

SENATE BILL REPORT

E2SSB 6529

As Passed Senate, February 12, 2018

Title: An act relating to establishing a pesticide application safety work group.

Brief Description: Establishing a pesticide application safety work group.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Saldaña, Ranker, Cleveland, Rolfes, Van De Wege, Miloscia, Chase, Conway, McCoy, Hunt, Keiser and Hasegawa).

Brief History:

Committee Activity: Labor & Commerce: 1/25/18, 1/31/18 [DPS-WM, DNP, w/oRec].
Ways & Means: 2/05/18, 2/06/18 [DP2S, DNP, w/oRec].

Floor Activity:

Passed Senate: 2/12/18, 45-2.

Brief Summary of Engrossed Second Substitute Bill

- Establishes a pesticide application safety workgroup to develop recommendations for improving the safety of pesticide applications.
- Includes legislators, agencies, and stakeholders in the workgroup.
- Requires the workgroup to provide a report that includes any findings, recommendations, and draft legislation, to the Governor and the Legislature, by November 1, 2018.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 6529 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Keiser, Chair; Hasegawa, Vice Chair; Conway, Kuderer and Saldaña.

Minority Report: Do not pass.

Signed by Senators Baumgartner, Ranking Member; Braun and Wilson.

Minority Report: That it be referred without recommendation.

Signed by Senator King.

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.

Staff: Susan Jones (786-7404)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 6529 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair; Billig, Carlyle, Conway, Darneille, Fain, Hasegawa, Hunt, Keiser, Mullet, Palumbo, Pedersen, Ranker, Van De Wege and Warnick.

Minority Report: Do not pass.

Signed by Senators Honeyford, Assistant Ranking Member; Bailey, Becker, Brown, Schoesler and Wagoner.

Minority Report: That it be referred without recommendation.

Signed by Senators Braun, Ranking Member; Rivers.

Staff: James Kettel (786-7459)

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

Under the Worker and Community Right to Know Act (Right to Know Act), administered by the Department of Labor & Industries, information regarding hazardous substances must be provided to employees and community members. The Department of Agriculture (WSDA) administers 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 Health (DOH) tracks and investigates pesticide-related illnesses, and provides education and technical assistance to physicians and other agencies.

Both the Pesticide Application Act and the Right to Know Act require recordkeeping for pesticide applications by applicators and employers who apply or cause pesticides to be applied (pesticide records). The pesticide records must include the following:

- the location of the land where pesticide was applied;
- the year, month, day, and time of application;
- the product name and Environmental Protection Agency registration number;
- the crop or site to which pesticide was applied; the amount of pesticide applied per acre;
- the concentration of pesticide applied;
- the number of acres to which pesticide was applied;
- the applicator's name, address, and telephone number;
- the direction and estimated velocity of the wind during the time the pesticide was applied; and
- any other information reasonably required by rule.

The pesticide records must be readily accessible to the respective agencies for inspection and must be provided upon request to other specified agencies and treating health care personnel.

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.

Pesticide sensitive individuals may apply to WSDA to be included on a pesticide notification list. This application must list property abutting the applicant's principle place of residence. These lands constitute the pesticide notification area for the applicant. This list is made available to all certified pesticide applicators. The pesticide sensitivity of an individual must be certified by a licensed physician.

Summary of Engrossed Second Substitute Bill: Legislative findings are regarding the interest in minimizing pesticide exposure and the gains in minimizing those exposures.

A pesticide application safety workgroup is established to develop recommendations for improving the safety of pesticide applications. The workgroup must review existing state and federal law on pesticide safety and application, arrange for a presentation about technologies, review the structure of the former review panel, and review data and reports from state agencies and other states' relevant agencies.

The workgroup is composed of legislators and agencies. In addition to the members, the University of Washington Latino Center for Health, the Washington State University, and other experts and technical advisors may be invited by the secretary of DOH or the director of WSDA.

The workgroup will be co-chaired by two of the legislative members, one from each major party and one from each house. Staff support for the workgroup must be provided by DOH and WSDA.

Legislative members of the workgroup are reimbursed for travel expenses. Non-legislative members are not entitled to be reimbursed for travel expenses if they are elected officials or are participating on behalf of an employer, governmental entity, or other organization. The expenses of the workgroup must be paid jointly by the Senate and the House of Representatives, subject to approval.

The workgroup provided a report to the Governor and the appropriate committees of the Legislature. The report is due by November 1, 2018, and must include any findings, recommendations, and draft legislation. The act expires on December 31, 2018.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: Yes.

Effective Date: The bill takes effect on July 1, 2018.

Staff Summary of Public Testimony on Original Bill (Labor & Commerce): *The committee recommended a different version of the bill than what was heard.* PRO: We support advance notification. Researcher could use information to analyze pesticide exposure. Records are already required by law, but does not become public. This is especially important in rural communities and for farm workers. One-half of applications miss their intended target. Airblast applicators are the greatest source of drift. Siting schools outside their area may put children at risk of exposure. Harmful pollution is harming communities of color disproportionately. Nine out of ten people who are exposed to pesticide drift are not employed on the farm that is applying the pesticide. Drift impacts the farm workers and their families when they bring it home on their clothes. Notification seems like a good step and a feasible one. As people live closer to farms, we need to have information available to make informed decisions. Many exposures go unreported because of fear of taking time off work or other reasons. Pesticides have serious impacts.

CON: Farmers have to decide in a short period of time when to apply pesticides. The four-day notification would be devastating to farmers and farm products. It can be only a few hours, depending on expected weather conditions. Every hour may impact the effectiveness of the product. If we are not using the product properly, we could lose the orchard and may have to wait three years to replant. We only apply the product as needed. Products are expensive and timing is important. Applicators are licensed and trained. Drift is already illegal.

Persons Testifying (Labor & Commerce): PRO: Senator Rebecca Saldaña, Prime Sponsor; Megan Dunn, Healthy People and Communities Program Director, Northwest Center for Alternatives to Pesticide; Lucinda Young, Chief Lobbyist, Washington Education Association; Darcy Nonemacher, Government Affairs Director, Washington Environmental Council; Eric Gonzalez Alfaro, Legislative and Policy Director, Washington State Labor Council, AFL-CIO; Andrea Schmitt, Columbia Legal Services.

CON: Stacy Kniveton; Flor Maldonado, M&A Orchards; Gavin Morse, Owner: GEM AIR Inc., President: Association of Washington Aerial Applicators; Nicole Berg, Washington Association of Wheat Growers; Bill Zimmerman, B-Z Farms; Rob Dhaliwal, Samson Farms.

OTHER: Joel Kangiser, Washington State Department of Agriculture, Pesticide Compliance; Lauren Jenks, Washington State Department Of Health; Andrew Hayes, Forest Resources Division Manager, Department of Natural Resources.

Persons Signed In To Testify But Not Testifying (Labor & Commerce): CON: Jim Jesernig, Washington Potato & Onion Association; Heath Gimmetad, citizen; Travis Meachem, citizen; Grant Morris, citizen; Heather Hansen, Washington Friends of Farms & Forests; Mary Catherine McAleer, Association of Washington Business; Brad Tower, Washington Christmas Tree Growers; Kristi Scholz-O'Leary, Snowshoe Evergreen; Casey Cochran, Cochran Family Farm; Brett Blankenship; Dillon Honcoop, Save Family Farming.

Staff Summary of Public Testimony on First Substitute (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: It makes sense for all stakeholders to engage on this issue and to have an honest conversation. DOH prepared a report showing that drift is an issue. The report showed over 500 instances of illness that

were a result of drift. Applicator training only represents about 5 percent of the cases. The state has the data and knows that this is an issue. The issue is not just economic. It is a health issue for workers and for children. There is no desire from any individual or organization to create pesticide exposure. It is necessary to come together and to find a way to make exposure a thing of the past. Eliminating exposure to pesticide drift would result in less emergency room visits and long term health care costs. It is also possible to reduce the amount of money needed to enforce violations associated with pesticide drift. Stakeholders are open to modifying the scope of the workgroup, and the membership of the workgroup, if it makes sense.

CON: The bill concedes defeat by saying that pesticide applicators are going to break the law on a regular basis and the WSDA cannot do anything about it. Those of us in agriculture do not think that this is a good way to look at this issue. The data shows that the vast majority of pesticide applications are made accurately with no drift. There are mistakes from time-to-time. Everyone wants to do better. It does not make sense to spend money planning how to do pre-notification and use reporting after the fact. It makes more sense to spend money up front on preventing drift in the first place. A workgroup is a good idea if it starts with an open-minded and even handed approach that results in looking at ways to prevent drift from happening in the first place. Several years ago, Oregon spent millions of dollars trying to develop a reporting system. The system failed and they gave up. Developing a notification system does not get at the real issue. Convening a group of agencies that are already involved in enforcement, and involved with providing training and education for farmworkers, makes a lot of sense. That group can come up with recommendations to solve the real problem. This state has a long history of investment in agriculture. This state is the envy of the world for investments in technology, education, and training. It makes sense to build on this legacy. It does not make sense to waste this opportunity. The Environmental Protection Agency regulates pesticides on the federal level. WSDA and Labor & Industries regulate pesticides on the state level. These agencies oversee about 27,000 applicators making about 500,000 applications every year. The proposal in the current bill makes the workgroup focus on after-the-fact reporting. The records already exist. Anyone can get these records at any time. The notification requirement for potato growers would be devastating. It makes more sense to focus state resources on the front-end. The workgroup should focus more on pesticide application safety. Workgroups function better when the legislators and agencies are the official members, and the rest of the participants serve an advisory function. The intent section should go away entirely. WSDA already maintains a pesticide notification system for sensitive populations in urban areas. Since that infrastructure already exists, the fiscal impact of this bill would be significantly less if the current system is modified to meet a desired outcome. The money may also be better spent on additional application education initiatives. DOH is already doing a lot of work in this area through the Washington Tracking Database. There are differing opinions, but it is possible to review the data and conclude that pesticide drift is more of a problem in do-it-yourself home application.

Persons Testifying (Ways & Means): PRO: Eric Gonzalez Alfaro, Washington State Labor Council, Legislative and Policy Director, AFL-CIO; Antonio Ginatta, Columbia Legal Services.

CON: Heather Hansen, Washington Friends of Farms & Forests; Jim Jesernig, Washington

Potato and Onion Association; Heather Hansen, Washington Friends of Farms & Forests; Jim Jesernig, Washington Potato & Onion Association; Kristin Kershaw, Domex Superfresh Growers; Mary Catherine McAleer, Association of Washington Business.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.