

HOUSE BILL REPORT

HB 1725

*As Reported By House Committee on:
Commerce & Labor*

Title: An act relating to human reproductive rights regarding hazardous substances in the workplace.

Brief Description: Addressing workplace hazards and pregnancy.

Sponsor(s): Representatives Prentice, Winsley, Heavey, Basich, Jones, R. King, Cole, Ogden, Hargrove, Fraser, Day, Cantwell, Braddock, Sprenkle, Dellwo, Wineberry, Spaniel and Roland.

Brief History:

Reported by House Committee on:
Commerce & Labor, February 26, 1991, DPS.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: That Substitute House Bill No. 1725 be substituted therefor, and the substitute bill do pass.
Signed by 7 members: Representatives Heavey, Chair; Cole, Vice Chair; Franklin; Jones; R. King; O'Brien; and Prentice.

Minority Report: Do not pass. Signed by 4 members: Representatives Fuhrman, Ranking Minority Member; Lisk, Assistant Ranking Minority Member; Vance; and Wilson.

Staff: Chris Cordes (786-7117).

Background: Several Washington laws address workplace hazards. The Washington Industrial Safety and Health Act requires the Department of Labor and Industries to adopt workplace safety rules and standards of exposure to toxic materials in the workplace. The Community and Worker Right to Know Act requires employers to provide information to employees about toxic materials used in the workplace.

Under the federal civil rights law and the Washington Law Against Discrimination, employers may not discriminate against an employee on the basis of sex or a mental or physical handicap.

In 1989, the U.S. Court of Appeals for the Seventh Circuit upheld an employer's policy that excluded women of childbearing capacity from jobs with a certain high level of exposure to lead. The case is pending before the United States Supreme Court.

Summary of Substitute Bill:

Safety and health standards

The Department of Labor and Industries is directed to adopt health and safety standards addressing employee exposure to chemical, biological, or physical reproductive hazards or hazards to a fetus. The standards must include exposure standards for substances or conditions that there is reason to believe will cause birth defects or be a hazard to individual's reproductive system or to a fetus, and include requirements for informing employees of the hazards. The department will consult with a scientific advisory committee in adopting the rules.

The poison control network centers must include information about the reproductive hazards of the substances for which they provide information.

Prohibited employment practices

Employers may not condition employment on an individual's sterilization or reproductive status, nor terminate the employment of a person exposed to a reproductive hazard who will not submit to sterilization. Employers may not request or require information about an employee's child-bearing plans.

Employment standards

Based on the recommendation of a health care provider addressing exposure to reproductive hazards, an employee must be given a temporary job transfer without loss of pay or benefits, when work is available.

Amendments to the Law Against Discrimination

"Reproductive status" is added as a protected class for the purposes of employment discrimination law.

Substitute Bill Compared to Original Bill: The substitute bill: (1) removes responsibility for advising the Department of Labor and Industries on reproductive hazards from the Right to Know Advisory Council. Instead, the department is required to adopt rules in consultation with a scientific advisory committee; (2) deletes the provision that allowed

an employer to request information from an employee about his or her reproductive plans or capacity when directly related to a bona fide occupational qualification, or about exposure to workplace reproductive hazards through a physician's inquiry; (3) revises the provision for job modification by allowing an employee to request a temporary job transfer without loss of pay when recommended by a health care provider and when work is available; (4) clarifies the responsibility of the poison control network centers. The centers are responsible for providing information about reproductive hazards only on the substances for which they provide information; and (5) changes the class protection for "reproductive status" from a protected class for all categories of discrimination to a protected class for employment discrimination only.

Fiscal Note: Requested February 15, 1991.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: Workers are exposed to thousands of chemicals in the workplace, many of which are known to be reproductive hazards. Both men and women can be affected by these substances. If preventive measures are not taken, the workers' compensation system will pay the cost. Workers need to be informed about the hazards and they should not be discriminated against for the job decisions they make. Without regulation in this area, employers are refusing to employ women in certain jobs even if the employee does not intend to have children.

Testimony Against: The employer is in a "catch 22" over this issue. If severe preventive measures are taken to protect the employees, job discrimination may be claimed. But if the employer permits employees at risk to continue in the job, the employer may be subject to a civil suit for damages. The U.S. Supreme Court is hearing a case that may resolve some of these issues. The Legislature should wait for that decision before acting. Any regulations adopted by the State should be clear about what is covered and should recognize the difficulties for small employers.

Witnesses: Chuck Bailey, Washington State Labor Council (in favor); Brent Knott, Association of Western Pulp and Paper Workers (in favor); Lonnie Johns-Brown, National Organization for Women (in favor); Steve Cant, Department of Labor and Industries (with concerns, but in support of concept); and Clif Finch, Association of Washington Business (opposed).