

**SENATE BILL 5253**

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**State of Washington**

**52nd Legislature**

**1991 Regular Session**

**By** Senators Murray, Snyder, Owen, L. Kreidler, Wojahn, Gaspard, McMullen, Niemi, A. Smith, Skratek, Moore, Talmadge, Williams, Madsen, Vognild, Pelz, Rinehart and Sutherland.

Read first time January 24, 1991. Referred to Committee on Environment & Natural Resources.

1 AN ACT Relating to pesticide application notification; amending RCW  
2 17.21.020 and 15.58.040; adding new sections to chapter 17.21 RCW; and  
3 making an appropriation.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 17.21 RCW  
6 to read as follows:

7 (1) If a pesticide is applied to public and private school grounds,  
8 day care centers, public recreation areas, or residential property by  
9 a certified applicator, the pesticide-treated area must be posted with  
10 warning signs provided by the applicator in accordance with the  
11 requirements of this section.

12 (2) If pesticide warning signs are required under this section, the  
13 certified applicator must post signs visible from all usual points of  
14 entry to the pesticide-treated area. If there are no usual points of  
15 entry or the area is adjacent to an unfenced public right of way, signs

1 must be posted (a) at each corner of the pesticide-treated area, and  
2 (b) at intervals not exceeding one hundred feet, or (c) at other  
3 locations approved by the department that provide maximum visibility.

4 (3) The signs must be posted during application and for at least  
5 the following forty-eight hours. The owner or occupant of the property  
6 is responsible for disposition of the signs after the posting period.

7 (4) Signs must be legible for the duration of use. Signs shall  
8 contain a prominent symbol approved by the department by rule, and  
9 wording shall be in English and other appropriate languages as  
10 determined by the department. Signs shall meet the minimum  
11 specifications adopted by rule by the department, which shall include,  
12 at a minimum, the following requirements:

13 (a) Signs must be at least eight and one-half inches by five and  
14 one-half inches in size;

15 (b) Signs must include an information box covering at least fifty  
16 percent of the area of the sign containing: (i) The words "NOTICE!--  
17 Area sprayed"; (ii) the name of the pesticide; (iii) pesticide label  
18 signal word; and (iv) information identifying the applicator, and an  
19 address and telephone number where additional information can be  
20 obtained. If the department determines that such information is too  
21 lengthy to be contained in the information box in easily readable print  
22 size, the department may approve an alternative sign; and

23 (c) The date of application must be indicated on the signs.

24 **Sec. 2.** RCW 17.21.020 and 1989 c 380 s 33 are each amended to read  
25 as follows:

26 Unless the context clearly requires otherwise, the definitions in  
27 this section apply throughout this chapter.

28 (1) "Agricultural commodity" means any plant or part of a plant, or  
29 animal, or animal product, produced by a person (including farmers,

1 ranchers, vineyardists, plant propagators, Christmas tree growers,  
2 aquaculturists, floriculturists, orchardists, foresters, or other  
3 comparable persons) primarily for sale, consumption, propagation, or  
4 other use by people or animals.

5 (2) "Apparatus" means any type of ground, water, or aerial  
6 equipment, device, or contrivance using motorized, mechanical, or  
7 pressurized power and used to apply any pesticide on land and anything  
8 that may be growing, habitating, or stored on or in such land, but  
9 shall not include any pressurized handsized household device used to  
10 apply any pesticide, or any equipment, device, or contrivance of which  
11 the person who is applying the pesticide is the source of power or  
12 energy in making such pesticide application, or any other small  
13 equipment, device, or contrivance that is transported in a piece of  
14 equipment licensed under this chapter as an apparatus.

15 (3) "Arthropod" means any invertebrate animal that belongs to the  
16 phylum arthropoda, which in addition to insects, includes allied  
17 classes whose members are wingless and usually have more than six legs;  
18 for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

19 (4) "Certified applicator" means any individual who is licensed as  
20 a commercial pesticide applicator, commercial pesticide operator,  
21 public operator, private-commercial applicator, demonstration and  
22 research applicator, or certified private applicator, or any other  
23 individual who is certified by the director to use or supervise the use  
24 of any pesticide which is classified by the EPA as a restricted use  
25 pesticide or by the state as restricted to use by certified applicators  
26 only.

27 (5) "Commercial pesticide applicator" means any person who engages  
28 in the business of applying pesticides to the land of another.

29 (6) "Commercial pesticide operator" means any employee of a  
30 commercial pesticide applicator who uses or supervises the use of any

1 pesticide and who is required to be licensed under provisions of this  
2 chapter.

3 (7) "Defoliant" means any substance or mixture of substances  
4 intended to cause the leaves or foliage to drop from a plant with or  
5 without causing abscission.

6 (8) "Department" means the Washington state department of  
7 agriculture.

8 (9) "Desiccant" means any substance or mixture of substances  
9 intended to artificially accelerate the drying of plant tissues.

10 (10) "Device" means any instrument or contrivance intended to trap,  
11 destroy, control, repel, or mitigate pests, or to destroy, control,  
12 repel, or mitigate fungi, nematodes, or such other pests, as may be  
13 designated by the director, but not including equipment used for the  
14 application of pesticides when sold separately from the pesticides.

15 (11) "Direct supervision" by certified private applicators shall  
16 mean that the designated restricted use pesticide shall be applied for  
17 purposes of producing any agricultural commodity on land owned or  
18 rented by the applicator or the applicator's employer, by a competent  
19 person acting under the instructions and control of a certified private  
20 applicator who is available if and when needed, even though such  
21 certified private applicator is not physically present at the time and  
22 place the pesticide is applied. The certified private applicator shall  
23 have direct management responsibility and familiarity of the pesticide,  
24 manner of application, pest, and land to which the pesticide is being  
25 applied. Direct supervision by all other certified applicators means  
26 direct on-the-job supervision. Direct supervision of an aerial  
27 apparatus means the pilot of the aircraft must be appropriately  
28 certified.

29 (12) "Director" means the director of the department or a duly  
30 authorized representative.

1 (13) "Engage in business" means any application of pesticides by  
2 any person upon lands or crops of another.

3 (14) "EPA" means the United States environmental protection agency.

4 (15) "EPA restricted use pesticide" means any pesticide with  
5 restricted uses as classified for restricted use by the administrator,  
6 EPA.

7 (16) "FIFRA" means the federal insecticide, fungicide and  
8 rodenticide act as amended (61 Stat. 163, 7 U.S.C. Sec. 136 et seq.).

9 (17) "Fungi" means all nonchlorophyll-bearing thallophytes (all  
10 nonchlorophyll-bearing plants of lower order than mosses and  
11 liverworts); for example, rusts, smuts, mildews, molds, yeasts, and  
12 bacteria, except those on or in a living person or other animals.

13 (18) "Fungicide" means any substance or mixture of substances  
14 intended to prevent, destroy, repel, or mitigate any fungi.

15 (19) "Herbicide" means any substance or mixture of substances  
16 intended to prevent, destroy, repel, or mitigate any weed.

17 (20) "Insect" means any of the numerous small invertebrate animals  
18 whose bodies are more or less obviously segmented, and which for the  
19 most part belong to the class insecta, comprising six-legged, usually  
20 winged forms, as, for example, beetles, bugs, bees, flies, and to other  
21 allied classes of arthropods whose members are wingless and usually  
22 have more than six legs, for example, spiders, mites, ticks,  
23 centipedes, and isopod crustaceans.

24 (21) "Insecticide" means any substance or mixture of substances  
25 intended to prevent, destroy, repel, or mitigate any insects which may  
26 be present in any environment whatsoever.

27 (22) "Land" means all land and water areas, including airspace and  
28 all plants, animals, structures, buildings, devices, and contrivances,  
29 appurtenant to or situated on, fixed or mobile, including any used for  
30 transportation.

1 (23) "Nematocide" means any substance or mixture of substances  
2 intended to prevent, destroy, repel, or mitigate nematodes.

3 (24) "Nematode" means any invertebrate animal of the phylum  
4 nemathelminthes and class nematoda, that is, unsegmented round worms  
5 with elongated, fusiform, or saclike bodies covered with cuticle, and  
6 inhabiting soil, water, plants or plant parts, may also be called nemas  
7 or eelworms.

8 (25) "Person" means any individual, partnership, association,  
9 corporation, or organized group of persons whether or not incorporated.

10 (26) "Pest" means, but is not limited to, any insect, rodent,  
11 nematode, snail, slug, weed, and any form of plant or animal life or  
12 virus, except virus on or in a living person or other animal, which is  
13 normally considered to be a pest, or which the director may declare to  
14 be a pest.

15 (27) "Pesticide" means, but is not limited to:

16 (a) Any substance or mixture of substances intended to prevent,  
17 destroy, control, repel, or mitigate any insect, rodent, snail, slug,  
18 fungus, weed, and any other form of plant or animal life or virus  
19 except virus on or in a living person or other animal which is normally  
20 considered to be a pest or which the director may declare to be a pest;

21 (b) Any substance or mixture of substances intended to be used as  
22 a plant regulator, defoliant or desiccant; and

23 (c) Any spray adjuvant, such as a wetting agent, spreading agent,  
24 deposit builder, adhesive, emulsifying agent, deflocculating agent,  
25 water modifier, or similar agent with or without toxic properties of  
26 its own intended to be used with any other pesticide as an aid to the  
27 application or effect thereof, and sold in a package or container  
28 separate from that of the pesticide with which it is to be used.

29 (28) "Pesticide advisory board" means the pesticide advisory board  
30 as provided for in this chapter.

1 (29) "Plant regulator" means any substance or mixture of substances  
2 intended through physiological action, to accelerate or retard the rate  
3 of growth or maturation, or to otherwise alter the behavior of  
4 ornamental or crop plants or their produce, but shall not include  
5 substances insofar as they are intended to be used as plant nutrients,  
6 trace elements, nutritional chemicals, plant inoculants, or soil  
7 amendments.

8 (30) "Private applicator" means a certified applicator who uses or  
9 is in direct supervision of the use of (a) any EPA restricted use  
10 pesticide; or (b) any restricted use pesticide restricted to use only  
11 by certified applicators by the director, for the purposes of producing  
12 any agricultural commodity and for any associated noncrop application  
13 on land owned or rented by the applicator or the applicator's employer  
14 or if applied without compensation other than trading of personal  
15 services between producers of agricultural commodities on the land of  
16 another person.

17 (31) "Private-commercial applicator" means a certified applicator  
18 who uses or supervises the use of (a) any EPA restricted use pesticide  
19 or (b) any restricted use pesticide restricted to use only by certified  
20 applicators for purposes other than the production of any agricultural  
21 commodity on lands owned or rented by the applicator or the  
22 applicator's employer.

23 (32) "Restricted use pesticide" means any pesticide or device  
24 which, when used as directed or in accordance with a widespread and  
25 commonly recognized practice, the director determines, subsequent to a  
26 hearing, requires additional restrictions for that use to prevent  
27 unreasonable adverse effects on the environment including people,  
28 lands, beneficial insects, animals, crops, and wildlife, other than  
29 pests.

1 (33) "Rodenticide" means any substance or mixture of substances  
2 intended to prevent, destroy, repel, or mitigate rodents, or any other  
3 vertebrate animal which the director may declare by rule to be a pest.

4 (34) "Snails or slugs" include all harmful mollusks.

5 (35) "Unreasonable adverse effects on the environment" means any  
6 unreasonable risk to people or the environment taking into account the  
7 economic, social, and environmental costs and benefits of the use of  
8 any pesticide, or as otherwise determined by the director.

9 (36) "Weed" means any plant which grows where not wanted.

10 (37) "Residential property" includes property less than one acre  
11 in size zoned as residential by the city, town, or county.

12 (38) "Dwelling" means a building or structure or portion of a  
13 building or structure that is occupied in whole or in part as the home,  
14 residence, or sleeping place for one or two families.

15 (39) "Multiple dwelling" means a dwelling occupied by or that is  
16 occupied as the residence or home of three or more families living  
17 independent of each other.

18 (40) "Multiple dwelling unit" means that portion of a multiple  
19 dwelling occupied by one or more persons as the residence or home of  
20 such persons.

21 (41) "Premises" means land and improvements or appurtenances or any  
22 part of land and improvements or appurtenances.

23 NEW SECTION. Sec. 3. A new section is added to chapter 17.21 RCW  
24 to read as follows:

25 (1) Every certified applicator must, prior to the application of  
26 pesticide on or within a dwelling on residential property, supply the  
27 occupants with a written copy of the information, specifically for  
28 health warnings to humans and pets, contained on the label of the  
29 pesticide to be applied.



1       (2) Except as provided in subsection (3) of this section, every  
2 certified applicator must, prior to the application of pesticide within  
3 or on the premises of a multiple dwelling, building, or structure other  
4 than a dwelling in an area zoned as residential property, supply the  
5 owner or his or her agent, with a written copy of the information,  
6 specifically for health warnings to humans and pets, contained on the  
7 label of the pesticide to be applied. Prior to an application of  
8 pesticide the owner or agent must inform the occupants or residents of  
9 the multiple dwelling, building, or structure of the impending  
10 application and must provide written information specifically for  
11 health warnings to humans and pets in English or appropriate language  
12 as determined by the department.

13       (3) In the case where an occupant of a multiple dwelling unit  
14 retains a certified applicator to apply pesticides within the unit, the  
15 applicator must, prior to the application of a pesticide, supply any  
16 information, specifically for health warnings for humans and pets,  
17 contained on the label of the pesticides to the occupants.

18       NEW SECTION. **Sec. 4.** A new section is added to chapter 17.21 RCW  
19 to read as follows:

20       (1) Prior to a pesticide application on public or private school  
21 grounds, day care centers, public recreation areas, or residential  
22 property, the certified applicator must provide in writing, as part of  
23 the contract to the owner of the property or his or her agent, the  
24 following:

25       (a) The approximate date or dates of application;

26       (b) The number of applications and quantity;

27       (c) A list of substances to be applied, including brand names and  
28 generic names of active ingredients;

1 (d) Warnings that appear on the pesticide label pertinent to the  
2 protection of humans, animals, or the environment;

3 (e) The company name, address, telephone number, and the state  
4 certified applicator's license number.

5 (2) If the application date or dates specified become infeasible,  
6 the applicator must give the owner or his or her agent oral or written  
7 notice of the proposed alternative date or dates. The owner or his or  
8 her agent must approve the alternative date or dates before the  
9 pesticide is applied.

10 **Sec. 5.** RCW 15.58.040 and 1989 c 380 s 2 are each amended to read  
11 as follows:

12 (1) The director shall administer and enforce the provisions of  
13 this chapter and rules adopted under this chapter. All the authority  
14 and requirements provided for in chapter 34.05 RCW (Administrative  
15 Procedure Act) and chapter 42.30 RCW shall apply to this chapter in the  
16 adoption of rules including those requiring due notice and a hearing  
17 for the adoption of permanent rules.

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

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

24 (b) Determining that certain pesticides are highly toxic to people.  
25 For the purpose of this chapter, highly toxic pesticide means any  
26 pesticide that conforms to the criteria in 40 C.F.R. Sec. 162.10 for  
27 toxicity category I due to oral inhalation or dermal toxicity. The  
28 director shall publish a list of all pesticides, determined to be  
29 highly toxic, by their common or generic name and their trade or brand

1 name if practical. Such list shall be kept current and shall, upon  
2 request, be made available to any interested party;

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

5 (d) The collection and examination of samples of pesticides or  
6 devices;

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

9 (f) Restricting or prohibiting the use of certain types of  
10 containers or packages for specific pesticides. These restrictions may  
11 apply to type of construction, strength, and/or size to alleviate  
12 danger of spillage, breakage, misuse, or any other hazard to the  
13 public. The director shall be guided by federal regulations concerning  
14 pesticide containers;

15 (g) Procedures in making of pesticide recommendations;

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

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

1 (j) Regulating the labeling of devices; and  
2 (k) Public notice, including warning signs and information  
3 materials, for public distribution at retail sales outlets where  
4 pesticides are sold for home and garden use.

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

10 NEW SECTION. Sec. 6. A new section is added to chapter 17.21 RCW  
11 to read as follows:

12 State and local health departments and mosquito control districts  
13 when conducting mosquito control operations are exempt from the posting  
14 applications and notification provisions of this chapter.

15 NEW SECTION. Sec. 7. A new section is added to chapter 17.21 RCW  
16 to read as follows:

17 (1) The department shall establish pesticide use education and  
18 information programs for the public to include, but not be limited to,  
19 the following subjects:

20 (a) Importance of following manufacturers' instructions for the  
21 product;

22 (b) The harmful effects of product misuse and misapplications;

23 (c) Impacts upon human health, animals, and birds;

24 (d) Environmental impacts including impacts on surface and ground  
25 water quality;

26 (e) Proper container storage or disposal after usage.

27 (2) The department shall establish a home and garden pesticide  
28 product telephone hotline to respond to public inquiries.

1 (3) The department shall develop and produce informational  
2 materials, to include brochures, residential warning signs, and posters  
3 for distribution to retail outlets where home and garden pesticide  
4 products are sold.

5 (4) The department shall establish a six-member home and garden  
6 pesticide product advisory group in the development of the public  
7 education program. The director shall include representatives from the  
8 pesticide manufacturing industry, certified applicators, environmental  
9 community, the department of health, and the department of ecology.

10 (5) The home and garden pesticide product advisory group shall  
11 report to the appropriate legislative committees by June 30, 1992, on  
12 the program needs and priorities.

13 NEW SECTION. **Sec. 8.** The sum of forty-five thousand dollars, or  
14 as much thereof as may be necessary, is appropriated to the department  
15 of agriculture for the biennium ending June 30, 1993, from the state  
16 toxics control account for the state pesticide use education and  
17 information program.