

HOUSE BILL REPORT

HB 2413

As Reported by House Committee On:

Labor & Workforce Development
Health & Human Services Appropriations & Oversight

Title: An act relating to protecting workers and other community members from pesticide drift.

Brief Description: Protecting workers and other community members from pesticide drift.

Sponsors: Representatives Reykdal, Sells, Appleton, Ladenburg, Ormsby, Hunt, Moscoso, Ryu, Roberts, Wylie, Green, Hasegawa, McCoy, Kenney, Hudgins, Cody, Moeller, Fitzgibbon, Pollet and Jinkins.

Brief History:

Committee Activity:

Labor & Workforce Development: 1/18/12, 1/27/12, 1/30/12 [DPS];

Health & Human Services Appropriations & Oversight: 2/2/12, 2/3/12 [DP2S(w/o sub LWD)].

Brief Summary of Second Substitute Bill

- Requires persons who apply pesticides on a farm by aircraft or air-blast sprayer to provide notice to properties adjacent to the intended application area.
- Requires employers to notify farm and nursery workers within one-quarter mile of the intended application area and ensure that workers remain at least one-quarter mile from the intended application area or work indoors.
- Establishes a Joint Select Committee on Pesticide Drift Exposure to formulate a state policy to reduce exposure of workers and other community members to drift while not adversely affecting agricultural and other economic sectors that use pesticides.

HOUSE COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Sells, Chair; Reykdal, Vice Chair; Kenney, Miloscia, Moeller, Ormsby and Roberts.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Do not pass. Signed by 6 members: Representatives Condotta, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Fagan, Green, Taylor and Warnick.

Staff: Joan Elgee (786-7106).

Background:

Pesticides are regulated by the state and federal government. At the state level, several state agencies have responsibilities.

The Department of Labor and Industries (L&I) administers and enforces the Washington Industrial Safety and Health Act (WISHA). Under the WISHA, the L&I adopts safety and health standards, provides consultation and advice, and conducts inspections and investigations.

The Worker and Community Right to Know Act (Right to Know Act) requires that information regarding hazardous substances be provided to employees and community members. The L&I administers the worker right-to-know portion of the law and the Department of Ecology provides information to community members. Under the Right to Know Act, employers must provide agricultural employees information and training on hazardous chemicals in the workplace and must keep specified records regarding pesticides.

An employer who discharges or otherwise discriminates against an employee because the employee or the employee's representative has exercised any right under the Right to Know Act is subject to the discrimination provisions of the WISHA. The WISHA discrimination provision allows the Director of the L&I (or the employee if the Director determines a violation has not occurred) to bring a cause of action to restrain violations and order all appropriate relief, including reinstatement and backpay.

The Department of Agriculture (Agriculture) administers and enforces the Federal Insecticide, Fungicide, and Rodenticide Act, as well as the state Pesticide Control Act and the state Pesticide Application Act. Its activities include adopting rules requiring the registration and restricting the use of pesticides, testing and certifying pesticide applicators, issuing handler and worker pesticide training documentation, and providing technical assistance to pesticide applicators and workers.

Agriculture and the L&I have adopted identical rules on worker protection from pesticides. These rules impose various duties on agricultural employers, including requirements that pesticides be used in a manner consistent with their labels and that workers be notified of pesticide applications.

The Department of Health (DOH) tracks and investigates pesticide-related illnesses, and provides education and technical assistance to physicians and other agencies.

Schools must notify interested parents or guardians of students and employees at least 48 hours before a pesticide application and must place signs regarding pesticide applications.

Summary of Substitute Bill:

Intent is stated that pesticide exposure in agricultural communities results in lost wages and worker productivity; increased industrial insurance costs; and health problems for workers and other community members. The Legislature declares that workers and other community members have a right to be protected from pesticide exposure and notified of certain applications to prevent exposure.

New sections are added to the Right to Know Act.

Notice of Pesticide Application.

Persons applying pesticides by aircraft or air-blast sprayer must provide written notice to employers of outdoor employees on a farm or nursery within one-quarter mile of the intended application area.

The notice by the applicator must be: (1) given at least 24 hours but no sooner than 48 hours before the application; (2) provided in person if feasible or posted on the primary entrance of workplace buildings; and (3) translated when the applicator knows or a reasonable person would know that persons entitled to notice do not speak English as their primary language. If in-person notice or posting is not feasible, the applicator must make reasonable efforts to notify persons by other means.

The applicator's notice must include:

- the date and location of the application;
- the time of application, which may be stated as a range of no greater than 24 hours;
- the name, telephone number, and address of the person applying the pesticide and the person who contracts for the application;
- the common names and active ingredients of the pesticides;
- the telephone number of the Washington Poison Control Center;
- a statement that aircraft and air-blast application of pesticides is not allowed within one-quarter mile of child care facilities, schools, residences, and people outdoors;
- a list of the precautions related to drift that are on the pesticide label; and
- the restricted-entry interval on the pesticide label and a statement that if the pesticide lands in an area, persons should stay out of that area for the restricted-entry interval. The "restricted-entry interval" is the time after the end of an application during which entry into the treated area is restricted.

If the applicator is unable to apply the pesticide within the time specified because of conditions, the applicator must make a reasonable effort to contact employers with updated information. Five days after the latest time on the written notice, the notice expires.

Employers must give employees copies of the applicator's notice. When the employees do not speak English as their primary language, the employer must also provide written notice in

an appropriate language or a full verbal translation to each employee. The employer must give the notice at least four hours before the intended application and must give employees notice of any updated time.

Employers must ensure that employees remain at least one-quarter mile from the intended area of application or work in fully enclosed indoor work spaces during the application of pesticides.

A state or local government, or its contractor applying pesticide in compliance with a state-issued permit, is exempt from the notice requirements if other notice is required under law or permitting processes.

Restriction on Pesticide Application.

Application of a pesticide on a farm by aircraft or air-blast sprayer is prohibited within one-quarter mile of a child care facility, school, residence (including occupied temporary worker housing), and a person who the applicator knows or should know is outdoors at the time of application.

Application is also prohibited at a time other than the time listed on the notice, unless the applicator provides updated information and the application is within five days of the latest time on the written notice.

A state or local government or its contractor applying pesticide in compliance with a state-issued permit is exempt from the application restriction.

Remedies.

An employer who discharges or otherwise discriminates against an employee because the employee or employee's representative has made or plans to make a complaint, participated in an investigation, or been part of a lawsuit regarding the provisions is liable for actual damages or \$5,000, whichever is greater, including costs of litigation and attorney's fees. A cause of action for the same remedies is available against any person who attempts to intimidate another person because the other person or their representative has made or plans to make a complaint, participated in an investigation, or been part of a lawsuit regarding the provisions.

Subject to workers' compensation provisions, any person exposed to pesticides by a person willfully applying pesticides in violation of the provisions may bring a civil action for twice the damages or \$5,000, whichever is greater.

An employee entitled to notice may bring a civil action against an employer who acts willfully for statutory damages of \$500.

The remedies provided are in addition to and do not affect any other remedy. Compliance with the requirements do not limit the liability of any person for pesticide exposure to other persons.

The WISHA penalties and procedures do not apply.

Other.

A "farm" is any operation engaged in the outdoor production of plants destined in whole or in part for human or animal ingestion or direct application to the body, and seed and cover crops for such plants.

Definitions are also added for "nursery," "person," "pesticide," "temporary worker housing," and "willfully."

Substitute Bill Compared to Original Bill:

The substitute bill:

- limits the restricted application lands to farms;
- strikes fumigation and other methods with substantial risk of drift from restricted application methods;
- changes the restricted areas from one-half mile (or further to avoid drift) to one-quarter mile;
- changes the restriction regarding persons outdoors in the original bill which stated that the applicator may not apply pesticide to a person unless the applicator reasonably concludes no one is outdoors to a restriction that the applicator may not apply pesticides when the applicator knew or should have known persons are outdoors;
- adds reference to temporary worker housing and defines temporary worker housing;
- provides that employers must assure workers remain at least one-quarter (rather than one-half) mile from the intended area of application or work indoors;
- limits the notice requirements to employers of persons who work outdoors on farms and nurseries within one-quarter mile of the intended application area; and defines "nursery;"
- allows the time of application to be stated as a range and adds a provision allowing application up to five days after the time specified if updates are provided;
- deletes the requirement that the notice include a phone number for the DOH's pesticide program, and requires the notice to state the active ingredients, rather than the chemical names;
- adds reasonable method of notification if in-person or posting is not feasible;
- adds the state and local government exemption;
- deletes the civil penalty provisions;
- adds the civil cause of action allowing an employer to recover statutory damages against an employer and provides that the cause of action for willful exposure is subject to workers' compensation provisions;
- adds a provision stating that the WISHA penalties and procedures do not apply;
- modifies the intent section to refer to agricultural communities and delete "unnecessary" with respect to exposure; and
- adds definition of "farm."

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on January 30, 2012.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill came out of discussions going on for several years and a farm worker tour. Last year, a dangerous situation occurred in Mattawa. When a group of workers picking apples stopped to eat lunch, they were sprayed. They waved their arms at the pilot but the pilot made additional passes. Fifty workers were sent to medical clinics. One worker still has swelling in her nose. Agriculture did not fine the applicator or suspend the license. The employer could not protect the workers because the employer did not know the neighbor was spraying.

Children and families are affected by pesticide drift. Farm workers are bombarded on a regular basis by pesticides which are known to be harmful to health. We want to allow working lands to stay working but not use application methods that put people at risk.

A recent study showed that poor communication is a significant factor causing drift exposure. The Pesticide Incidence Report found that 75 percent of pesticide incidents are caused by drift. Recommendations include reducing the use of air-blast sprayers. Most exposures are inadvertent.

A clear buffer zone is needed. Labels do not protect against drift and farmers will say they were following the label.

There is a one-mile buffer for grapes and vineyards. Salmon and commercial greenhouses have a buffer zone. Farm workers are treated like they are invisible. Our policies disproportionately affect low-income people of color.

(With concerns) Clarity is key. The bill uses terms like "substantial risk." The bill may be an impediment to selling abroad. Some urban areas may be included; Agriculture has a pest eradication program including gypsy moth. An education program for farmers is in high demand.

(Opposed) This bill makes illegal what is already illegal. The Environmental Protection Agency (EPA) regulations specify what is on the label and Agriculture has enforcement authority. The EPA conducts studies before it approves labels. The DOH, Agriculture, and the L&I have been working together for 20 years. There will be mistakes but the numbers are very low. In 2008 a study found virtually no residue at 25 feet from air-blast spraying. When Agriculture tried to survey for problems, it got almost no response.

This bill does not protect health; it harms efforts to control the spread of pests and disease. It will lead to huge problems for the agricultural industry. The agricultural industry was not consulted on the bills. Farming could not take place under this bill. There is a labor shortage

so farmers must provide housing, but housing cannot be within one-half mile of an orchard. To be able to export to other states or internationally, farmers must be able to show the products have no pests. "Reasonably believe" is a startling standard.

Persons Testifying: (In support) Representative Reykdal, prime sponsor; Andrea Schmitt, Columbia Legal Services; Teresa Mosqueda, Washington State Labor Council and American Federation of Labor-Congress of Industrial Organizations; Toby Guevin, One America; and Nick Federici, Washington Toxics Coalition.

(With concerns) Mark Strueli, Washington State Department of Agriculture.

(Opposed) Heather Hansen, Washington Friends of Farms and Forests; Jim Jesernig, Washington Association of Wheat Growers and Washington State Potato Commission; Jim Halstrom, Washington State Horticultural Association; and Kris Tefft, Association of Washington Business.

Persons Signed In To Testify But Not Testifying: Brad Tower, Washington Christmas Tree Growers; and Neal Wolbert, Wolbert's Inc.

HOUSE COMMITTEE ON HEALTH & HUMAN SERVICES APPROPRIATIONS & OVERSIGHT

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Labor & Workforce Development. Signed by 6 members: Representatives Dickerson, Chair; Appleton, Vice Chair; Cody, Green, Kagi and Pettigrew.

Minority Report: Do not pass. Signed by 5 members: Representatives Johnson, Ranking Minority Member; Schmick, Assistant Ranking Minority Member; Harris, Overstreet and Walsh.

Staff: Amy Skei (786-7109).

Summary of Recommendation of Committee On Health & Human Services Appropriations & Oversight Compared to Recommendation of Committee On Labor & Workforce Development:

The Health and Human Services Appropriations and Oversight (APPH) Committee recommended the removal of the bill's restrictions on pesticide application, and the establishment of a Joint Select Committee on Pesticide Drift Exposure. The APPH committee also recommended changing the notification provisions from notification of child care facilities, schools, residences, and persons outdoors within one-quarter mile to adjacent properties and farm and nursery workers within one-quarter mile.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) State agency data shows that there is a problem with exposure to pesticide drift experienced by farmworkers. People are being sprayed, and most of that exposure goes unreported. Most of these are Hispanic individuals, many of whom prefer a language other than English. There is a need to tell pilots and applicators that there is a distance from schools and people that they need to stay. This will lower costs and improve public health. There is no law that says you cannot spray workers. There are buffers for vineyards but not for people. The bill has been reworked to use existing regulatory frameworks. Exposure to pesticide drift is very harmful for individuals. This bill will improve public health and produce long-term financial benefits to the state. This bill is narrowly tailored. Is it critical to balance economic considerations and the potential for negative health impacts, especially to children who are especially affected by toxic chemicals.

(With concerns) Some areas of the bill are unclear. It would be difficult to carry out the responsibilities of the pest eradication program, including protecting the state from economically devastating gypsy moth infestations. The term air-blast sprayer is not clearly defined and could lead to litigation regarding applicators that use air pressure. It is not clear whether county noxious weed boards are included. There are noxious weeds that infest large areas with great economic costs. Aircraft spraying may be the most cost effective and efficient means to treat these weeds. The buffer zone could result in infestation of previously eradicated areas. There are already safeguards in place.

(Opposed) It is important to consider other factors besides the impact on state agencies. This bill will have a severe impact on the state's economy and on jobs. Putting 125.6 acres out of production because of the orchard owner's house is not reasonable. Pesticide use contrary to the label is already illegal. This is a draconian measure with questionable benefits. The buffer would take a lot of farm and orchard land out of production. Legacy orchards in close proximity to houses will be especially affected. This will have a disproportionate impact on organic tree fruit, which requires many more applications of chemicals. Air-blast sprayers are necessary to protect the horticultural commodities due to the tree canopy. This bill would have disastrous impacts to the agricultural industry and jobs on both sides of the state. It would jeopardize the growing of key agricultural commodities. The bill duplicates existing state regulatory mechanisms. Many export protocols require sprays at particular times and places.

Persons Testifying: (In support) Representative Reykdal, prime sponsor; Andrea Schmitt, Columbia Legal Services; Teresa Mosqueda, Washington State Labor Council; Mo McBroom, Washington Environmental Council; and Nick Federici, Washington Toxics Coalition.

(With concerns) Mark Streuli, Department of Agriculture; and Alison Halpern, Washington State Noxious Weed Control Board.

(Opposed) Jim Halstrom, Washington State Horticultural Association; Scott Dilley, Washington Farm Bureau; and Jim Jesernig, Washington Association of Wheat Growers and Washington Potato Industry.

Persons Signed In To Testify But Not Testifying: None.