

HOUSE BILL REPORT

2SSB 6599

As Passed House - Amended:

March 5, 2004

Title: An act relating to required elements of cholinesterase monitoring programs for certain pesticide handlers.

Brief Description: Monitoring cholinesterase.

Sponsors: By Senate Committee on Ways & Means (originally sponsored by Senators Honeyford, Swecker, Parlette, Haugen, Sheahan and Rasmussen).

Brief History:

Committee Activity:

Commerce & Labor: 2/26/04 [DPA].

Floor Activity:

Passed House - Amended: 3/5/04, 95-0.

Brief Summary of Second Substitute Bill (As Amended by House)

- Requires the Department of Labor and Industries (Department) to collect, correlate, and analyze certain data related to cholinesterase tests.
- Requires the Department to make reasonable reimbursements on a quarterly basis as specified in the 2003-05 operating budget.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass as amended. Signed by 7 members: Representatives Conway, Chair; Wood, Vice Chair; McMorris, Ranking Minority Member; Condotta, Assistant Ranking Minority Member; Holmquist, Kenney and McCoy.

Minority Report: Without recommendation. Signed by 1 member: Representative Crouse.

Staff: Jill Reinmuth (786-7134).

Background:

Exposure to certain pesticides is known to inhibit levels of cholinesterase, a blood enzyme essential to the proper functioning of the nervous system. Blood tests of certain employees are considered to be an acceptable method for determining the extent and effects of exposure to these pesticides.

In 2002 the state Supreme Court issued its decision in *Rios v. Department of Labor and Industries*, and ordered the Department of Labor and Industries (Department) "to initiate rule-making on a mandatory cholinesterase monitoring program for agricultural pesticide handlers."

In April 2003 the Legislature passed 2SSB 5890, which required the Department and stakeholders representing agricultural employers and employees to report to the House Commerce and Labor Committee and the Senate Agriculture Committee on the rule making process. The Legislature also specified in the operating budget that \$378,000 from the Department's Accident Account appropriation be used for contracting with medical laboratories to provide cholinesterase monitoring, and to collect and analyze data related to such monitoring.

In December 2003 the Department adopted a rule on cholinesterase monitoring. (The rule took effect February 1, 2004.)

The rule requires agricultural employers to:

- Make cholinesterase monitoring available for employees who handle certain pesticides and meet certain exposure thresholds;
- Make sure employees receive training on the hazards and symptoms of overexposure to the pesticides and the purpose and requirements for monitoring before initial testing;
- Investigate an employee's work practices or remove an employee from handling pesticides depending on the employee's test results;
- Provide up to three months of medical removal protection benefits if an employee is removed from work or assigned other duties; and
- Maintain pesticide handling records and medical monitoring records for seven years.

The rule specifies that the Department will:

- Organize a scientific team to oversee testing data collection and analysis;
- Establish an advisory committee to evaluate issues and provide recommendations related to the Department's implementation of the rule; and
- Make efforts to defray the costs of medical testing during 2004.

Summary of Amended Bill:

Employers whose employees receive medical monitoring under the cholinesterase monitoring rule must submit records to the Department of Labor and Industries (Department) each month. These records must specify the names of workers tested, and the numbers of hours that each worker handled covered pesticides during the thirty days prior to testing and during

the current year. (No later than January 1, 2005, the Department must require employers to report this data when the employee's test is taken.)

The Department of Labor and Industries must work with the Department of Health to correlate this data with the employee's test results.

The Department also must require employers to give employees this data upon request, as well as access to the records on which this data is based.

The Department must make reasonable reimbursements on a quarterly basis as specified in the 2003-05 operating budget.

The Department must report to the House Committees on Agricultural & Natural Resources and Commerce & Labor and the Senate Committees on Agriculture and Commerce & Trade by January 1 of 2005, 2006, and 2007. The report must include the results of data collection, correlation, and analysis, and any technical issues regarding testing of cholinesterase levels or administration of cholinesterase monitoring.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For: This bill is good for workers, will result in greater participation in cholinesterase testing, and help get answers more quickly. We want to know whether workers are being hurt, and if they are, we want to do whatever is necessary. We need an honest evaluation of whether cholinesterase monitoring is warranted, and an assurance that farmers will be compensated for their costs. We can work with the Department of Labor and Industries to deal with issues of implementation and proper funding sources. California and Washington are the only states that have mandatory cholinesterase monitoring. In 1994, the Environmental Protection Agency declined to implement nationwide cholinesterase testing.

The key to evaluating the rule is getting good data. We need to induce people to participate in testing to get good data. We also need to make sure the testing procedures work by using, for example, blind samples and split samples. California data was gathered before requirements for personal protective equipment were in place. Washington data is currently very limited. In 2001, there were 26 workers' compensation claims alleging exposure to pesticides. In 13 of those cases, blood tests were conducted. There were not any with abnormal cholinesterase levels. In seven of those cases, cholinesterase levels were okay. In six of those cases, there were problems with the test. Data that will be collected under the rule is also limited. It should include the exact number of hours of exposure as well as the cholinesterase level. This bill is critical because it is too late for the Department to modify the types of data that will be collected under the rule.

Last year's agreement was not clear as to the rule's costs. It wasn't until after the Department initiated rulemaking that the rule's costs became clear. Full funding of these costs will result in greater participation.

When agencies adopt rules, they must show that benefits outweigh costs. However, the Department did not attempt to quantify the benefits of the rule. Although California has 20 years of experience administering a similar rule, California has no data on the cost-effectiveness of cholinesterase monitoring.

Testimony Against: This bill is not good for workers, and could delay and/or weaken protections for farm workers. This bill could be interpreted as telling the Department of Labor and Industries to ignore the finding that medical monitoring is needed, and to ignore the threshold for when testing is required.

This bill is an effort to run an end game around last year's agreement. We should remain faithful to last year's agreement, which specified testing would be mandatory. We cannot continue to question the need for testing. Recent studies show that thinners have even greater exposure to toxic pesticides than mixer/loaders and sprayers. Other studies show that 90 percent of mixer/loaders and 95 percent of sprayers have a serious risk of being poisoned. The Environmental Protection Agency is not protecting farm worker interests.

We agreed to leave questions about data collection and analysis to the scientific team. The rule already specifies which data must be collected and how it must be analyzed. The rule is already being implemented. So far, 600 workers have had baseline cholinesterase tests. They will have follow-up tests by year end. The rule does not specify that the exact number of hours of exposure for each individual be collected. This issue was not raised in the rulemaking process.

This bill goes beyond last year's agreement by requiring the Department to reimburse employers for training and recordkeeping costs. This requirement is bad public policy and would set a bad precedent. It subsidizes growers that use toxic pesticides. It pays growers to comply with requirements that exist in dozens of other rules. It requires all employers to subsidize agricultural employers. Employers should comply with the rule because it exists, not because costs of compliance are being paid.

The Department of Labor and Industries is comfortable with subsection (2) of the House budget, which provides full funding for testing in the second year. The Department is concerned about funding anything beyond that.

Persons Testifying: (In support) Senator Honeyford, prime sponsor; Chris Cheney, Washington Growers' League; Dan Fazio; Washington State Farm Bureau; and Jim Jesernig; Washington Potato and Onion Association.

(Opposed) Grant Cope, Earthjustice; Erik Nicholson, United Farm Workers; Jeff Johnson, Washington State Labor Council; and Dr. Michael Silverstein and Michael Wood, Department of Labor and Industries.

Persons Signed In To Testify But Not Testifying: None.