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By Representatives Clements, Chandler, Cole and Boldt

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1 AN ACT Relating to the application of pesticides; amending RCW
2 17.21.020, 17.21.100, 17.21.420, and 17.21.430; and adding a new
3 section to chapter 17.21 RCW.

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

5 **Sec. 1.** RCW 17.21.020 and 1994 c 283 s 1 are each amended to read
6 as follows:

7 Unless the context clearly requires otherwise, the definitions in
8 this section apply throughout this chapter.

9 (1) "Agricultural commodity" means any plant or part of a plant, or
10 animal, or animal product, produced by a person (including farmers,
11 ranchers, vineyardists, plant propagators, Christmas tree growers,
12 aquaculturists, floriculturists, orchardists, foresters, or other
13 comparable persons) primarily for sale, consumption, propagation, or
14 other use by people or animals.

15 (2) "Agricultural land" means land on which an agricultural
16 commodity is produced or land that is in a government-recognized
17 conservation reserve program. This definition does not apply to
18 private gardens where agricultural commodities are produced for
19 personal consumption.

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

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

15 (5) "Certified applicator" means any individual who is licensed as
16 a commercial pesticide applicator, commercial pesticide operator,
17 public operator, private-commercial applicator, demonstration and
18 research applicator, or certified private applicator, or any other
19 individual who is certified by the director to use or supervise the use
20 of any pesticide which is classified by the EPA or the director as a
21 restricted use pesticide.

22 (6) "Commercial pesticide applicator" means any person who engages
23 in the business of applying pesticides to the land of another.

24 (7) "Commercial pesticide operator" means any employee of a
25 commercial pesticide applicator who uses or supervises the use of any
26 pesticide and who is required to be licensed under provisions of this
27 chapter.

28 (8) "Defoliant" means any substance or mixture of substances
29 intended to cause the leaves or foliage to drop from a plant with or
30 without causing abscission.

31 (9) "Department" means the Washington state department of
32 agriculture.

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

35 (11) "Device" means any instrument or contrivance intended to trap,
36 destroy, control, repel, or mitigate pests, but not including equipment
37 used for the application of pesticides when sold separately from the
38 pesticides.

1 (12) "Direct supervision" by certified private applicators shall
2 mean that the designated restricted use pesticide shall be applied for
3 purposes of producing any agricultural commodity on land owned or
4 rented by the applicator or the applicator's employer, by a competent
5 person acting under the instructions and control of a certified private
6 applicator who is available if and when needed, even though such
7 certified private applicator is not physically present at the time and
8 place the pesticide is applied. The certified private applicator shall
9 have direct management responsibility and familiarity of the pesticide,
10 manner of application, pest, and land to which the pesticide is being
11 applied. Direct supervision by all other certified applicators means
12 direct on-the-job supervision and shall require that the certified
13 applicator be physically present at the application site and that the
14 person making the application be in voice and visual contact with the
15 certified applicator at all times during the application. Direct
16 supervision of an aerial apparatus means the pilot of the aircraft must
17 be appropriately certified.

18 (13) "Director" means the director of the department or a duly
19 authorized representative.

20 (14) "Engage in business" means any application of pesticides by
21 any person upon lands or crops of another.

22 (15) "EPA" means the United States environmental protection agency.

23 (16) "EPA restricted use pesticide" means any pesticide classified
24 for restricted use by the administrator, EPA.

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

27 (18) "Fumigant" means any pesticide product or combination of
28 products that is a vapor or gas or forms a vapor or gas on application
29 and whose method of pesticidal action is through the gaseous state.

30 (19) "Fungi" means all nonchlorophyll-bearing thallophytes (all
31 nonchlorophyll-bearing plants of lower order than mosses and
32 liverworts); for example, rusts, smuts, mildews, molds, and yeasts,
33 except those on or in a living person or other animals.

34 (20) "Fungicide" means any substance or mixture of substances
35 intended to prevent, destroy, repel, or mitigate any fungi.

36 (21) "Herbicide" means any substance or mixture of substances
37 intended to prevent, destroy, repel, or mitigate any weed or other
38 higher plant.

1 (22) "Immediate service call" means a landscape application to
2 satisfy an emergency customer request for service, or a treatment to
3 control a pest to landscape plants.

4 (23) "Indoor application" means an application of a pesticide or
5 pesticides, by a person licensed or certified under this chapter to
6 make such applications, made to an interior room or hallway in a
7 building and made by or made on behalf of the owner, operator, or
8 manager of the building. It does not mean an application of a
9 pesticide or pesticides made in the crawl space beneath a building nor
10 the application of a pesticide or pesticides by the licensed or
11 certified person to the person's own office or residence within a
12 building.

13 (24) "Insect" means any small invertebrate animal, in any life
14 stage, whose adult form is segmented and which generally belongs to the
15 class insecta, comprised of six-legged, usually winged forms, as, for
16 example, beetles, bugs, bees, and flies. The term insect shall also
17 apply to other allied classes of arthropods whose members are wingless
18 and usually have more than six legs, for example, spiders, mites,
19 ticks, centipedes, and isopod crustaceans.

20 (~~(24)~~) (25) "Insecticide" means any substance or mixture of
21 substances intended to prevent, destroy, repel, or mitigate any insect.

22 (~~(25)~~) (26) "Land" means all land and water areas, including
23 airspace and all plants, animals, structures, buildings, devices, and
24 contrivances, appurtenant to or situated on, fixed or mobile, including
25 any used for transportation.

26 (~~(26)~~) (27) "Landscape application" means an application by a
27 certified applicator of any EPA registered pesticide to any exterior
28 landscape plants found around residential property, commercial
29 properties such as apartments or shopping centers, parks, golf courses,
30 schools including nursery schools and licensed day cares, or cemeteries
31 or similar areas. This definition shall not apply to: (a)
32 Applications made by certified private applicators; (b) mosquito
33 abatement, gypsy moth eradication, or similar wide-area pest control
34 programs sponsored by governmental entities; and (c) commercial
35 pesticide applicators making structural applications.

36 (~~(27)~~) (28) "Nematocide" means any substance or mixture of
37 substances intended to prevent, destroy, repel, or mitigate nematodes.

38 (~~(28)~~) (29) "Nematode" means any invertebrate animal of the
39 phylum nemathelminthes and class nematoda, that is, unsegmented round

1 worms with elongated, fusiform, or saclike bodies covered with cuticle,
2 and inhabiting soil, water, plants or plant parts. Nematodes may also
3 be called nemas or eelworms.

4 ~~((+29+))~~ (30) "Open to the public" means normally and obviously
5 open to the general public during normal business hours.

6 (31) "Person" means any individual, partnership, association,
7 corporation, or organized group of persons whether or not incorporated.

8 ~~((+30+))~~ (32) "Pest" means, but is not limited to, any insect,
9 rodent, nematode, snail, slug, weed, and any form of plant or animal
10 life or virus, except virus, bacteria, or other microorganisms on or in
11 a living person or other animal or in or on processed food or beverages
12 or pharmaceuticals, which is normally considered to be a pest, or which
13 the director may declare to be a pest.

14 ~~((+31+))~~ (33) "Pesticide" means, but is not limited to:

15 (a) Any substance or mixture of substances intended to prevent,
16 destroy, control, repel, or mitigate any pest;

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

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

25 ~~((+32+))~~ (34) "Pesticide advisory board" means the pesticide
26 advisory board as provided for in this chapter.

27 ~~((+33+))~~ (35) "Plant regulator" means any substance or mixture of
28 substances intended through physiological action, to accelerate or
29 retard the rate of growth or maturation, or to otherwise alter the
30 behavior of ornamental or crop plants or their produce, but shall not
31 include substances insofar as they are intended to be used as plant
32 nutrients, trace elements, nutritional chemicals, plant inoculants, or
33 soil amendments.

34 ~~((+34+))~~ (36) "Private applicator" means a certified applicator who
35 uses or is in direct supervision of the use of any pesticide classified
36 by the EPA or the director as a restricted use pesticide, for the
37 purposes of producing any agricultural commodity and for any associated
38 noncrop application on land owned or rented by the applicator or the
39 applicator's employer or if applied without compensation other than

1 trading of personal services between producers of agricultural
2 commodities on the land of another person.

3 ~~((+35+))~~ (37) "Private-commercial applicator" means a certified
4 applicator who uses or supervises the use of any pesticide classified
5 by the EPA or the director as a restricted use pesticide for purposes
6 other than the production of any agricultural commodity on lands owned
7 or rented by the applicator or the applicator's employer.

8 ~~((+36+))~~ (38) "Residential property" includes property less than
9 one acre in size zoned as residential by a city, town, or county, but
10 does not include property zoned as agricultural or agricultural
11 homesites.

12 ~~((+37+))~~ (39) "Restricted use pesticide" means any pesticide or
13 device which, when used as directed or in accordance with a widespread
14 and commonly recognized practice, the director determines, subsequent
15 to a hearing, requires additional restrictions for that use to prevent
16 unreasonable adverse effects on the environment including people,
17 lands, beneficial insects, animals, crops, and wildlife, other than
18 pests.

19 ~~((+38+))~~ (40) "Rodenticide" means any substance or mixture of
20 substances intended to prevent, destroy, repel, or mitigate rodents, or
21 any other vertebrate animal which the director may declare by rule to
22 be a pest.

23 ~~((+39+))~~ (41) "Snails or slugs" include all harmful mollusks.

24 ~~((+40+))~~ (42) "Unreasonable adverse effects on the environment"
25 means any unreasonable risk to people or the environment taking into
26 account the economic, social, and environmental costs and benefits of
27 the use of any pesticide, or as otherwise determined by the director.

28 ~~((+41+))~~ (43) "Weed" means any plant which grows where it is not
29 wanted.

30 **Sec. 2.** RCW 17.21.100 and 1994 c 283 s 9 are each amended to read
31 as follows:

32 (1) Certified applicators licensed under the provisions of this
33 chapter, persons required to be licensed under this chapter, all
34 persons applying pesticides to more than one acre of agricultural land
35 in a calendar year, including public entities engaged in roadside
36 spraying of pesticides, and all other persons making landscape
37 applications of pesticides to types of property listed in RCW

1 17.21.410(1) (b), (c), (d), and (e), shall keep records for each
2 application which shall include the following information:

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

4 (b) The year, month, day and beginning and ending time of the
5 application of the pesticide each day the pesticide was applied;

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

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

10 (e) The amount of pesticide applied per acre or other appropriate
11 measure;

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

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

15 (h) The licensed applicator's name, address, and telephone number
16 and the name of the individual or individuals making the application
17 and their license number, if applicable;

18 (i) The direction and estimated velocity of the wind during the
19 time the pesticide was applied. This subsection (i) shall not apply to
20 applications of baits in bait stations and pesticide applications
21 within structures; and

22 (j) Any other reasonable information required by the director in
23 rule.

24 (2) If the application is an indoor application in a building that
25 is open to the public, the records shall state whether the application
26 area will be ventilated to the outdoors during the twelve hours
27 immediately following the application and during any reentry interval
28 established for the pesticide applied.

29 (3)(a) The required information shall be recorded on the same day
30 that a pesticide is applied.

31 (b) A commercial pesticide applicator who applies a pesticide to an
32 agricultural crop or agricultural lands shall provide a copy of the
33 records required under subsection (1) of this section for the
34 application to the owner, or to the lessee if applied on behalf of the
35 lessee, of the lands to which the pesticide is applied. Records
36 provided by a commercial pesticide applicator to the owner or lessee of
37 agricultural lands under this subsection need not be provided on a form
38 adopted by the department.

1 (~~(3)~~) (4) The records required under this section shall be
2 maintained and preserved by the licensed pesticide applicator or such
3 other person or entity applying the pesticides for no less than seven
4 years from the date of the application of the pesticide to which such
5 records refer. If the pesticide was applied by a commercial pesticide
6 applicator to the agricultural crop or agricultural lands of a person
7 who employs one or more employees, as "employee" is defined in RCW
8 49.70.020, the records shall also be kept by the employer for a period
9 of seven years from the date of the application of the pesticide to
10 which the records refer.

11 (~~(4)~~) (5)(a) The pesticide records shall be readily accessible to
12 the department for inspection. Copies of the records shall be provided
13 on request to: The department; the department of labor and industries;
14 treating health care personnel initiating diagnostic testing or therapy
15 for a patient with a suspected case of pesticide poisoning; the
16 department of health; the pesticide incident reporting and tracking
17 review panel; and, in the case of an industrial insurance claim filed
18 under Title 51 RCW with the department of labor and industries, the
19 employee or the employee's designated representative. In addition, the
20 director may require the submission of the records on a routine basis
21 within thirty days of the application of any restricted use pesticide
22 in prescribed areas controlling the use of the restricted use
23 pesticide. When a request for records is made under this subsection by
24 treating health care personnel and the record is required for
25 determining treatment, copies of the record shall be provided
26 immediately. For all other requests, copies of the record shall be
27 provided within seventy-two hours.

28 (b) Copies of records provided to a person or entity under this
29 subsection (~~(4)~~) (5) shall, if so requested, be provided on a form
30 adopted under subsection (~~(7)~~) (8) of this section. Information for
31 treating health care personnel shall be made immediately available by
32 telephone, if requested, with a copy of the records provided within
33 twenty-four hours.

34 (~~(5)~~) (6) If a request for a copy of the record is made under
35 this section from an applicator referred to in subsection (1) of this
36 section and the applicator refuses to provide a copy, the requester may
37 notify the department of the request and the applicator's refusal.
38 Within seven working days, the department shall request that the
39 applicator provide the department with all pertinent copies of the

1 records, except that in a medical emergency the request shall be made
2 within two working days. The applicator shall provide copies of the
3 records to the department within twenty-four hours after the
4 department's request.

5 ~~((+6+))~~ (7) The department shall include inspection of the records
6 required under this section as part of any on-site inspection conducted
7 under this chapter on agricultural lands. The inspection shall
8 determine whether the records are readily transferable to a form
9 adopted by the department and are readily accessible to employees.
10 However, no person subject to a department inspection may be inspected
11 under this subsection ~~((+6+))~~ (7) more than once in any calendar year,
12 unless a previous inspection has found recordkeeping violations. If
13 recordkeeping violations are found, the department may conduct
14 reasonable multiple inspections, pursuant to rules adopted by the
15 department. Nothing in this subsection ~~((+6+))~~ (7) limits the
16 department's inspection of records pertaining to pesticide-related
17 injuries, illnesses, fatalities, accidents, or complaints.

18 ~~((+7+))~~ (8) The department of agriculture and the department of
19 labor and industries shall jointly adopt, by rule, forms that satisfy
20 the information requirements of this section.

21 **Sec. 3.** RCW 17.21.420 and 1994 c 283 s 34 are each amended to read
22 as follows:

23 (1) The department shall develop a list of pesticide-sensitive
24 individuals. The list shall include any person with a documented
25 pesticide sensitivity who submits information to the department on an
26 application form developed by the department indicating the person's
27 pesticide sensitivity.

28 (2) An applicant for inclusion on the pesticide-sensitive list may
29 apply to the department at any time and shall provide the department,
30 on the department's form, the name of the applicant, street
31 address~~((7))~~ and telephone number of the ~~((applicant))~~ applicant's
32 principal place of residence, and of each property owner with property
33 abutting the applicant's principal place of residence, and the
34 telephone number and street address of the applicant's place of
35 employment. The pesticide sensitivity of an individual shall be
36 certified by a physician who holds a valid license to practice medicine
37 in this state. The ~~((lands))~~ residential address and the addresses of
38 property abutting the residential address listed on an application for

1 inclusion on the pesticide-sensitive list shall constitute the
2 pesticide notification area for that applicant for landscape and right
3 of way applications of pesticides. For highway or road rights of way,
4 a property abutting shall mean that portion of the property within one-
5 half mile of the principal place of residence. The residential address
6 and the employment address of the applicant listed on the application
7 constitute the pesticide notification area for that applicant for
8 indoor applications of pesticides.

9 (3) A person whose name has been included on the pesticide-
10 sensitive list shall notify the department of a need to update the list
11 as soon as possible after: (a) A change of applicant's residential or
12 employment address or telephone number; (b) a change in ownership of
13 property abutting a pesticide-sensitive individual; (c) a change in the
14 applicant's condition; or (d) the sensitivity is deemed to no longer
15 exist.

16 (4) The pesticide-sensitive list shall expire on December 31 of
17 each year. The department shall distribute application forms for the
18 new list at a reasonable time prior to the expiration of the current
19 list, including mailing an application form to each person on the
20 current list at the address given by the person in his or her most
21 recent application. Persons desiring to be placed on or remain on the
22 list shall submit a new application each year.

23 (5) The department shall distribute the list by January 1 and June
24 15 of each year to all certified applicators likely to make landscape
25 right of way or indoor applications. The list shall provide multiple
26 methods of accessing the information so that certified applicators
27 making landscape or indoor applications or right of way applications
28 are able to easily determine what properties and individuals require
29 notification for a specific application. An updated list shall be
30 distributed whenever deemed necessary by the department. Certified
31 applicators may request a list of newly registered individuals that
32 have been added to the list since the last distribution. Registered
33 individuals shall receive verification that their name has been placed
34 on the list.

35 **Sec. 4.** RCW 17.21.430 and 1992 c 176 s 4 are each amended to read
36 as follows:

37 (1) A certified applicator making a landscape, indoor, or right of
38 way application (~~((or a right of way application))~~) to the pesticide

1 notification area, as defined in RCW 17.21.420(2), of a person on the
2 pesticide-sensitive list shall notify the listed pesticide-sensitive
3 individual of the application. Notification shall be made at least two
4 hours prior to the scheduled application, or in the case of an
5 immediate service call, the applicator shall provide notification at
6 the time of the application.

7 (2) Notification under this section shall be made in writing, in
8 person, or by telephone, and shall disclose the date and approximate
9 time of the application. In the event a certified applicator is unable
10 to provide prior notification because of the absence or inaccessibility
11 of the individual, the applicator shall leave a written notice at the
12 residence of the individual listed on the pesticide-sensitive list at
13 the time of the application. If a person on the pesticide-sensitive
14 list lives in a multifamily dwelling such as an apartment or
15 condominium, the applicator shall notify the person on the list or
16 shall advise the manager or other property owner's representative to
17 notify the person on the list of the application.

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

20 A person who is licensed or certified under this chapter who makes
21 an indoor application of a pesticide or pesticides in a building that
22 is owned by an agency or unit of federal, state, or local government
23 shall place a marker at the principal entrances to the building
24 indicating that the building is to be treated, that information
25 regarding the material applied is available upon request, and listing
26 the business name and telephone number of the person making the
27 application. The marker shall remain in place until after the
28 pesticide is applied and until the expiration of any reentry interval
29 established for the pesticide. The person applying the pesticide shall
30 provide the information upon request and without charge. If
31 information regarding the material applied is requested under this
32 section, the information provided in response to the request shall
33 include the federal registration number of the pesticide applied, the
34 active ingredient of the pesticide applied, the rate of application and
35 amount applied, the site of the application, and the applicator's
36 license number.

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