

HOUSE BILL REPORT

HB 2484

As Reported by House Committee On: Labor & Workplace Standards

Title: An act relating to requiring inspections, specialized training, and other enhanced workplace standards on dairy farms.

Brief Description: Requiring inspections, specialized training, and other enhanced workplace standards on dairy farms.

Sponsors: Representatives Walkinshaw, Moscoso, Ortiz-Self, Sells, Reykdal, Robinson, Pollet, Kilduff, Ryu, Frame, Ormsby, Fitzgibbon, Kuderer, Sawyer, Bergquist, Gregerson and Stanford.

Brief History:

Committee Activity:

Labor & Workplace Standards: 1/18/16, 2/4/16 [DPS].

Brief Summary of Substitute Bill

- Requires the Department of Labor and Industries (Department) to adopt rules applicable to dairy farms, including rules mandating employee training and establishing dairy-specific safety and health standards.
- Requires the Department to create a dairy safety emphasis unit to, among other things, ensure that every dairy farm is inspected at least once every three years.
- Extends the time frames under which dairy farm employees may file a retaliation complaint, creates a rebuttable presumption, and specifies additional court remedies.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Sells, Chair; Gregerson, Vice Chair; Moeller and Ormsby.

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 2 members: Representatives Manweller, Ranking Minority Member; McCabe.

Staff: Trudes Tango (786-7384).

Background:

The Washington Industrial Safety and Health Act (WISHA) authorizes the Department of Labor and Industries (Department) to adopt safety and health rules of general or specific applicability for all covered industries in the state. Under this authority, the Department adopted safety standards specifically applicable to agricultural operations, which includes dairy farming. The rules address issues such as pesticide use, farm field equipment, heat exposure, and field sanitation.

The Department enforces WISHA rules by inspecting work sites, investigating work-related injuries, and investigating employee complaints. The Department also offers consult services to employers who request it.

An employee may file a confidential complaint with the Department if there is a violation of a WISHA rule or a safety hazard at work. An employer may not discharge or discriminate against an employee because the employee filed a complaint or instituted proceedings involving a violation of a WISHA rule. An employee who believes he or she has been discriminated against has 30 days from the day of the alleged discriminatory act to file a complaint with the Department. Remedies for an aggrieved employee include, among other things, reinstatement with back pay.

Summary of Substitute Bill:

The Department must adopt rules requiring safety training for dairy farm employees. The training must address common dairy issues. The rules must:

- require employers to ensure that all their employees receive agriculture safety training, at no cost to the employee;
- provide that a certificate of completion be issued, which must be renewed every three years; and
- provide that there must be at least one supervisor present on site who has completed training, and that for every 10 employees on-site there must be at least one trained supervisor.

Training may be provided by the Department, nonprofit organizations, and employers. The Department must regularly audit training provided by organizations and employers.

The Department must also adopt rules establishing a dairy safety emphasis unit that will:

- ensure that every dairy farm will be inspected, without advance notice, at least once every three years for compliance with safety and health standards;
- ensure employers are complying with training requirements;
- provide consultation and advisory services to employers; and

- create educational materials for employers and employees.

The Department must also adopt safety and health standards for dairy farms to ensure safe dairy workplaces. The rules must address issues and hazards such as manure pits, air quality, crushing and stomping by animals, heavy equipment operations, slipping and falling hazards, and standards for drinking water, bathrooms, and washing facilities for employees.

Rules must be adopted by June 30, 2018.

Dairy farm employees are given 90 days (rather than 30 days) to file a complaint with the Department if the employee believes he or she has been discriminated against for instituting proceedings to address safety and health violations. Additional remedies are provided for cases involving dairy farm employees (damages equal to three times the amount of back wages and a \$1,000 civil penalty to the Department).

There is a rebuttable presumption that a dairy farm employer discriminated against an employee if the discriminatory act occurred within 90 days of the employee instituting proceedings for the safety and health violation. The employer may rebut the presumption by clear and convincing evidence that the act was taken for permissible purposes. Examples of discriminatory acts include denying a promotion, demoting, failing to rehire after seasonal interruption of work, engaging in unfair immigration-related practices, or other acts of retaliation.

Substitute Bill Compared to Original Bill:

The substitute bill strikes provisions increasing penalties for willful violations and imposing monetary payments upon the death of a dairy farm employee.

Appropriation: None.

Fiscal Note: Available.

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 can initiate the conversation to make the dairy industry safer by addressing training, inspection, retaliation, and fatalities. The costs of our food system sometimes does not account for costs borne by workers. Consumers are concerned with the food process and that workers are fairly treated. The bill is a good first step to protect the poorest and most vulnerable workers and an opportunity to position Washington's dairy industry as a nation leader.

Agriculture is one of most dangerous industries and dairy is one of the most dangerous within agriculture. The number and rate of compensable claims has been rising since 2009.

In 2014 11.3 out of 100 dairy workers were injured, while the average private sector rate for all industries is five to six. Dairy workers work around large unpredictable animals, heavy machinery, chemicals, and open manure pits, and breathe air with manure dust. Every 16 months, an employee on a dairy farm dies and eight and a half workers are injured every week. The numbers do not reveal the intensity of the injuries. When a worker is injured, the harm is physical, psychological, and financial. The injuries impact the families. Workers are afraid of reporting injuries for fear of retaliation, so the number of claims do not reflect the number of injuries. Employers care more about the cows than the workers. Anti-retaliation measures are needed so workers feel safe to go to the doctor and report injuries.

Dairy farms have been operating without regulations. Workers receive no training. The bill will require training and accountability. The training would be provided by employer or nonprofit agencies at no cost to the employee. Hazards include open manure pits, methane exposure, being kicked and crushed by cows and rolling doors. Proponents have worked collaboratively with many industries but have been unable to do so in dairy. A dairy cooperative was unresponsive.

(Opposed) No employer wants to see an injury or death. Dairy farmers have a vested interest in safety and are proud of the work they have done on training and safety. The claims are inconsistent with the facts. The worker who died had a controlled substance in his system. This is a drug problem, not a dairy problem. Employers and employees must be committed to safety. Washington is a leader in farm safety. An agriculture industry inspector does over 300 inspections a year at the request of employers, many of them on dairies. A robust safety plan is in place, with workshops and trainings. About 1,500 employers and 1,000 workers attend these trainings. Dairies must follow hundreds of pages of regulations. Dairy farms are not listed as one of the top dangerous industries. Dairy farms are safer than construction.

This bill creates a vertical code instead of a horizontal code. There is already a code that protects workers and it should be enforced. The bill creates a unique class for dairy farmers that will be subject to additional penalty and retaliation provisions that do not apply to other industries. The retaliation, treble damages, and 90-day presumption are opposed. There is a belief that the treble damages will result in complaints. The bill says innocent until proven guilty, which is not how our legal system works. The bill is well intended but overreaches. A more transparent roundtable approach works better than legislation. The proponents did not even reach out in the drafting of the bill.

Persons Testifying: (In support) Jeff Johnson and Joe Kendo, Washington State Labor Council, AFL-CIO; Erik Nicholson and Indira Trejo, United Farm Workers; Raymundo Arellano; Andres Gonzalez; Alberto Garcia; Paul Benz, Faith Action Network.

(Opposed) Jay Gordon, Washington State Dairy Federation; Scott Dilley, Washington State Farm Bureau; Robert Battles, Association of Washington Business; and Jeff Lutz and Dominique Damian, Washington State Farm Bureau - Retro Safety Program.

Persons Signed In To Testify But Not Testifying: None.