
HOUSE BILL 1765

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By Representatives Belcher, Prentice, Heavey, Cole, R. Fisher, Wood, Phillips, G. Fisher, Winsley, Pruitt, Wineberry, Sprenkle, Leonard and Anderson.

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1 AN ACT Relating to public and worker safety in the use of
2 pesticides; amending RCW 15.58.020, 15.58.110, 70.104.030, 15.58.040,
3 15.58.100, 15.58.405, 17.21.100, and 49.70.119; adding a new section to
4 chapter 49.17 RCW; and creating a new section.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The purpose of this act is to declare as
7 a matter of public and environmental policy that to protect the health
8 of the public and workers the state shall identify and reduce the use
9 of those pesticides that by virtue of the quantity of their use and
10 toxicity pose a significant health hazard to workers and the public.

11 **Sec. 2.** RCW 15.58.020 and 1971 ex.s. c 190 s 2 are each amended to
12 read as follows:

13 The protection of the public's and workers' health and the
14 environment is the paramount goal in regulating pesticides. It is in

1 the state's economic, social, and environmental best interest to pursue
2 a strategy that eliminates the use of the most toxic pesticides and
3 reduces the use of other pesticides. The formulation, distribution,
4 storage, transportation, and disposal of any pesticide and the
5 dissemination of accurate scientific information as to the proper use,
6 or nonuse, of any pesticide, is important and vital to the maintenance
7 of a high level of public health and welfare both immediate and future,
8 and is hereby declared to be a business affected with the public
9 interest. The provisions of this chapter are enacted in the exercise
10 of the police powers of the state for the purpose of protecting the
11 immediate and future health and welfare of the people of the state.

12 **Sec. 3.** RCW 15.58.110 and 1989 c 380 s 8 are each amended to read
13 as follows:

14 (1) If it does not appear to the director that the pesticide is
15 such as to warrant the proposed claims for it or if the pesticide and
16 its labeling and other material required to be submitted do not comply
17 with the provisions of this chapter or rules adopted under this
18 chapter, the registrant shall be notified of the manner in which the
19 pesticide, labeling, or other material required to be submitted fails
20 to comply with the provisions of this chapter so as to afford the
21 applicant an opportunity to make the necessary corrections. If, upon
22 receipt of such notice, the applicant does not make the corrections the
23 director shall refuse to register the pesticide. The applicant may
24 request a hearing as provided for in chapter 34.05 RCW.

25 (2) The director may, when the director determines that a pesticide
26 or its labeling does not comply with the provisions of this chapter or
27 the rules adopted under this chapter, cancel the registration of a
28 pesticide after a hearing in accordance with the provisions of chapter
29 34.05 RCW.

1 (3) The director shall establish a schedule phasing out the use of
2 any pesticide determined to pose a hazard to public or worker health by
3 virtue of its toxicity and frequency of use or by virtue of repeated
4 application violations. A pesticide that is to be phased out shall
5 have its registration canceled no later than five years after the
6 adoption of the phase-out schedule.

7 (4) The director shall cancel the registration of any pesticide on
8 a date consistent with phase-out schedules established under section 4
9 of this act and RCW 70.104.030.

10 NEW SECTION. Sec. 4. A new section is added to chapter 49.17 RCW
11 to read as follows:

12 The department shall monitor pesticide use and pesticide exposures
13 for purposes of identifying pesticides and pesticide uses that
14 repeatedly pose a health hazard to workers. The department shall, by
15 rule adopted in accordance with chapter 34.05 RCW, establish procedures
16 for the prevention of worker injury that results from pesticide
17 exposure. The procedures may include establishing a schedule that
18 phases out the use of any pesticide that is found to cause repeated
19 work-related exposures or of any pesticide that by virtue of its
20 toxicity and frequency of use poses a long-term health risk to workers.
21 The phase-out schedule shall specify a date, not to exceed five years
22 from the date of the schedule adoption, by which the director of the
23 department of agriculture shall cancel the pesticide.

24 **Sec. 5.** RCW 70.104.030 and 1989 c 380 s 71 are each amended to
25 read as follows:

26 (1) The department of social and health services shall investigate
27 all suspected human cases of pesticide poisoning and such cases of
28 suspected pesticide poisoning of animals that may relate to human

1 illness. The department shall establish time periods by rule to
2 determine investigation response time. Time periods shall range from
3 immediate to forty-eight hours to initiate an investigation, depending
4 on the severity of the case or suspected case of pesticide poisoning.
5 In order to adequately investigate such cases, the department of social
6 and health services shall have the power to:

7 (a) Take all necessary samples and human or animal tissue specimens
8 for diagnostic purposes: PROVIDED, That tissue, if taken from a living
9 human, shall be taken from a living human only with the consent of a
10 person legally qualified to give such consent;

11 (b) Secure any and all such information as may be necessary to
12 adequately determine the nature and causes of any case of pesticide
13 poisoning.

14 (2) The state department of social and health services shall, by
15 rule ~~((and regulation))~~ adopted pursuant to the Administrative
16 Procedure Act, chapter 34.05 RCW, ~~((as it now exists or is hereafter
17 amended,))~~ and, in any event, with due notice and a hearing for the
18 adoption of permanent rules, establish procedures for the prevention of
19 any recurrence of poisoning ~~((and)),~~ including a schedule to phase out
20 the use of any pesticide that is involved in repeated pesticide
21 poisonings and of any pesticide that by virtue of its toxicity and
22 frequency of use poses a long-term risk to public health. The phase-
23 out schedule shall specify a date, not to exceed five years from the
24 date of the schedule adoption, by which the director of the department
25 of agriculture shall be directed to cancel the pesticide. The
26 department shall immediately notify the department of agriculture, the
27 department of labor and industries, and other appropriate agencies of
28 the results of its investigation for such action as the other
29 departments or agencies deem appropriate. The notification of such

1 investigations and their results may include recommendations for
2 further action by the appropriate department or agency.

3 **Sec. 6.** RCW 15.58.040 and 1989 c 380 s 2 are each amended to read
4 as follows:

5 (1) The director shall administer and enforce the provisions of
6 this chapter and rules adopted under this chapter. All the authority
7 and requirements provided for in chapter 34.05 RCW (Administrative
8 Procedure Act) and chapter 42.30 RCW shall apply to this chapter in the
9 adoption of rules including those requiring due notice and a hearing
10 for the adoption of permanent rules.

11 (2) The director is authorized to adopt appropriate rules for
12 carrying out the purpose and provisions of this chapter, including but
13 not limited to rules providing for:

14 (a) Declaring as a pest any form of plant or animal life or virus
15 which is injurious to plants, people, animals (domestic or otherwise),
16 land, articles, or substances;

17 (b) Determining that certain pesticides are highly toxic to people.
18 For the purpose of this chapter, highly toxic pesticide means any
19 pesticide that conforms to the criteria in 40 C.F.R. Sec. (~~162.10~~)
20 156.10 for toxicity category I due to oral, inhalation, or dermal
21 toxicity. The director shall publish a list annually of all
22 pesticides, determined to be highly toxic or determined by the EPA to
23 cause cancer or reproductive harm, by their common or generic name and
24 their trade or brand name if practical. Such list shall be kept
25 current and shall (~~upon request,~~) be made available to (~~any~~
26 ~~interested party~~) the department of labor and industries, the
27 department of health, and the public;

28 (c) Determining standards for denaturing pesticides by color,
29 taste, odor, or form;

1 (d) The collection and examination of samples of pesticides or
2 devices;

3 (e) The safe handling, transportation, storage, display,
4 distribution, and disposal of pesticides and their containers;

5 (f) Restricting or prohibiting the use of certain types of
6 containers or packages for specific pesticides. These restrictions may
7 apply to type of construction, strength, and/or size to alleviate
8 danger of spillage, breakage, misuse, storage, or any other hazard to
9 the public. In the case of products for home and garden use, the
10 director may limit the size of containers and packages if the director
11 finds that the size contributes to waste or disposal problems. The
12 director shall be guided by federal regulations concerning pesticide
13 containers;

14 (g) Procedures in making of pesticide recommendations;

15 (h) Adopting a list of restricted use pesticides for the state or
16 for designated areas within the state if the director, the secretary of
17 the department of health, or the directors of labor and industries or
18 ecology determine(~~s~~) that such pesticides may require rules
19 restricting or prohibiting their distribution or use. The directors
20 and the secretary may include in the rule the time and conditions of
21 distribution or use of such restricted use pesticides and may, if it is
22 found necessary to carry out the purpose and provisions of this
23 chapter, require that any or all restricted use pesticides shall be
24 purchased, possessed, or used only under permit of the director and
25 under the director's direct supervision in certain areas and/or under
26 certain conditions or in certain quantities or concentrations. The
27 director (~~may~~) shall require all persons issued such permits to
28 maintain and submit records as to the use of all the restricted use
29 pesticides. The department shall use these records to report the

1 volume of use by pesticide in its annual report of pesticides described
2 in (b) of this subsection;

3 (i) Label requirements of all pesticides required to be registered
4 under provisions of this chapter; and

5 (j) Regulating the labeling of devices.

6 (3) For the purpose of uniformity and to avoid confusion
7 endangering the public health and welfare the director may adopt rules
8 in conformity with the primary pesticide standards, particularly as to
9 labeling, established by the United States environmental protection
10 agency or any other federal agency.

11 **Sec. 7.** RCW 15.58.100 and 1979 c 146 s 2 are each amended to read
12 as follows:

13 (1) The director shall require the information required under RCW
14 15.58.060 and shall register the label or labeling for such pesticide
15 if ((he)) the director determines that:

16 (a) Its composition is such as to warrant the proposed claims for
17 it;

18 (b) Its labeling and other material required to be submitted comply
19 with the requirements of this chapter;

20 (c) It will perform its intended function without unreasonable
21 adverse effects on the environment and present no greater than a
22 negligible risk to workers;

23 (d) When used in accordance with widespread and commonly recognized
24 practice it will not ((generally)) cause unreasonable adverse effects
25 on the environment;

26 (e) In the case of any pesticide subject to section 24(c) of FIFRA,
27 it meets (1) (a), (b), (c), and (d) of this section and the following
28 criteria:

1 (i) The proposed classification for general use, for restricted
2 use, or for both is in conformity with section 3(d) of FIFRA;

3 (ii) A special local need exists;

4 (iii) Effective alternative control methods including management
5 systems and biological controls are not available.

6 (2) The director shall not make any lack of essentiality a
7 criterion for denying registration of any pesticide.

8 **Sec. 8.** RCW 15.58.405 and 1979 c 146 s 5 are each amended to read
9 as follows:

10 For the purpose of exercising the authority granted to the state
11 under the provisions of FIFRA, the director may with written approval
12 by the secretary of the department of health and the director of the
13 department of labor and industries:

14 (1) Meet emergency conditions in this state by applying for an
15 exemption from any provision of FIFRA as provided for by section 18 of
16 that act. If such exemption is granted by the administrator of EPA the
17 director may carry out and enforce the requirements and conditions of
18 the exemption;

19 (2) Comply with the requirements necessary to issue special local
20 needs registration under section 24(c) of FIFRA; and

21 (3) Comply with the requirements necessary to issue experimental
22 use permits under section 5(f) of FIFRA.

23 **Sec. 9.** RCW 17.21.100 and 1989 c 380 s 39 are each amended to read
24 as follows:

25 (1) (~~Except as provided in subsection (7) of this section,~~
26 ~~pesticide~~)) Applicators licensed under the provisions of this chapter
27 and all persons applying pesticides to more than one acre of
28 agricultural land in a calendar year, including public entities engaged

1 in roadside spraying of pesticides, shall keep records on a form
2 prescribed by the director which shall include the following:

3 (a) The location of the land where the pesticide was applied.

4 (b) The year, month, day and time the pesticide was applied.

5 (c) The product name used on the registered label and the United
6 States environmental protection agency registration number, if
7 applicable, of the pesticide which was applied.

8 (d) The crop or site to which the pesticide was applied.

9 (e) The amount of pesticide applied per acre or other appropriate
10 measure.

11 (f) The concentration of pesticide that was applied.

12 (g) The number of acres, or other appropriate measure, to which the
13 pesticide was applied.

14 (h) The licensed applicator's name, address, and telephone number
15 and the name of the individual or individuals making the application.

16 (i) The direction and estimated velocity of the wind at the time
17 the pesticide was applied: PROVIDED, That this subsection (i) shall
18 not apply to applications of baits in bait stations and pesticide
19 applications within structures.

20 (j) Any other reasonable information required by the director.

21 (2) Records shall be updated on the same day that a pesticide is
22 applied.

23 (3) Such records shall be kept for a period of seven years from the
24 date of the application of the pesticide to which such records refer,
25 and the director shall, upon request in writing, be furnished with a
26 copy of such records forthwith by the licensee: PROVIDED, That the
27 director may require the submission of such records within thirty days
28 of the application of any restricted use pesticide in prescribed areas
29 controlling the use of such restricted use pesticide.

1 (4) The pesticide records shall be readily available to: The
2 department; treating medical personnel initiating diagnostic testing or
3 therapy for a patient with a suspected case of pesticide poisoning; the
4 department of social and health services; the pesticide incident
5 reporting and tracking panel; and, in the case of an industrial
6 insurance claim filed under Title 51 RCW with the department of labor
7 and industries, the employee or the employee's designated
8 representative and the department of labor and industries.

9 (5) If a request for information is made under subsection (4) of
10 this section from an applicator referred to in subsection (1) of this
11 section and the applicator refuses to provide a copy of the records,
12 the department shall be notified of the request and the applicator's
13 refusal. Within seven working days, the department shall request that
14 the applicator provide the department with all pertinent copies, except
15 that in a medical emergency the request shall be made within two
16 working days. The applicator shall provide copies of the records to
17 the department within twenty-four hours after the department's request.

18 (6) The department of agriculture (~~(and the department of labor and~~
19 ~~industries)~~) shall (~~(jointly)~~) adopt, by rule, (~~(one)~~) a form that
20 satisfies the information requirements of this section (~~(and RCW~~
21 ~~49.70.119)~~). Records kept on the prescribed form under RCW 49.70.119
22 may be used to comply with this section.

23 (~~((7) This section shall not apply to the owner or operator of a~~
24 ~~dairy farm with respect to his or her application of pesticides to the~~
25 ~~farm.)~~)

26 **Sec. 10.** RCW 49.70.119 and 1989 c 380 s 77 are each amended to
27 read as follows:

28 (1) An employer who applies or stores pesticides in connection with
29 the production of an agricultural crop shall compile and maintain a

1 workplace pesticide list by crop for each pesticide that is applied to
2 a crop or stored in a work area. The workplace pesticide list shall be
3 kept on a form prescribed by the department and shall contain at least
4 the following information:

5 (a) The location of the land where the pesticide was applied or
6 site where the pesticide was stored;

7 (b) The year, month, day, and time the pesticide was applied;

8 (c) The product name used on the registered label and the United
9 States environmental protection agency registration number, if
10 applicable, of the pesticide that was applied or stored;

11 (d) The crop or site to which the pesticide was applied;

12 (e) The amount of pesticide applied per acre, or other appropriate
13 measure;

14 (f) The concentration of pesticide that was applied;

15 (g) The number of acres, or other appropriate measure, to which
16 pesticide was applied;

17 (h) If applicable, the licensed applicator's name, address, and
18 telephone number and the name of the individual or individuals making
19 the application; and

20 (i) The direction and estimated velocity of the wind at the time
21 the pesticide was applied: PROVIDED, That this subsection (i) shall
22 not apply to applications of baits in bait stations and pesticide
23 applications within structures.

24 (2) The employer shall update the workplace pesticide list (~~on the~~
25 ~~same day~~) within twenty-four hours that a pesticide is applied or is
26 first stored in a work area.

27 (3) The workplace pesticide list may be prepared for the workplace
28 as a whole or for each work area (~~and~~). The workplace pesticide list
29 or the pesticide application records required by RCW 17.21.100 and the
30 workplace list of stored pesticides must be readily available to

1 employees and their designated representatives. New or newly assigned
2 employees shall be made aware of the pesticide chemical list and
3 application records before working with pesticides or in a work area
4 containing pesticides.

5 (4) An employer subject to this section shall maintain one form for
6 each crop, work area, or workplace as a whole, as appropriate, and
7 shall add information to the form as different pesticides are applied
8 or stored. The forms shall be accessible and available for copying and
9 shall be stored in a location suitable to preserve their physical
10 integrity. The employer shall maintain and preserve the forms required
11 under this section for no less than seven years. The records shall
12 include an estimation of the total amount of each pesticide listed on
13 the forms.

14 (5) (~~After July 23, 1989,~~) If an employer (~~has failed~~) fails to
15 maintain and preserve the forms as required, the employer shall be
16 subject to any applicable penalties authorized under this chapter or
17 chapter 49.17 RCW.

18 (6) If activities for which forms are maintained cease at a
19 workplace, the forms shall be filed with the department. If an
20 employer subject to this section is succeeded or replaced in that
21 function by another person, the person who succeeds or replaces the
22 employer shall retain the forms as required by this section but is not
23 liable for violations committed by the former employer under this
24 chapter or rules adopted under this chapter, including violations
25 relating to the retention and preservation of forms.

26 (7) The employer shall provide copies of the forms, on request, to
27 an employee or the employee's designated representative (~~in the case~~
28 ~~of an industrial insurance claim filed under Title 51 RCW with the~~
29 ~~department of labor and industries~~)), treating medical personnel, the
30 pesticide incident reporting and tracking review panel, or department

1 representative. The designated representative or treating medical
2 personnel are not required to identify the employee represented or
3 treated. The department shall keep the name of any affected employee
4 confidential in accordance with RCW 49.17.080(1). If an employee, a
5 designated representative, treating medical personnel, or the pesticide
6 incident reporting and tracking review panel requests a copy of a form
7 and the employer refuses to provide a copy, the requester shall notify
8 the department of the request and the employer's refusal. Within seven
9 working days, the department shall request that the employer provide
10 the department with all pertinent copies, except that in a medical
11 emergency the request shall be made within two working days. The
12 employer shall provide copies of the form to the department within
13 twenty-four hours after the department's request.

14 ~~((8) The department of labor and industries and the department of
15 agriculture shall jointly adopt, by rule, one form that satisfies the
16 information requirements of this section and RCW 17.21.100. Records
17 kept by the employer on the prescribed form under RCW 17.21.100 may be
18 used to comply with the workplace pesticide list information
19 requirements under this section.))~~