
ENGROSSED SENATE BILL 5882

State of Washington

57th Legislature

2001 Regular Session

By Senators T. Sheldon, Hale, Hewitt, Hargrove, Rasmussen, Honeyford, Carlson, Haugen, Shin, Hochstatter, Horn, Stevens, Zarelli, Oke, Deccio, McCaslin, West, Long, Swecker, Sheahan, McDonald, Johnson, Rossi, Morton and Parlette

Read first time 02/06/2001. Referred to Committee on Labor, Commerce & Financial Institutions.

1 AN ACT Relating to occupational safety and health; adding new
2 sections to chapter 49.17 RCW; adding a new section to chapter 44.28
3 RCW; creating a new section; providing expiration dates; and declaring
4 an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** It is the intent of the legislature to
7 expedite the minimization of the risk of employees incurring
8 musculoskeletal disorders. The legislature recognizes that prior to
9 the adoption of the state's ergonomics rule, musculoskeletal disorder
10 injuries were reduced more than twenty-eight percent over a seven-year
11 period through voluntary efforts by employers and employees, and that
12 more research, information, and education on reducing musculoskeletal
13 disorders will greatly facilitate further reduction of these disorders.
14 The legislature recognizes that both employers and employees have a
15 number of existing incentives, both monetary and nonmonetary, to reduce
16 musculoskeletal disorders, but that most employers and employees are
17 not informed about what practices, products, and equipment are known to
18 reduce these disorders. The legislature recognizes the wide diversity
19 in cost estimates to comply with the state's rules, and the need to

1 carefully analyze the costs to comply with the rules by employers and
2 government agencies and the need to determine how to maximize reduction
3 of musculoskeletal disorders in the most cost-effective way. The
4 legislature further recognizes that there are many questions and
5 concerns about implementation of the state's rules. Therefore, the
6 legislature wishes to accelerate ergonomics awareness education. The
7 legislature also wants to ensure that pilot demonstration projects for
8 various industries, as contained in the department's implementation
9 plan for the agency's rules to reduce musculoskeletal disorder, are
10 carried out for key industries; that alternative musculoskeletal
11 disorder reduction techniques can be tried; that certain information is
12 obtained from all projects; and that the projects are initiated and
13 completed so information to reduce injuries can be distributed as soon
14 as possible, and the legislature and all interested parties can review
15 the results of the projects. The legislature also wishes to have the
16 joint legislative audit and review committee review the rules adopted
17 by the department of labor and industries, and the results of the pilot
18 demonstration projects, and make recommendations regarding the rules,
19 alternatives to the rules, and the need for implementation.

20 NEW SECTION. **Sec. 2.** A new section is added to chapter 49.17 RCW
21 to read as follows:

22 (1) The legislature directs the department to accelerate the
23 dissemination of ergonomics awareness education to employers and
24 employees to the maximum extent possible within existing resources.
25 The department shall make any necessary adjustments to the use of their
26 resources to produce musculoskeletal disorder prevention and awareness
27 education for employers and employees that is written, on-line, or
28 available through other media, as determined to be cost-effective by
29 the department, at the earliest date possible for use on a voluntary
30 basis. The department shall obtain input from employers and employees
31 from large and small businesses and units of government in preparing
32 these materials.

33 (2) The department shall carry out comprehensive pilot
34 demonstration projects on the technological and economic feasibility of
35 implementing the rules adopted on May 26, 2000, by the director of the
36 department of labor and industries and codified as WAC 296-62-05101
37 through 296-62-05176. The department shall, at the earliest date
38 possible and within existing resources, establish pilot demonstration

1 projects for industries first required to come into compliance with the
2 rule. Demonstration projects for each of these industries shall
3 include at least five employers with twenty-five or fewer employees,
4 five employers with twenty-five to fifty employees, and five employers
5 with over fifty employees, who volunteer to participate and who shall
6 not be subject to any enforcement action as a result of the project.
7 The department may establish more than one pilot demonstration project
8 for each industry as it deems necessary. The pilot demonstration
9 projects for these industries shall be completed, to the maximum extent
10 possible, by July 1, 2003. The goal of each pilot demonstration
11 project shall be:

12 (a) To test the implementation of the rule as adopted and based on
13 a set of draft practices agreed to by the participants with the advice
14 of the department, and to report at a minimum on the following:

15 (i) The cost of implementation including but not limited to
16 monetary expenditures, both direct and indirect, and time for
17 participating employers;

18 (ii) The ease of implementation and any implementation problems
19 participants identify;

20 (iii) Any recommendations participants have to modify the rule;

21 (iv) The cost to the department to provide necessary technical
22 assistance to employers to assist participants to implement the rule;
23 and

24 (v) The effectiveness of the rule in reducing musculoskeletal
25 disorders; and

26 (b) The results of allowing some participants, if they choose, to
27 test alternatives to the rule in an effort to reduce musculoskeletal
28 disorders and to provide the following information on each alternative
29 tried:

30 (i) A clear description of the alternative;

31 (ii) The cost of implementation including but not limited to
32 monetary expenditures, both direct and indirect, and time for
33 participating employers;

34 (iii) The ease of implementation and any implementation problems
35 participants identify;

36 (iv) Any recommendations participants have to modify the
37 alternative;

1 (v) The cost to the department to provide necessary technical
2 assistance to employers to assist them in implementing the alternative;
3 and

4 (vi) The effectiveness of the alternative in reducing
5 musculoskeletal disorders.

6 (3) To the extent possible within existing resources, the
7 department of labor and industries shall provide periodic information
8 to the industries identified in subsection (2) of this section and any
9 other industries deemed appropriate by the department on practices,
10 equipment, and products that have been identified by the department as
11 being effective in reducing musculoskeletal disorders.

12 (4) This section expires June 30, 2004.

13 NEW SECTION. **Sec. 3.** A new section is added to chapter 44.28 RCW
14 to read as follows:

15 The joint legislative audit and review committee shall conduct a
16 review of the rule as adopted and the results of all demonstration
17 projects arranged by the department to assess and make recommendations,
18 including but not limited to:

19 (1) Review of the literature regarding the scientific justification
20 for the rules, the expectation that the rules will reduce
21 musculoskeletal disorders, and the degree to which the rules would
22 reduce injury;

23 (2) The accuracy of the cost-benefit analyses prepared for the
24 department rule;

25 (3) The ease of understanding and complying with the rule,
26 identification of ambiguities and difficulties encountered during the
27 demonstration projects to implement the rule, and recommendations to
28 maximize understanding and minimize ambiguities and confusion for
29 employers in complying with the rule;

30 (4) Ease of implementation of the rule based on the results of the
31 pilot projects and recommendations on how to facilitate easier
32 implementation and reduce costs while maintaining or increasing the
33 reduction of musculoskeletal disorders;

34 (5) Results of any demonstration projects using alternative methods
35 to reduce musculoskeletal disorders and the cost-effectiveness of each
36 of the alternatives;

1 (6) Expected musculoskeletal disorder reductions as a result of the
2 rule and any alternatives to the rule that were the subject of a
3 demonstration project;

4 (7) Costs to comply with the rule and any alternative methods to
5 reduce musculoskeletal disorders, based on the result of the
6 demonstration projects; and

7 (8) Any other analysis, finding, or recommendation the committee
8 deems useful in assessing effectiveness in reducing musculoskeletal
9 disorders.

10 The committee shall report its finding by January 1st of each
11 calendar year and shall issue a complete report by January 1, 2004.

12 Funding for this program will be taken from the reserves of the
13 medical aid fund that are in excess of actuarial needs.

14 This section expires June 30, 2004.

15 NEW SECTION. **Sec. 4.** A new section is added to chapter 49.17 RCW
16 to read as follows:

17 The department may adopt rules regarding the prevention of
18 musculoskeletal disorders, also known as ergonomics rules, however,
19 such rules shall provide for implementation no earlier than:

20 (1) July 1, 2005, for all employers in Standard Industrial
21 Classification codes 078, 152, 174, 175, 176, 177, 242, 421, 451, 541,
22 805, and 836 who employ fifty or more annual full-time equivalents in
23 Washington state, and for the Washington state department of labor and
24 industries;

25 (2) July 1, 2006, for the remaining employers in Standard
26 Industrial Classification codes 078, 152, 174, 175, 176, 177, 242, 421,
27 451, 541, 805, and 836, and all other employers who employ fifty or
28 more annual full-time equivalents in Washington state;

29 (3) July 1, 2007, for all other employers employing eleven to
30 forty-nine annual full-time equivalents in Washington state; and

31 (4) July 1, 2008, for all other employers employing ten or fewer
32 annual full-time equivalents in Washington state.

33 NEW SECTION. **Sec. 5.** (1) The director, in consultation with the
34 WISHA advisory committee, shall establish a program to provide safety
35 and health impact grants to prevent injuries and illnesses, save lives,
36 and educate Washington employees and employers about work place hazards
37 and safe work place practices. The intent of sections 5 through 11 of

1 this act is to benefit, in the broadest sense possible, Washington
2 workers and employers, especially those who are in small business and
3 may lack the injury and illness prevention resources that larger
4 companies may possess. The department may use appropriated industrial
5 insurance funds to accomplish the purpose of sections 5 through 11 of
6 this act. Funding for this program will be taken from the reserves of
7 the medical aid fund that are in excess of actuarial needs.

8 (2) Using a competitive application process, the department shall
9 award up to five million dollars per year in safety and health impact
10 grants to trade associations, business associations, employers,
11 employee organizations, labor unions, and groups of employees. The
12 grants may include: (a) Education and training grants to implement
13 safety and health and to provide practical information, curricula,
14 materials, and methods intended for use by employers and employees in
15 reducing work place hazards; (b) technical innovation grants to develop
16 engineering and other technical solutions to injury and illness
17 problems; or (c) best practice grants for the application of hazard
18 control. The department shall attempt to ensure that best practice
19 grants, in particular, are adequately represented in the final awarding
20 of grants. In addition, the department shall make reasonable efforts
21 to ensure that not less than twenty percent of the grant funds are used
22 to assist small employers and employees in small businesses to improve
23 safety and health in small firms.

24 (3) Applicants for grants may form partnerships with educational
25 institutions and other organizations. Applicants for grants may form
26 partnerships with self-insured employers if the product of the grant
27 will significantly benefit employees and employers who belong to the
28 state industrial insurance fund.

29 (4) Any materials, designs, or equipment developed under these
30 grants will be in the public domain and shall not be copyrighted or
31 patented. Any materials or designs developed under these grants shall
32 be provided to the department at no charge as a condition of grant
33 receipt.

34 (5) Grants shall not be used to support or develop specific
35 legislative or regulatory initiatives.

36 (6) The department shall not use information contained in a grant
37 application for inspection activity or to establish a recognized hazard
38 for enforcement or citation purposes. The department shall not use the

1 results of a grant to establish that the grantee is subject to citation
2 or penalty for violation of a safety and health rule.

3 (7) All grants shall contain an accountability component that shall
4 evaluate the impact on work place safety with results that are reported
5 back to the safety and health impact grant review committee. The
6 department shall cooperate in providing available data required to
7 assist the grant recipients in measuring the impact.

8 (8) In order to encourage the broadest level of participation, no
9 grant application shall be approved that proposes work that cannot be
10 completed during the current application year or biennium. Applicants
11 that seek additional funding in subsequent years will be eligible to
12 submit new applications only if they have successfully completed the
13 work for which they were previously funded, and these new applications
14 will compete with all other applicants.

15 NEW SECTION. **Sec. 6.** (1) The director shall appoint a safety and
16 health impact grant review committee that will be a subcommittee of the
17 WISHA advisory committee. The review committee is composed of nine
18 members: Four members representing employees, each appointed from a
19 list of at least three names per position, submitted by recognized
20 statewide organizations of employees; four members representing
21 employers, each appointed from a list of at least three names per
22 position, submitted by recognized statewide organizations of employers;
23 and one ex officio member, without a vote, who shall represent the
24 department. The committee chair shall be chosen by the review
25 committee and shall alternate between business and labor. The
26 committee members shall serve three-year renewable terms.

27 (2) Business and labor members of the safety and health impact
28 grant review committee are entitled to expenses as provided under RCW
29 43.03.050 and 43.03.060.

30 (3) The safety and health impact grant review committee shall:

31 (a) Prepare requests for proposals which shall include specific
32 criteria and the weight to be given to each of the criteria in awarding
33 grants;

34 (b) Receive, review, and process grant applications;

35 (c) Identify, by two-thirds majority vote, grant applications that
36 merit funding and forward those applications to the director;

1 (d) Identify, by two-thirds majority vote, funded grants that meet
2 criteria for suspension or revocation and forward those grants to the
3 director; and

4 (e) Provide written notification to those grant applicants that do
5 not merit funding explaining the reasons for denial.

6 NEW SECTION. **Sec. 7.** (1) The safety and health impact grant
7 review committee, in cooperation with the director, shall develop grant
8 application procedures and approval criteria. The director shall
9 ensure the proper administrative support to successfully monitor grant
10 recipients for compliance with grant criteria and all other procedures
11 under the grant program. The director in cooperation with the safety
12 and health impact grant review committee shall implement procedures and
13 criteria for grant approval, including procedures for suspension or
14 revocation of grants to recipients failing to comply with grant
15 criteria established under the authority of this section.

16 (2) The director shall approve only those grant applications and
17 their recommended acceptance conditions as forwarded by the safety and
18 health impact grant review committee, unless the director has a
19 compelling and substantive reason to reject an application, whereupon
20 the director shall provide written explanation for the denial to the
21 review committee. The safety and health impact grant review committee
22 shall review any grant applications rejected by the director and may
23 advise the director to reconsider. The director shall consider the
24 advice, if given, and shall approve the grant application with any
25 conditions presented by the safety and health impact grant review
26 committee. The director may reject that advice only for a compelling
27 and substantive reason. If the director rejects that advice, the
28 safety and health impact grant review committee may refer the
29 application to the WISHA advisory committee. The WISHA advisory
30 committee shall review the application and may advise the director to
31 reconsider.

32 (3) The director may revoke or suspend an issued grant if advised
33 by the safety and health impact grant review committee that the
34 recipient is not in compliance with grant criteria or procedures. The
35 director may suspend an issued grant without the advice of the safety
36 and health impact grant review committee only for a compelling and
37 substantive reason and the suspension recommendation shall be presented

1 to the safety and health impact grant review committee for its
2 consideration.

3 NEW SECTION. **Sec. 8.** For purposes of the 2001-2003 time frame,
4 the director shall approve one grant application of up to one million
5 dollars per year, and its recommended acceptance conditions as
6 forwarded by the safety and health impact grant review committee, that
7 is selected by the employee representatives of the review committee,
8 unless the director has a compelling and substantive reason to reject
9 the application, whereupon the director shall provide written
10 explanation for the denial to the review committee. This grant shall
11 be above and beyond the funding authorized in section 5(2) of this act.
12 The entire review committee, by the normal two-thirds vote, shall
13 forward such a grant proposal if the grant meets all other criteria and
14 accountability requirements. The specified time frame in this section
15 shall be determinative for meeting the grant duration requirements in
16 section 5(8) of this act.

17 NEW SECTION. **Sec. 9.** The department and the safety and health
18 impact grant review committee will present an annual review regarding
19 the activities of the safety and health impact grant program to the
20 WISHA advisory committee, the workers' compensation advisory committee,
21 and make it available to the appropriate standing committees of the
22 legislature. Based on a recommendation of the WISHA advisory
23 committee, the workers' compensation advisory committee shall make a
24 biennial recommendation to the director concerning an appropriate
25 budget for the program and the maximum amount of individual grant
26 awards.

27 NEW SECTION. **Sec. 10.** The director and representatives from the
28 WISHA advisory committee shall perform a comprehensive review of the
29 grant program which shall include, but not be limited to, reported
30 outcomes, injury reduction, and safety awareness and shall issue a
31 report to the legislature by December 31, 2004.

32 NEW SECTION. **Sec. 11.** The following acts or parts of acts, as now
33 existing or hereafter amended, are each repealed, effective July 1,
34 2005:

35 (1) Section 5 of this act;

- 1 (2) Section 6 of this act;
- 2 (3) Section 7 of this act;
- 3 (4) Section 8 of this act;
- 4 (5) Section 9 of this act; and
- 5 (6) Section 10 of this act.

6 NEW SECTION. **Sec. 12.** Sections 5 through 11 of this act are each
7 added to chapter 49.17 RCW.

8 NEW SECTION. **Sec. 13.** Sections 1 through 4 of this act are
9 necessary for the immediate preservation of the public peace, health,
10 or safety, or support of the state government and its existing public
11 institutions, and take effect immediately.

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