

SENATE BILL REPORT

SB 6397

As of January 26, 2012

Title: An act relating to protecting workers and other community members from pesticide drift.

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

Sponsors: Senators Kohl-Welles, Chase, Rolfes, Conway, Keiser, Nelson, Kline and Shin.

Brief History:

Committee Activity: Labor, Commerce & Consumer Protection: 1/26/12.

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Staff: Edith Rice (786-7444)

Background: Several state agencies regulate or monitor the use of pesticides. The Department of Agriculture has authority to administer and enforce the Washington Pesticide Control Act and the Washington Pesticide Application Act. The Pesticide Control Act regulates the formulation, distribution, storage, transportation and disposal of pesticides, as well as the dissemination of accurate scientific information regarding the proper use of pesticides. The Pesticide Application Act regulates the loading, mixing, application and use of pesticides. The Department of Labor and Industries (L&I) enforces provisions of the Worker and Community Right to Know Act which requires that employers who apply pesticides in connection with production of an agricultural crop keep detailed records regarding pesticide application and make this available to employees. This information must be made available to L&I as well. The Department of Health (DOH) has authority to investigate suspected cases of pesticide poisoning and must respond when a pesticide emergency is reported.

Summary of Bill: A new section is added to the Worker and Community Right to Know Act which prohibits a person from applying a pesticide that poses a substantial risk of pesticide drift within a half mile of a child care facility, residence, school, or any person outdoors or within the distance necessary to avoid pesticide drift, given the conditions.

Written notice must be provided by the pesticide applicator to child care facilities, schools and residences within the buffer zone as well as to those persons (or their employer) the applicator can reasonably determine will likely be outdoors within the buffer zone at any time during application of the pesticide. Buffer zone is that area which is one half mile in all

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directions from the boundaries of the intended pesticide application. Notice must be provided in person or posted on buildings within the buffer zone that may be occupied. Notices must be translated into the appropriate language when the applicator knows that persons entitled to notice do not speak English as their primary language. Information which must be in the notice is specifically listed. If employers are provided notice, they must provide copies to each employee in the appropriate language. Employers must ensure that employees remain outside the buffer zone or work in fully enclosed indoor work spaces during application of the pesticide.

Under the Worker and Community Right to Know Act employers are prohibited from discharging or discriminating against an employee exercising their rights under this act. Employers who do so are liable for actual damages in a civil action or for statutory damages of \$5,000 (whichever is greater) including costs of litigation and attorney fees. Anyone who attempts to intimidate those who have made a safety complaint is similarly liable.

L&I can issue citations, and DOH can investigate and enforce violation of this act. Both agencies can share relevant information with each other but may not issue duplicate citations to someone for the same violation. Willful violation of this act may result in civil action for twice the damages suffered or \$5,000, whichever is greater. These remedies are in addition to any other remedies available.

DOH can investigate and issue a citation if DOH reasonably believes a person has violated section 3 of this act including those violations which do not involve potential or actual exposure of workers to pesticides. Civil penalties can amount to \$10,000 for each violation. Appeals of citations are through the Administrative Procedure Act.

L&I and DOH must establish a formal agreement regarding the roles of the two agencies by December 1, 2012.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: People working in agricultural areas have been directly sprayed and had their health negatively impacted, some have been hospitalized. Employers of these workers can't protect them when they are sprayed by neighboring field owners. There is no way to protect these people from drift. We protect salmon, we protect grapes, why shouldn't we protect people? There is a disproportionate impact upon low-income minorities. Health issues contribute to the cycle of poverty. Most cases of exposure to pesticide drift go unreported.

CON: This bill would undermine the control of noxious weeds. The fiscal impact will devastate agriculture in Washington. This is another layer of bureaucracy. It is expensive

and time consuming. Consider the affect upon urban tree farms. With the buffer, it is unmanageable.

OTHER: This has the potential to affect international trade, the fiscal impact would hamper public health work where we need to spray. This presents all pesticides as harmful and that is not the case. Agencies are not seeking additional authority. State forests will suffer if we can't fumigate, the fiscal impact of this bill is huge.

Persons Testifying: PRO: Fanny Cordero, Andrea Schmitt, Columbia Legal Services; Teresa Mosqueda, WA State Labor Council; Mo McBroom, WA Environment Council; Nick Federici, WA Toxics; Toby Gueran, One America; Charlie Weems, Whitman College; Yoshe Revelle, citizen.

CON: Alison Halpern, WA State Noxious Weed Control Board; Paul Rainswell, Western WA Golf Course Superintendents Assn.; Terry Willis, Commissioner, Grays Harbor County; Jeff Van Lierop, Farmer; Mike Warjone, Port Blakely Tree Farm; Michael La Plant, Aaron Galladay, WA Farm Bureau.

OTHER: Mark Streuli, Dept. of Agriculture; Dr. Michael Silverstein, L&I; Maryann Guichard, Cullen Stephenson, Dept. of Natural Resources.