in already existing workers' compensation actions or bona fide potential lien claimants, or the requester pays the administrative

~~director the costs of informing the individually identified subjects of the request and the purpose for which the information will be used. It would also provide that these provisions shall not permit furnishing names and addresses for commercial purposes as forbidden by the Information Practices Act. It would authorize the Administrative Director of the Division of Workers' Compensation to audit requesters of information under this section and to assess administrative penalties identifies himself or herself and states the reason for making the request. The bill would authorize the administrative director of the Division of Workers' Compensation to require the requester to verify the validity and correctness of the name and address of the requester. It would require a notice if the information is for preemployment screening.~~

The bill would provide that any residence address is confidential and shall not be disclosed, except as specified.

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 138.7 of the Labor Code is
 2 amended to read:
 3 138.7. (a) Except as expressly permitted in
 4 subdivision (b), a person or public or private entity not
 5 a party to a claim for workers' compensation benefits may
 6 not obtain individually identifiable information obtained
 7 or maintained by the division on that claim. For purposes
 8 of this section, "individually identifiable information"
 9 means any data concerning an injury or claim that is
 10 linked to a uniquely identifiable employee, employer,
 11 claims administrator, or any other person or entity.
 12 (b) (1) The administrative director, or a statistical
 13 agent designated by the administrative director, may use
 14 individually identifiable information for purposes of
 15 creating and maintaining the workers' compensation
 16 information system as specified in Section 138.6.
 17 (2) The State Department of Health Services may use
 18 individually identifiable information for purposes of



1 establishing and maintaining a program on occupational
2 health and occupational disease prevention as specified in
3 Section 105175 of the Health and Safety Code.

4 (3) Individually identifiable information may be used
5 by the Division of Workers' Compensation, the Division
6 of Occupational Safety and Health, and the Division of
7 Labor Statistics and Research as necessary to carry out
8 their duties. The administrative director shall adopt
9 regulations governing the access to the information
10 described in this subdivision by these divisions. Any
11 regulations adopted pursuant to this subdivision shall set
12 forth the specific uses for which this information may be
13 obtained.

14 (4) The administrative director shall adopt regulations
15 allowing reasonable access to individually identifiable
16 information by other persons or public or private entities
17 for the purpose of bona fide statistical research. This
18 research shall not divulge individually identifiable
19 information concerning a particular employee,
20 employer, claims administrator, or any other person or
21 entity. The regulations adopted pursuant to this
22 paragraph shall include provisions guaranteeing the
23 confidentiality of individually identifiable information.

24 (5) This section shall not operate to exempt from
25 disclosure any information that is considered to be a
26 public record pursuant to the California Public Records
27 Act (Chapter 3.5 (commencing with Section 6250) of
28 Division 7 of Title 1 of the Government Code) contained
29 in an individual's file once an application for adjudication
30 has been filed pursuant to Section 5501.5: ~~However,~~
31 ~~individually identifiable information shall not be~~
32 ~~provided to any person or public or private entity unless~~
33 ~~the requester states the purpose to which the information~~
34 ~~will be put. Individually identifiable information shall not~~
35 ~~be provided if the requester intends to furnish the~~
36 ~~information to any other person or private or public~~
37 ~~entity unless (A) the requester enters into a written~~
38 ~~agreement with the administrative director that the~~
39 ~~information shall be furnished solely to parties in already~~
40 ~~existing workers' compensation actions or bona fide~~



1 ~~potential lien claimants, or (B) the requester pays the~~
2 ~~administrative director the costs of informing the~~
3 ~~individually identified subjects of the request and the~~
4 ~~purpose for which the information will be used. Nothing~~
5 ~~in this section shall permit furnishing names and~~
6 ~~addresses for commercial purposes, as forbidden by~~
7 ~~Section 1798.60, including, but not limited to, the~~
8 ~~solicitation of patients for medical services. The~~
9 ~~administrative director may audit requesters of~~
10 ~~information under this section and may assess~~
11 ~~administrative penalties in the manner prescribed by~~
12 ~~Section 129.5..~~

13 *However, individually identifiable information shall*
14 *not be provided to any person or public or private entity*
15 *who is not a party to the claim unless that person or public*
16 *or private entity identifies himself or herself and states*
17 *the reason for making the request. The administrative*
18 *director may require the person or public or private*
19 *entity making the request to produce information to*
20 *verify that the name and address of the requester is valid*
21 *and correct. If the purpose of the request is related to*
22 *preemployment screening, the administrative director*
23 *shall notify the person about whom the information is*
24 *requested that the information was provided and shall*
25 *include the following in 12-point type:*

26 *“IT MAY BE A VIOLATION OF FEDERAL AND*
27 *STATE LAW TO DISCRIMINATE AGAINST A JOB*
28 *APPLICANT BECAUSE THE APPLICANT HAS FILED*
29 *A CLAIM FOR WORKERS’ COMPENSATION*
30 *BENEFITS.”*

31 *Any residence address is confidential and shall not be*
32 *disclosed to any person or public or private entity except*
33 *to a party to the claim, a law enforcement agency, an*
34 *office of a district attorney, or other governmental*
35 *agency.*

36 (c) Except as provided in subdivision (b), individually
37 identifiable information obtained by the division is
38 privileged and is not subject to subpoena in a civil
39 proceeding unless, after reasonable notice to the division
40 and a hearing, a court determines that the public interest



1 and the intent of this section will not be jeopardized by
2 disclosure of the information. This section shall not
3 operate to restrict access to information by any law
4 enforcement agency or district attorney's office or to
5 limit admissibility of that information in a criminal
6 proceeding.

7 (d) It shall be unlawful for any person who has
8 received individually identifiable information from the
9 division pursuant to this section to provide that
10 information to any person who is not entitled to it under
11 this section.

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