

## BILL ANALYSIS

SENATE RULES COMMITTEE	SB 193
Office of Senate Floor Analyses	
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## THIRD READING

Bill No: SB 193  
 Author: Monning (D)  
 Amended: 4/9/13  
 Vote: 21

SENATE JUDICIARY COMMITTEE : 5-2, 4/23/13  
 AYES: Evans, Corbett, Jackson, Leno, Monning  
 NOES: Walters, Anderson

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

SUBJECT : Hazard evaluation system and information service

SOURCE : Author

DIGEST : This bill requires, upon written request from the repository of the Department of Industrial Relations (DIR) with the Department of Public Health (DPH), chemical manufacturers, formulators, suppliers, distributors, importers, and their agents to provide the repository with the names and addresses of their customers, who have purchased certain chemicals, or commercial product information.

ANALYSIS :

Existing law:

1. Recognizes that hazardous substances in the workplace in some forms and concentrations pose potential acute and chronic health hazards to employees who are exposed to these

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substances.

2. Provides that employers and employees have a right and a need to know the properties and potential hazards of substances to which they may be exposed, and such knowledge is essential to reducing the incidence and cost of occupational disease. Further, existing law recognizes that employers do not always have available adequate data on the contents and properties

- of specific hazardous substances necessary for the provision of a safe and healthful workplace.
3. Ensures the transmission of necessary information to employees regarding the properties and potential hazards of hazardous substances in the workplace.
  4. Requires the DIR, by interagency agreement with the Department of Health Services (DHS), to establish a repository of current data on toxic materials and harmful physical agents in use or potentially in use in workplaces.
  5. Requires the DPH to maintain a program, known as the Hazard Evaluation System and Information Service (HESIS), on occupational health and occupational disease prevention.
  6. Requires DIR and DHS to 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. Existing case law settled the authority of HESIS, on behalf of DHS, to issue hazard alerts and fact sheets to the public.
  7. The California Public Records Act, governs the disclosure of information collected and maintained by public agencies. Generally, all public records are accessible to the public upon request, unless the record requested is exempt from public disclosure.

This bill:

1. Requires that for every product whose final destination may be a place of employment within the state, chemical manufacturers, formulators, suppliers, distributors, importers, and their agents, upon written request by the

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- repository, to provide the names and addresses of customers who have purchased certain chemicals, as specified by the repository, or commercial products containing those chemicals and information related to those shipments, including the quantity and dates of shipments, and the proportion of a specified chemical within a mixture containing the specified chemical.
2. Requires, on or after January 1, 2015, the information requested by the repository to include current and past customers for not more than a one-year period prior to the date the request is received; requires the information to be provided within a reasonable timeframe as determined by DPH, not to exceed 30 calendar days from the date the request is received; and requires the information to be provided in a format specified by DPH but consistent with the responding entity's current data system.
  3. Authorizes DPH to seek reimbursement for attorney's fees and costs incurred in seeking an injunction to enforce these provisions.
  4. Does not apply to a retail seller if the sale of the chemical or mixture is in the same form, approximate amount,

- concentration, and manner as the chemical or mixture is sold to the general public.
5. Does not require employers, other than chemical manufacturers, formulators, suppliers, distributors, importers, and their agents, to report any information not otherwise required by law.
  6. Makes conforming changes to reflect the recent reorganization of DPH.
  7. Exempts from disclosure, under the California Public Records Act, the customer lists of chemical manufacturers, formulators, suppliers, distributors, importers, and their agents that are required to be provided pursuant to the repository's request; and authorizes disclosure of customer lists only to officers or employees of the state not affiliated with the repository who are responsible for carrying out the purposes of the California Occupational Safety and Health Act of 1973, the Division of Occupational

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Safety and Health Administration, and the Secretary of Food and Agriculture.

Background

In 1973, the Legislature enacted the California Occupational Safety and Health Act for the purpose of assuring safe and healthful working conditions. In furtherance of this purpose, the Legislature subsequently established comprehensive statutory mandates requiring DIR and DPH to safeguard the health and safety of California workers. One such mandate requires DIR and DPH to maintain a repository, that collects and maintains data on toxic materials and harmful physical agents in use or potentially in use in workplaces. HESIS, a DPH program, utilizes the information collected by the repository to evaluate potential hazards to human health and provides information about possible health hazards that may be caused by exposure to toxic materials. HESIS also issues early warnings to various industries concerning potential workplace hazards.

The current strategy used by HESIS when mailing out hazard alerts is to identify each business likely to use the targeted chemical by searching commercial databases using standard industry codes. For example, after participating in a workplace fatality investigation last year, HESIS mailed out a hazard alert on the use of methylene chloride-containing paint strippers. To identify employees potentially exposed to the potential hazard of these paint strippers, HESIS searched the commercial databases for businesses classified as furniture refinishers, furniture strippers, or bathtub refinishers.

Additionally, the Occupational Health Branch (OHB) (of which HESIS is a part) maintains a database of businesses, contractors, unions, and advocacy groups. That database is of limited use in directed hazard alert mailings since a search for potential users of toxic materials is based upon the likely relevance of the businesses, contractors, unions, and advocacy groups to the toxic material.

In its Summer 2004 Occupational Health Watch publication,

indicated that "[a]lthough businesses are required to submit hazardous materials inventories to local agencies, these data are not computerized, easily accessed, nor compiled on a statewide basis. Direct requests to manufacturers and importers

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to voluntarily submit their client lists for the test chemicals was unsuccessful. Requiring client lists of hazardous chemicals, or making inventory data available on a statewide basis, would help ensure that workers and employers receive OHB alerts in a manner timely enough to keep workers health." (Cal. Dept. of Health Services, Occupational Health Branch, Occupational Health Watch (Summer 2004) [as of Aug. 10, 2013], p. 5.)

Prior legislation

AB 816 (Lieber, 2005), would have required chemical manufacturers and importers to provide HESIS the names and addresses of businesses to which they sold their products. The bill is substantially similar to the enrolled version of AB 816 (Lieber, 2005). In vetoing AB 816, Governor Schwarzenegger stated:

This bill is unnecessary and an invasion of privacy. Employers are currently required to notify their workers about health hazards and to provide a safe and healthy workplace. Other protective measures that ensure worker safety include the Business Plan Hazardous Materials Inventories; the Air Toxics Program; CalSites Database, Unidocs Hazardous Materials Online Inventory Database; and the Wastewater Pretreatment and Pollution Prevention Plans. Employers must also inform their employees of the availability of material safety data sheets (MSDS) relating to any chemical to which the employee may be exposed. Further, employers routinely undergo Division of Occupational Safety and Health inspections to ensure that MSDS documents are available for employees.

Assembly Bill 816 imposes an unreasonable, labor intensive and duplicative reporting requirement when there are existing programs and standards in place to ensure that employees are protected from hazardous chemical exposure.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes  
Local: No

SUPPORT : (Verified 5/3/13)

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American Sustainable Business Council

Breast Cancer Fund  
 California Conference of Machinists  
 California Conference of the Amalgamated Transit Union  
 California Health Nail Salon Collaborative  
 California Labor Federation  
 California Nurses Association  
 California Rural Legal Assistance Foundation  
 California State Association of Occupational Health Nurses  
 California Teamsters Public Affairs Council  
 Californians for a Healthy and Green Economy  
 Central Coast School Food Alliance  
 Clean Water Action California  
 Consumer Attorneys of California  
 Engineers & Scientists of California, IFPTE Local 20  
 International Longshore & Warehouse Union  
 Mujeres Unidas y Activas  
 National Lawyers Guild Labor and Employment Committee  
 Occupational Health and Safety Section of the American Public  
 Health Association  
 Physicians for Social Responsibility  
 Professional and Technical Engineers, IFPTE Local 21  
 Silicon Valley Toxics Coalition  
 United Food and Commercial Workers Western States Council  
 UNITE-HERE, AFL-CIO  
 Utility Workers Union of America, AFL-CIO  
 Western Occupational & Environmental Medical Association  
 Worksafe

OPPOSITION : (Verified 5/3/13)

American Chemistry Council  
 American Coatings Association  
 California Chamber of Commerce  
 California League of Food Processors  
 California Manufacturers and Technology Association  
 California Paint Council  
 Chemical Industry Council of California  
 Consumer Specialty Products Association

ARGUMENTS IN SUPPORT : According to the author's office, in the absence of a robust federal policy on chemicals, California has confronted a number of difficulties when responding to the release of chemical hazards in recent years. Too often, the

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public is provided protections only after damaging effects to workers' health have become pervasive. Finding information concerning new, unregulated chemicals, such as certain solvents, is often very difficult to track when they are used in many different settings. When it has been able to obtain the necessary information, [the Hazardous Evaluation System and Information Service (HESIS)] has provided early warnings to various industries concerning prospective hazards, such as alerts on chemicals posing reproductive hazards.

This bill requires chemical manufacturers, suppliers, distributors, importers and their agents, when requested to do so by [HESIS] maintained jointly at DIR and the DPH, and under conditions of confidentiality, to provide the names and addresses of their customers who have purchased chemicals or products containing those chemicals, and their proportions, to the repository maintained by the HESIS.

ARGUMENTS IN OPPOSITION : An opposition coalition argues that "[p]resuming this bill becomes law, [the Department of Industrial Relations] DIR could theoretically on January 1, 2014 issue requests to thousands of businesses requesting customer information on thousands of chemicals without any clear indication as to how this information would be used and to what extent the information will help address a potential public health threat in the workplace?. Depending upon the products in question and industries targeted, this bill could result in an enormous cascade of information and data that could easily overwhelm DIR, raising the question of how DIR could put this information to meaningful use in actually enhancing workplace safety." The opposition coalition also raises concerns about ensuring the protection of sensitive information, and asserts that DIR should only be granted access to customer lists through a clearly defined process and under very specific circumstances.

AL:d 5/7/13 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

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