

SENATE BILL REPORT

2SSB 6599

As Passed Senate, February 17, 2004

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

Brief Description: Monitoring cholinesterase.

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

Brief History:

Committee Activity: Agriculture: 2/5/04 [DPS-WM].

Ways & Means: 2/9/04 [DP2S, DNP].

Passed Senate: 2/17/04, 30-19.

SENATE COMMITTEE ON AGRICULTURE

Majority Report: That Substitute Senate Bill No. 6599 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Swecker, Chair; Brandland, Vice Chair; Rasmussen and Sheahan.

Minority Report: Do not pass.

Signed by Senator Jacobsen.

Staff: Evan Sheffels (786-7486)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 6599 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Zarelli, Chair; Hewitt, Vice Chair; Parlette, Vice Chair; Carlson, Hale, Honeyford, Johnson, Pflug, Rasmussen, Roach, Sheahan and Winsley.

Minority Report: Do not pass.

Signed by Senators Fairley, Fraser and Prentice.

Staff: Carole Holland (786-7441)

Background: The Department of Labor and Industries (L&I) has adopted a new regulation that requires agricultural employers to provide blood testing for workers who handle toxicity class I or II organophosphate or N-methyl-carbamate pesticides. L&I began this rule-making last year as the result of a Washington State Supreme Court decision (*Rios v. L&I*). The rule was adopted December 3 and became effective February 1, 2004. The rule generally requires certain agricultural employers to evaluate their pesticide worker protection program and make preventative corrections if significant cholinesterase depression is identified in an employee.

Cholinesterase is a human enzyme that serves as the nervous system's "off switch." It is essential to normal nervous system function. Exposure to organophosphate or N-methyl-carbamate pesticides may reduce the activity of cholinesterase. The purpose for monitoring cholinesterase levels in the blood is to detect cholinesterase depression prior to the onset of serious illness.

The rule requires employers of agricultural pesticide handlers who use covered pesticides to: record the number of hours employees handle these pesticides; implement a medical monitoring program for workers who could meet or exceed the handling threshold of 50 or more hours in any consecutive 30-day period in 2004; identify a medical provider for medical monitoring services; make baseline and periodic cholinesterase testing available to employees who could meet or exceed the handling threshold; investigate work practices when a handler's red blood cell (RBC) or plasma cholinesterase level drops more than 20 percent below the employee's personal baseline; remove employees from handling and other exposures to organophosphate and N-methyl-carbamate pesticides when recommended by the health care provider; provide training to covered employees; and maintain medical monitoring and other records for seven years.

With input from stakeholder and science advisory groups, L&I will analyze the 2004 data and determine whether the rule's default change--from a 50 hour per month testing threshold in 2004 to a 30 hour per month testing threshold in 2005--is warranted.

Summary of Bill: L&I must collect and analyze specified data to determine whether mandatory testing is warranted. If L&I determines mandatory testing to be warranted, L&I must determine what thresholds of exposure to pesticides should trigger mandatory testing. The department must develop or contract the development of a database to help assess program efficacy. The department must ensure that each cholinesterase test is correlated with documented hours spent handling listed pesticides since the last test. Consultation procedures are established. By December 1 of each year, the department must report the results of this data collection and analysis to the appropriate legislative committees.

L&I must use medical aid funds to directly pay all costs for medical services related to baseline and periodic cholinesterase tests and interpretations of such tests. L&I must allow agricultural employers to seek accident fund reimbursement for training activities, testing-related travel, and record-keeping costs associated with rule compliance. Reimbursement rates are based on the probable costs specified in the benefit-cost determination of the monitoring rules. Payments are limited to activities in 2004, 2005, and 2006. Deadlines and procedures for requesting reimbursement and making reimbursement payments are provided.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: L&I's report needs to correlate hours of exposure with blood test results. What the department has in mind would not capture that for each test. Last year's appropriation was not sufficient to cover testing costs, so we're working with labor to get that covered. Because use of these pesticides has been decreasing and new protective equipment is more effective, EPA decided not to require nationwide testing. L&I's cost benefit analysis for

rule development was flawed and biased, not even attempting to quantify benefits, and relied on qualitative justification alone.

Testimony Against: While L&I is comfortable with paying the medical bills while we gather and analyze data in 2004, there is concern that the provisions of the bill go far beyond that. Other employers in the state industrial fund would need to subsidize growers for costs incurred. This is an end run around last year's agreement. We should defer to the science panel to determine if thresholds set are sufficient. This bill uses money from a fund workers contribute to, the medical aid fund. We have no objection to hours exposed being documented, collected and put into a useful database.

Testified: PRO: Chris Cheney, WA Growers League; Jim Jesernig, WA Potato and Onion Assn.; Dan Fazio, WA Farm Bureau; CON: Michael Silverstein, Dept. of Labor and Industries; Erik Nicholson, VFW; Jeff Johnson, WSLC, AFL-CIO.

House Amendment(s): Employers are required to submit monthly records to L&I indicating the name of each worker tested for cholinesterase depression and the number of hours handling covered pesticides over both the past 30 days and the current calendar year. L&I and the Department of Health are required to work together to correlate data on hours exposed and employee test results. This replaces language specifying that the purpose of the data collection is to determine whether mandatory testing is warranted and calling for database creation and correlation on the numbers of employees tested, tests performed, investigations and medical removals required, and investigations and medical removals for which depressed cholinesterase levels are not positively correlated to pesticide handling. Language is also deleted relating to L&I consultation with employers.

Beginning no later than January 1, 2005, L&I is to require employers to report this data to the appropriate health care professional and laboratory when each employee's cholinesterase test is taken and to provide a tested employee with access to and copies of such data reports upon request.

L&I must make reasonable reimbursements on a quarterly basis as specified in the 2003-05 operating budget. This replaces language requiring L&I to pay certain agricultural employer costs related to cholinesterase testing and to reimburse employers for certain costs of compliance.

Dates are modified for L&I to report results to appropriate legislative committees and identify technical issues regarding cholinesterase testing or administration. An emergency clause is added.