
**Labor & Workforce Development
Committee**

HB 2413

Brief Description: Protecting workers and other community members from pesticide drift.

Sponsors: Representatives Reykdal, Sells, Appleton, Ladenburg, Ormsby, Hunt, Moscoso, Ryu, Roberts, Wylie, Green, Hasegawa, McCoy, Kenney, Hudgins, Cody, Moeller, Fitzgibbon, Pollet and Jinkins.

Brief Summary of Bill

- Requires notification of airplane and other types of pesticide applications to child care facilities, schools, residences, and persons whom the applicator can reasonably determine will likely be outdoors, within a one-half mile buffer zone.
- Prohibits airplane and other types of pesticide applications within one-half mile (or greater to avoid pesticide drift) of child care facilities, schools, residences, and persons outdoors.

Hearing Date: 1/18/12

Staff: Joan Elgee (786-7106).

Background:

Pesticides are regulated by the state and federal government, and at the state level, several state agencies have responsibilities.

The Department of Labor and Industries (L&I) administers and enforces the Washington Industrial Safety and Health Act (WISHA). Under WISHA, L&I adopts safety and health standards, provides consultation and advice, and conducts inspections and investigations.

The Worker and Community Right to Know Act (Right to Know Act) requires information regarding hazardous substances be provided to employees and community members. L & I

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.

administers the worker right-to-know portion of the law and the Department of Ecology provides information on hazardous substances to community members. Under the Right to Know Act, employers must provide agricultural employees information and training on hazardous chemicals in the workplace and must keep specified records regarding pesticides. Employers in certain industries pay an assessment to fund right-to-know activities.

An employer who discharges or otherwise discriminates against an employee because the employee or the employee's representative has exercised any right under the Right to Know Act is subject to the discrimination provisions of WISHA. The WISHA discrimination provision allows the Director of L&I (or the employee if the Director determines a violation has not occurred) to bring a cause of action to restrain violations and order all appropriate relief, including reinstatement and backpay.

The Department of Agriculture administers and enforces the Federal Insecticide, Fungicide and Rodenticide Act, as well as the state Pesticide Control Act and the state Pesticide Application Act. Its activities include adopting rules requiring the registration and restricting the use of pesticides, testing and certifying pesticide applicators, issuing handler and worker pesticide training documentation, and providing technical assistance to pesticide applicators and workers.

The Department of Agriculture and L&I have adopted identical rules on worker protection from pesticides. These rules impose various duties on agricultural employers, including requirements that pesticides be used in a manner consistent with their labels and that workers be notified of pesticide applications.

The Department of Health tracks and investigates pesticide-related illnesses, and provides education and technical assistance to physicians and other agencies.

Schools must notify interested parents or guardians of students and employees at least 48 hours before a pesticide application and must place signs regarding pesticide applications.

Summary of Bill:

Intent is stated that pesticide exposure results in lost wages and worker productivity, increased industrial insurance costs, and health problems for workers and other community members. The Legislature declares that workers and other community members have a right to be protected from pesticide exposure and notified of certain applications to prevent unnecessary exposure.

New sections are added the Right to Know Act.

Notice of pesticide application.

Persons applying pesticides by airplane, air-blast sprayer, fumigation, or any other application method that poses a substantial risk of pesticide drift must provide written notice to child care facilities, schools, and residences within a buffer zone and persons whom the applicator can reasonably determine will likely be outdoors within the buffer zone at any time during application. "Buffer zone" is an area extending one-half mile in all directions from the boundaries of the intended pesticide application. If the persons are outdoors because of employment, notice to the employer satisfies the notice requirement.

The notice by the applicator must be: (1) Given at least 24 hours but no sooner than 48 hours before the application; (2) provided in person if feasible or posted on the primary entrance of buildings within the buffer zone that may be occupied; and (3) translated when the applicator knows or a reasonable person would know that persons entitled to notice do not speak English as their primary language.

The applicator's notice must include the:

- Time, date, and location of the application,
- Name, telephone number, and address of the person applying the pesticide and the person who contracts for the application,
- Common and chemical names of the pesticides,
- Telephone number of the Department of Health's pesticide program and the Washington poison control center,
- A statement that aerial, air-blast, and fumigation application of pesticides is not allowed within one-half mile of child care facilities, schools, residences, and people who are outdoors,
- A list of the precautions related to drift that are on the pesticide label, and
- Restricted-entry interval on the pesticide label and a statement that if the pesticide lands in an area, persons should stay out of that area for the restricted-entry interval. The "restricted-entry interval" is the time after the end of an application during which entry into the treated area is restricted.

Employers must give employees copies of the applicator's notice. When the employees do not speak English as their primary language, the employer must also provide written notice in an appropriate language or a full verbal translation to each employee. The employer must give the notice at least four hours before the intended application.

Employers must ensure that employees remain outside of the buffer zone or work in fully enclosed indoor work spaces during the application of pesticides.

Restriction on pesticide application.

Application of a pesticide by airplane, air-blast sprayer, fumigation, or any other application method that poses a substantial risk of pesticide drift is prohibited:

- Within one-half mile of:
 - A child care facility, residence, or school.
 - Any natural person outdoors, unless the applicator had reasonably concluded that no natural persons were present outdoors at the time of application.

If a distance greater than one-half mile is necessary is necessary to avoid pesticide drift given conditions, the greater distance applies.

- At a time not within reasonable proximity to the time listed on the notice.

Remedies

Remedies are provided for violation of the buffer zone notice and no application requirements:

Cause of action. An employer who discharges or otherwise discriminates against an employee because the employee or employee's representative made a complaint, participated in an investigation, or been part of a lawsuit is liable for the greater of actual damages, or \$5,000 and the costs of litigation and attorney's fees. A cause of action for the same remedies is available against any person who attempts to intimidate another person because the other person or their representative has made a complaint, participated in an investigation, or been part of a lawsuit.

Any person exposed to pesticides by a person willfully applying pesticides in violation of the no application requirement may bring a civil action for twice the damages or \$5,000, whichever is greater.

Civil penalties. The Department of Labor & Industries (L&I) may investigate and issue citations. A person who is found to have violated the buffer zone notice or no application requirements is liable for a civil penalty of up to \$10,000 for each violation. The Department of Health (DOH) may also investigate and issue a citation and impose penalties for violations that do not involve workers. L&I and DOH must coordinate investigations and penalty assessments and may not issue duplicate citations for the same violation.

The remedies provided are in addition to and do not affect any other remedy. Compliance with the buffer zone notice and no application requirements do not limit the liability of any person for pesticide exposure to other persons.

Other.

By December 1, 2012, L&I and DOH must jointly establish a formal agreement that identifies the roles of the two agencies with respect to investigations.

Appropriation: None.

Fiscal Note: Requested on January 13, 2012.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.