

SENATE BILL REPORT

ESHB 1725

AS REPORTED BY COMMITTEE ON COMMERCE & LABOR, APRIL 5, 1991

Brief Description: Addressing workplace hazards and pregnancy.

SPONSORS: House Committee on Commerce & Labor (originally sponsored by Representatives Prentice, Winsley, Heavey, Basich, Jones, R. King, Cole, Ogden, Hargrove, Fraser, Day, Cantwell, Braddock, Sprenkle, Dellwo, Wineberry, Spanel and Roland).

HOUSE COMMITTEE ON COMMERCE & LABOR

SENATE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass as amended.

Signed by Senators Matson, Chairman; Anderson, Vice Chairman; McCaslin, McDonald, McMullen, Moore, and Murray.

Staff: Jonathan Seib (786-7427)

Hearing Dates: April 3, 1991; April 5, 1991

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.

Concern still exists regarding the exposure of employees at the workplace to substances which may cause birth defects or constitute a hazard to an employee's reproductive system or to a fetus.

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 Supreme Court recently reversed this decision, holding that "fetal protection" policies violate the laws that forbid discrimination against women.

SUMMARY:

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 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.

Appropriation: none

Revenue: none

Fiscal Note: available

SUMMARY OF PROPOSED SENATE AMENDMENT:

A striking amendment is adopted with the following provisions:

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

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

An employer will not be liable for civil damages because of an employee's workplace exposure to substances that cause birth defects or constitute a hazard to the employee's reproductive system or capacity if, in compliance with rules adopted by the Department of Labor and Industries, the employer has informed

the employee of the hazard or potential hazard of the substances or condition.

TESTIMONY FOR:

The recent Supreme Court decision makes it clear that employment cannot be conditioned on a person's reproductive status. However, individuals who, after being fully informed, choose to work in a hazardous environment, should not hold their employer liable for injury.

TESTIMONY AGAINST: None

TESTIFIED: Representative Margarita Prentice, prime sponsor; Senator Phil Talmadge; Larry Kenney, Washington State Labor Council