

BILL ANALYSIS

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Date of Hearing: July 2, 2013

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Luis Alejo, Chair
SB 193 (Monning) - As Amended: April 9, 2013SENATE VOTE : 21-14SUBJECT : Hazard Evaluation System and Information ServiceSUMMARY : Requires chemical manufacturers and importers to provide the Hazard Evaluation System and Information Service (HESIS) repository the names and addresses of businesses to which these manufacturers and importers sold their products. Specifically, this bill :

- 1) Requires, upon written request from the HESIS repository, chemical manufacturers, suppliers, distributors, and importers to provide to the repository the names and addresses of their customers who have purchased specified chemicals or commercial products containing those chemicals. The information request would meet the following limitations:
 - a) The information request would 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;
 - b) The information request would not require employers, other than chemical manufacturers, formulators, suppliers, distributors, importers, and their agents, to report any information not otherwise required by law; and
 - c) Beginning in 2015, the information requested by HESIS would include current and past customers for not more than a one-year period prior to the date the request is received and the information would be due no more than 30 calendar days from the date the request is received.
- 2) Authorizes the California Department of Public Health (CDPH) to receive reimbursement of attorney's fees and costs incurred in seeking an injunction to enforce this requirement.
- 3) Exempts from disclosure, under the California Public Records Act, the customer lists of chemical manufacturers,

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formulators, suppliers, distributors, importers, and their agents that are required to be provided pursuant to the repository's request. This bill would authorize 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 Safety and Health Administration, and the Secretary of Food

and Agriculture.

- 4) Makes a finding and declaration of the Legislature that it is necessary to protect the data requested by the depository as a trade secret as the rationale for limiting the public's right of access to these customer lists.

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EXISTING LAW:

- 1) Requires the CDPH to maintain the Hazard Evaluation System and Information Service (HESIS) for purposes of occupational health and occupational disease prevention.
- 2) Requires the Department of Industrial Relations, with CDPH, 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.
- 3) Requires the repository to provide information and collect and evaluate data relating to possible hazards to employees resulting from exposure to toxic materials or harmful physical agents.
- 4) Requires, under the California Public Records Act, most public records to be made available for public inspection, and lists records that are exempt from disclosure under the act.
- 5) Requires HESIS to recommend to the Chief of the Division of Occupational Safety and Health that an occupational safety and

health standard be developed whenever it has been determined that a substance is potentially in use in places of employment that is potentially toxic at the concentrations or under the conditions used.

FISCAL EFFECT : The Senate Appropriations Committee moved this bill out of its committee pursuant to Senate Rule 28.8 indicating insignificant state costs.

COMMENTS :

1)Need for the bill . According to the author, California has confronted a number of difficulties when responding to the release of chemical hazards in recent years. Too often, the 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, HESIS has provided early warnings to various industries concerning prospective hazards, such as alerts on chemicals posing reproductive hazards.

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2)HESIS is supported through an interagency agreement between the Department of Industrial Relations, Cal/OSHA, and the California Department of Public Health, Occupational Health Branch. The Legislature created HESIS in 1978 to conduct two primary activities: 1) to provide reliable information about possible health hazards from exposures to toxic materials; and, 2) to collect toxicological, epidemiological and other information pertinent to evaluating potential hazards to human health. HESIS uses scientific, medical and public health expertise to prevent occupational illness and disease through the following activities:

- a) Maintains a repository of occupational health literature;
- b) Conducts ongoing reviews of new scientific literature;
- c) Identifies new and unappreciated health hazards;
- d) Provides "early warnings" and practical information on workplace toxic chemicals;
- e) Operates a statewide helpline on toxic chemicals to assist employers, employees, healthcare providers, and government agencies, and others;
- f) Recommends protective occupational health standards; and,
- g) Promotes pollution prevention by recommending alternatives to more hazardous workplace chemicals.

3)Confidentiality . In previous requests to chemical manufacturers, HESIS has been unable to successfully obtain customer information. In response, chemical manufacturers have cited HESIS' inability to guarantee confidentiality. In the interest of public health protections, the bill exempts this information from public disclosure.

4)Opponents/Proponents Concerns . Opponents argue that this bill would impose a new and potentially costly reporting requirement in the absence of any demonstrated need for such information. Since employers must provide employees with

access to material safety data sheets (MSDS) on hazardous materials, additional information is unnecessary.

Proponents note that there is a general absence of information about the hazards of toxic chemicals in the workplace. Identifying if and where a chemical that possess a threats to health, such as cancer and reproductive damage, is a major

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challenge. Proponents are concerned that current law [Labor Code 147.2(b)(1)] gives HESIS a mandate it cannot fulfill -- provide information of practical use to business, and other California employers, employees, and others about toxic workplace hazards.

5)Prior Legislation . This 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."

6)Recommended Amendments :

a) What triggers a request for customer data? This bill provides authority for the HESIS program to request a broad range of customer information from chemical manufacturers and importers. The goal of the author is to assure that when new information and previously unknown health effects from a chemical are found the HESIS program can more rapidly identify likely occupational exposures to these chemicals and offer preventive action. While the bill provides the new authority, it is unclear what warrants these additional data submissions. The Committee may wish to consider providing a standard to be meet by the HESIS administrator prior to requesting this data. The "triggering" standards may require that a new or unknown

health concern has been raised and that increased health risk poses a serious and significant health threat to workers.

b) Is there adequate protection of confidential marketing information?

This bill provides that the names and addresses of customers submitted to HESIS pursuant to a request shall be considered "confidential" and exempt from public disclosure under the California Public Records Act (PRA). However, HESIS and DPH would be permitted to disclose those customer names and addresses to other specified agencies, officials, or employees who are responsible for carrying out the policies of Cal OSHA. Because the bill only expressly exempts names and addresses, all other information obtained by HESIS through a request would be subject to PRA. This other information would include the quantity and dates of shipments and the proportion of any specified chemical in mixed product. The Committee may wish to provide greater protection under the PRA to unique market and product formulation data submitted to assist HESIS in responding to immediate worker safety threats.

7) Double Referral to Judiciary Committee . This bill was subject to a double-referral to the Assembly Judiciary Committee where it was approved on a 6 to 2 vote.

REGISTERED SUPPORT / OPPOSITION :

Support

American Sustainable Business Council
 Bay Area Healthy 880 Communities
 Breast Cancer Fund
 CA Conference of the Amalgamated Transit Union
 CA Conference of Machinists
 Californians for a Healthy and Green Economy (CHANGE)
 CA Healthy Nail Salon Collaborative
 CA Labor Federation
 CA Nurses Association
 CA Rural Legal Assistance Foundation

 CA State Association of Occupational

Health Nurses
 CA Teamsters Public Affairs Council
 Central Coast School Food Alliance
 Clean Water Action
 Communication Workers of America
 Consumer Attorneys of California

Engineers & Scientists of CA, IFPTE Local 20
 International Longshore & Warehouse Union
 Mujeres Unidas y Activas
 National Lawyers Guild, Labor + Employment Committee
 Occupational Health and Safety Section/
 American Public Health Association
 Physicians for Social Responsibility,
 Los Angeles
 Professional and Technical Engineers, IFPTE Local 21
 SEIU California
 Silicon Valley Toxics Coalition
 UNITE-HERE, AFL-CIO
 United Food and Commercial Workers, Western States Council
 Utility Workers Union of America, AFL-CIO
 Western Occupational & Environmental Medical Association
 Worksafe!

Opposition

American Chemistry Council
 American Cleaning Institute
 American Coatings Association
 California Chamber of Commerce
 California Grocers Association
 California Healthcare Institute
 California League of Food Processors
 California Independent Oil Marketers Association
 California Manufacturers and Technology Association
 California Paint Council

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California Service Station & Auto Repair Association
 Chemical Industry Council of California
 Consumer Specialty Products Association
 National Association of Chemical Distributors
 National Federation of Independent Business
 Society of Chemical Manufacturers & Affiliates
 SPI: The Plastics Industry Trade Association
 Styrene Information & Research Center
 Toy Industry Association
 Western Plant Health Association

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