

# HOUSE BILL REPORT

## ESHB 2703

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### As Amended by the Senate

**Title:** An act relating to occupational safety and health.

**Brief Description:** Limiting department of labor and industries authority when the department of agriculture has authority to prescribe or enforce occupational safety and health standards.

**Sponsors:** By House Committee on Agriculture & Ecology (originally sponsored by Representatives Clements, Chappell, Chandler, Koster, Lisk, Thompson and Johnson).

**Brief History:**

**Committee Activity:**

Agriculture & Ecology: 1/24/96, 2/1/96 [DPS].

**Floor Activity:**

Passed House: 2/9/96, 97-0.

Senate Amended.

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### HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 16 members: Representatives Chandler, Chairman; Koster, Vice Chairman; Chappell, Ranking Minority Member; Linville, Assistant Ranking Minority Member; Boldt; Clements; Delvin; R. Fisher; Honeyford; Johnson; Murray; Ogden; Regala; Robertson; Rust and Schoesler.

**Staff:** Kenneth Hirst (786-7105).

**Background:** The registration and use of pesticides are regulated at the national level under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The act is administered by the U.S. Environmental Protection Agency (EPA). Under the act, the EPA has adopted a worker protection standard. The EPA's rules state that the standard is designed to reduce the risks of illness or injury resulting from workers' and handlers' occupational exposures to pesticides used in the production of agricultural plants on farms or in nurseries, greenhouses, and forests, and also from the accidental exposure of workers and other persons to such pesticides. The rules also state that the standard requires workplace practices designed to reduce or eliminate exposure to pesticides and establishes procedures for responding to

exposure-related emergencies. The standard includes provisions that require the posting of warning signs regarding the application of pesticides on a farm or nursery and that prohibit workers from being in the area sprayed during the application and during any restricted entry interval associated with the application. The use of pesticides in this state is regulated under the state's Pesticide Application Act administered by the state's Department of Agriculture.

The Washington Industrial Safety and Health Act (WISHA) is administered by the Department of Labor and Industries (L&I). A safety standard for agriculture has been adopted under the act.

State legislation enacted in 1989 requires the posting of warning signs with regard to certain applications of pesticides to labor intensive agricultural crops and requires employees to vacate the area to be sprayed.

**Summary of Bill:** No rule adopted under WISHA or the Pesticide Application Act may impose requirements that make impractical direct compliance with the EPA's worker protection standard for agricultural workers and handlers of agricultural pesticides. With regard to the activities governed by the EPA's worker protection standard, the Department of Labor and Industries and the Department of Agriculture must adopt by rule safety standards that are at least as effective as the EPA's standard, and the standards adopted by the two departments must be identical.

A violation of the EPA's worker protection standard or of a rule adopted under this bill may be investigated by the Department of Labor and Industries or by the Department of Agriculture, but may not be investigated by both agencies. However, an investigation conducted by the Department of Labor and Industries solely with regard to industrial insurance is not to be considered an investigation for this purpose. A citation for a violation of the EPA's standard or of one of these rules may be issued by the Department of Labor and Industries or by the Department of Agriculture, but not by both agencies. The two departments must jointly establish a formal agreement that identifies the roles of each in conducting investigations of the standard or rules.

A section of law is repealed that requires the posting of certain warning signs if a pesticide with a reentry interval of more than 24 hours is applied to a labor-intensive agricultural crop and requires employees to vacate the area to be sprayed.

**EFFECT OF SENATE AMENDMENT(S):** The bill as passed by the House does not permit a rule adopted by the Department of Agriculture under the state's Pesticide Application Act or the Department of Labor and Industries under WISHA to impose requirements that make compliance with EPA's worker protection standard for pesticides impractical; under the Senate amendments, such a rule may not make such compliance impossible. The worker protection rules for pesticides of the two agencies need no longer be identical (as required by the bill as passed by the House).

A violation may no longer be investigated by only one of the two agencies; instead, joint investigations are to be conducted if feasible and relevant information is to be shared. By December 1, 1996, the agencies must report to the Legislature regarding the implementation of the bill and identify the number of multiple on-site investigations conducted and the reasons why they were not coordinated.

If one agency issues a citation for a violation, the other is no longer prohibited from also issuing a citation for the violation. Under the Senate amendments, the agencies may not issue duplicate citations. The two agencies must identify differences in their respective jurisdictions and penalty structures and publish those differences.

The formal agreement that the two agencies must establish jointly must now be established by December 1, 1996. It must now also provide for protection of workers and enforcement of standards at least as effective as provided to all workers under WISHA and at least as effective as provided for other enforcement under the Pesticide Application Act.

A severability clause is added by the Senate amendments. An emergency clause is added; the section repealing certain posting and reentry requirements of state law takes effect immediately.

**Appropriation:** None.

**Fiscal Note:** Requested on the original bill on January 19, 1996.

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

**Testimony For:** (Original Bill) (1) At the national level, OSHA defers to worker protection regulation for pesticides provided by the EPA under FIFRA, but at the state level, two agencies enforce conflicting rules: L&I regulates under WISHA and the Washington State Department of Agriculture (WSDA) is required to enforce the EPA's standards under FIFRA. If a division of roles at the national level is good enough for the federal government, why must two agencies do the same job at the state level? (2) The bill will reduce the frustration faced by farmers who are now faced with conflicting rules. The two state agencies have had since 1992 to resolve their differences but have not done so. (3) The WSDA is known as an enforcement agency regarding pesticides; it has specialists in pesticide enforcement. (4) Accord has not been reached on pesticide worker protection standards because the overlapping jurisdiction of the agencies fuels a turf fight; the job should be given to one agency. (5) Claims regarding potential worker exposure to pesticides are currently investigated by four units of state government. The bill will reduce it to three.

**Testimony Against:** (Original Bill) (1) The bill does not completely remove pesticide activities from L&I; L&I will be involved in workers' compensation issues for

pesticides anyway. The two roles should be done together to reduce both injuries and costs for industrial insurance. (2) L&I and the WSDA are trying to harmonize their requirements for worker protection regarding pesticides. (3) Putting the WSDA, an agency that is directed by law to promote agriculture, in charge of agricultural worker protection is like putting the fox in the henhouse. (4) The WSDA does not have "stop work" authority or technical assistance and consultation services for safety and health; agricultural worker safety will decline under the bill. (5) The EPA has only recently stopped changing its rules for agricultural worker protection for pesticides. The departments will now be able to resolve their differences; a problem regarding the posting of signs for pesticide applications on farms has already been worked out. (6) The WSDA receives very few human safety complaints regarding violations of the use of pesticides; its investigations normally involve damage caused to crops.

**Testified:** (Original Bill) Mike Gempler and Chris Cheney, Washington Growers League; Jon C. Warling, Washington State Farm Bureau; Enid Layes, Washington Horticultural Association; and Pat Boss, Hop Growers of Washington (in favor). Frank Leuck, Department of Labor and Industries; Jim Jesernig, Director of Agriculture; and Jeff Johnson, State Labor Council (against).