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SB-421 Refineries: turnarounds. (2015-2016)

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Senate Bill No. 421

CHAPTER 314

An act to amend Section 7873 of the Labor Code, relating to refineries.

[Approved by Governor September 21, 2015. Filed with Secretary of State September 21, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

SB 421, Hancock. Refineries: turnarounds.

Existing law requires a petroleum refinery employer to, every September 15, submit to the Division of Occupational Safety and Health information regarding planned turnarounds, as defined, for the following calendar year and provide onsite access to the division for inspection. Existing law establishes procedures for the public disclosure of turnaround information designated a trade secret, including authorization for a petroleum refinery employer to seek a declaratory judgment to prevent disclosure. Existing law requires a court to award attorney's fees to a party that prevails in an action to compel or prohibit the division from disclosing turnaround information.

This bill would delete the requirement that a person requesting the release of the above-described information, or a petroleum refinery employer seeking to prevent disclosure, name the other as a real party in interest in an applicable action. The bill would delete the requirement that a person requesting release of this information provide notice of an action to compel disclosure to the petroleum refinery employer and would instead require the division to provide that notification. The bill would instead authorize the person to intervene in a petroleum refinery employer's declaratory relief action and require the court to permit that person to intervene. The bill would also require the court to allow the petroleum refinery employer to intervene in that action. The bill would also delete the requirement that the court award attorney's fees.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 7873 of the Labor Code is amended to read:

7873. (a) As used in this section, "trade secret" means a trade secret as defined in subdivision (d) of Section 6254.7 of the Government Code or Section 1061 of the Evidence Code, and shall include the schedule submitted to the division pursuant to subdivision (b) of Section 7872 of this code, and the scheduling, duration, layout, configuration, and type of work to be performed during a turnaround. Upon completion of a turnaround, the scheduling and duration of that turnaround shall no longer be considered a trade secret. The wages, hours, benefits, job classifications, and training standards for employees performing work for petroleum refinery employers is not a trade secret.

(b) (1) If a petroleum refinery employer believes that information submitted to the division pursuant to Section 7872 may involve the release of a trade secret, the petroleum refinery employer shall nevertheless provide this information to the division. The

petroleum refinery employer may, at the time of submission, identify all or a portion of the information submitted to the division as trade secret and, to the extent feasible, segregate records designated as trade secret from the other records.

(2) Subject to subdivisions (c), (d), and (g), the division shall not release to the public any information designated as a trade secret by the petroleum refinery employer pursuant to paragraph (1).

(c) (1) Upon the receipt of a request for the release of information to the public that includes information that the petroleum refinery employer has notified the division is a trade secret pursuant to paragraph (1) of subdivision (b), the division shall notify the petroleum refinery employer in writing of the request by certified mail, return receipt requested.

(2) The division shall release the requested information to the public, unless both of the following occur:

(A) Within 30 days of receipt of the notice of the request for information, the petroleum refinery employer files an action in an appropriate court for a declaratory judgment that the information is subject to protection as a trade secret, as defined in subdivision (a), and promptly notifies the division of that action.

(B) Within 120 days of receipt of the notice of the request for information, the petroleum refinery employer obtains an order prohibiting disclosure of the information to the public and promptly notifies the division of that action.

(3) This subdivision shall not be construed to allow a petroleum refinery employer to refuse to disclose the information required pursuant to this section to the division.

(d) Except as provided in subdivision (c), any information that has been designated as a trade secret by a petroleum refinery employer shall not be released to any member of the public, except that such information may be disclosed to other officers or employees of the division when relevant in any proceeding of the division.

(e) (1) The petroleum refinery employer filing an action pursuant to paragraph (2) of subdivision (c) shall provide notice of the action to the person requesting the release of the information at the same time that the defendant in the action is served.

(2) A person who has requested the release of information that includes information that the petroleum refinery employer has notified the division is a trade secret pursuant to paragraph (1) of subdivision (b) may intervene in an action by the petroleum refinery employer filed pursuant to paragraph (2) of subdivision (c). The court shall permit that person to intervene.

(f) The public agency shall not bear the court costs for any party named in litigation filed pursuant to this section.

(g) This section shall not be construed to prohibit the exchange of trade secrets between local, state, or federal public agencies or state officials when those trade secrets are relevant and reasonably necessary to the exercise of their authority.

(h) If the person requesting the release of information identified by a petroleum refinery employer as a trade secret files an action against the division to order disclosure of that information, the division shall promptly notify the petroleum refinery employer in writing of the action by certified mail, return receipt requested. The petroleum refinery employer may intervene in an action filed by the person requesting the release of trade secrets identified by the petroleum refinery employer. The court shall permit the petroleum refinery employer to intervene.

(i) An officer or employee of the division who, by virtue of that employment or official position, has possession of, or has access to, trade secret information, and who, knowing that disclosure of the information to the general public is prohibited by this section, knowingly and willfully discloses the information in any manner to a person he or she knows is not entitled to receive it, is guilty of a misdemeanor. A contractor with the division and an employee of the contractor, who has been furnished information as authorized by this section, shall be considered an employee of the division for purposes of this section.