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HOUSE BILL 2378

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State of Washington

56th Legislature

2000 Regular Session

By Representatives Linville, G. Chandler and Haigh; by request of Department of Agriculture

Read first time 01/12/2000. Referred to Committee on Agriculture & Ecology.

1 AN ACT Relating to structural pest inspections; amending RCW  
2 15.58.030, 15.58.150, 15.58.233, 15.58.040, and 15.58.210; adding new  
3 sections to chapter 15.58 RCW; prescribing penalties; providing an  
4 effective date; and providing an expiration date.

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

6 **Sec. 1.** RCW 15.58.030 and 1992 c 170 s 1 are each amended to read  
7 as follows:

8 As used in this chapter the words and phrases defined in this  
9 section shall have the meanings indicated unless the context clearly  
10 requires otherwise.

11 (1) "Active ingredient" means any ingredient which will prevent,  
12 destroy, repel, control, or mitigate pests, or which will act as a  
13 plant regulator, defoliant, desiccant, or spray adjuvant.

14 (2) "Antidote" means the most practical immediate treatment in case  
15 of poisoning and includes first aid treatment.

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

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

4 (5) "Department" means the Washington state department of  
5 agriculture.

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

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

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

15 (9) "Distribute" means to offer for sale, hold for sale, sell,  
16 barter, or supply pesticides in this state.

17 (10) "EPA" means the United States environmental protection agency.

18 (11) "EPA restricted use pesticide" means any pesticide with  
19 restricted uses as classified for restricted use by the administrator,  
20 EPA.

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

23 (13) "Fungi" means all nonchlorophyll-bearing thallophytes (all  
24 nonchlorophyll-bearing plants of a lower order than mosses and  
25 liverworts); for example, rusts, smuts, mildews, molds, yeasts, and  
26 bacteria, except those on or in living persons or other animals.

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

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

31 (16) "Inert ingredient" means an ingredient which is not an active  
32 ingredient.

33 (17) "Ingredient statement" means a statement of the name and  
34 percentage of each active ingredient together with the total percentage  
35 of the inert ingredients in the pesticide, and when the pesticide  
36 contains arsenic in any form, the ingredient statement shall also  
37 include percentages of total and water soluble arsenic, each calculated  
38 as elemental arsenic. In the case of a spray adjuvant the ingredient  
39 statement need contain only the names of the principal functioning

1 agents and the total percentage of the constituents ineffective as  
2 spray adjuvants. If more than three functioning agents are present,  
3 only the three principal ones need be named.

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

11 (19) "Insecticide" means any substance or mixture of substances  
12 intended to prevent, destroy, repel, or mitigate any insects which may  
13 be present in any environment whatsoever.

14 (20) "Inspection control number" means a number obtained from the  
15 department that is recorded on wood destroying organism inspection  
16 reports issued by a structural pest inspector in conjunction with the  
17 transfer, exchange, or refinancing of any structure.

18 (21) "Label" means the written, printed, or graphic matter on, or  
19 attached to, the pesticide, device, or immediate container, and the  
20 outside container or wrapper of the retail package.

21 (~~(21)~~) (22) "Labeling" means all labels and other written,  
22 printed, or graphic matter:

23 (a) Upon the pesticide, device, or any of its containers or  
24 wrappers;

25 (b) Accompanying the pesticide, or referring to it in any other  
26 media used to disseminate information to the public; and

27 (c) To which reference is made on the label or in literature  
28 accompanying or referring to the pesticide or device except when  
29 accurate nonmisleading reference is made to current official  
30 publications of the department, United States departments of  
31 agriculture; interior; education; health and human services; state  
32 agricultural colleges; and other similar federal or state institutions  
33 or agencies authorized by law to conduct research in the field of  
34 pesticides.

35 (~~(22)~~) (23) "Land" means all land and water areas, including  
36 airspace and all plants, animals, structures, buildings, devices and  
37 contrivances, appurtenant thereto or situated thereon, fixed or mobile,  
38 including any used for transportation.

1       (~~(23)~~) (24) "Master license system" means the mechanism  
2 established by chapter 19.02 RCW by which master licenses, endorsed for  
3 individual state-issued licenses, are issued and renewed using a master  
4 application and a master license expiration date common to each  
5 renewable license endorsement.

6       (~~(24)~~) (25) "Nematocide" means any substance or mixture of  
7 substances intended to prevent, destroy, repel, or mitigate nematodes.

8       (~~(25)~~) (26) "Nematode" means any invertebrate animal of the  
9 phylum nemathelminthes and class nematoda, that is, unsegmented round  
10 worms with elongated, fusiform, or saclike bodies covered with cuticle,  
11 and inhabiting soil, water, plants or plant parts, may also be called  
12 nemas or eelworms.

13       (~~(26)~~) (27) "Person" means any individual, partnership,  
14 association, corporation, or organized group of persons whether or not  
15 incorporated.

16       (~~(27)~~) (28) "Pest" means, but is not limited to, any insect,  
17 rodent, nematode, snail, slug, weed and any form of plant or animal  
18 life or virus, except virus on or in a living person or other animal,  
19 which is normally considered to be a pest or which the director may  
20 declare to be a pest.

21       (~~(28)~~) (29) "Pest control consultant" means any individual who  
22 acts as a structural pest (~~control~~) inspector, who sells or offers  
23 for sale at other than a licensed pesticide dealer outlet or location  
24 where they are employed, or who offers or supplies technical advice,  
25 supervision, or aid, or makes recommendations to the user of:

26       (a) Highly toxic pesticides, as determined under RCW 15.58.040;

27       (b) EPA restricted use pesticides or restricted use pesticides  
28 which are restricted by rule to distribution by licensed pesticide  
29 dealers only; or

30       (c) Any other pesticide except those pesticides which are labeled  
31 and intended for home and garden use only.

32       (~~(29)~~) (30) "Pesticide" means, but is not limited to:

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

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

1 (c) Any spray adjuvant.

2 (~~(30)~~) (31) "Pesticide advisory board" means the pesticide  
3 advisory board as provided for in the Washington pesticide application  
4 act.

5 (~~(31)~~) (32) "Pesticide dealer" means any person who distributes  
6 any of the following pesticides:

7 (a) Highly toxic pesticides, as determined under RCW 15.58.040;

8 (b) EPA restricted use pesticides or restricted use pesticides  
9 which are restricted by rule to distribution by licensed pesticide  
10 dealers only; or

11 (c) Any other pesticide except those pesticides which are labeled  
12 and intended for home and garden use only.

13 (~~(32)~~) (33) "Pesticide dealer manager" means the owner or other  
14 individual supervising pesticide distribution at one outlet holding a  
15 pesticide dealer license.

16 (~~(33)~~) (34) "Plant regulator" means any substance or mixture of  
17 substances intended through physiological action, to accelerate or  
18 retard the rate of growth or maturation, or to otherwise alter the  
19 behavior of ornamental or crop plants or their produce, but shall not  
20 include substances insofar as they are intended to be used as plant  
21 nutrients, trace elements, nutritional chemicals, plant inoculants, or  
22 soil amendments.

23 (~~(34)~~) (35) "Registrant" means the person registering any  
24 pesticide under the provisions of this chapter.

25 (~~(35)~~) (36) "Restricted use pesticide" means any pesticide or  
26 device which, when used as directed or in accordance with a widespread  
27 and commonly recognized practice, the director determines, subsequent  
28 to a hearing, requires additional restrictions for that use to prevent  
29 unreasonable adverse effects on the environment including people,  
30 lands, beneficial insects, animals, crops, and wildlife, other than  
31 pests.

32 (~~(36)~~) (37) "Rodenticide" means any substance or mixture of  
33 substances intended to prevent, destroy, repel, or mitigate rodents, or  
34 any other vertebrate animal which the director may declare by rule to  
35 be a pest.

36 (~~(37)~~) (38) "Spray adjuvant" means any wetting agent, spreading  
37 agent, deposit builder, adhesive, emulsifying agent, deflocculating  
38 agent, water modifier, or similar agent with or without toxic  
39 properties of its own, intended to be used with any other pesticide as

1 an aid to the application or to the effect of the pesticide, and which  
2 is in a package or container separate from that of the pesticide with  
3 which it is to be used.

4 ~~((+38+))~~ (39) "Special local needs registration" means a  
5 registration issued by the director pursuant to provisions of section  
6 24(c) of FIFRA.

7 ~~((+39+))~~ (40) "Structural pest ~~((control))~~ inspector" means any  
8 individual who performs the service of inspecting a building for wood  
9 destroying organisms, their damage, or conditions conducive to their  
10 infestation.

11 ~~((+40+))~~ (41) "Unreasonable adverse effects on the environment"  
12 means any unreasonable risk to people or the environment taking into  
13 account the economic, social, and environmental costs and benefits of  
14 the use of any pesticide, or as otherwise determined by the director.

15 ~~((+41+))~~ (42) "Weed" means any plant which grows where not wanted.

16 (43) Wood destroying organism inspection report" means any written  
17 document that reports or comments on the presence or absence of wood  
18 destroying organisms, their damage, and/or conducive conditions leading  
19 to the establishment of such organisms.

20 NEW SECTION. Sec. 2. A new section is added to chapter 15.58 RCW  
21 to read as follows:

22 It is unlawful for any person to issue a wood destroying organism  
23 inspection report, prepared in conjunction with the transfer, exchange,  
24 or refinancing of any structure, without recording a unique inspection  
25 control number on all reports associated with the transaction.

26 NEW SECTION. Sec. 3. A new section is added to chapter 15.58 RCW  
27 to read as follows:

28 (1) The director shall not issue a license to any person who  
29 intends to act as a structural pest inspector until the person has  
30 furnished evidence of financial responsibility.

31 (2) Evidence of financial responsibility shall consist of either  
32 a surety bond or an errors and omissions insurance policy or  
33 certification thereof, protecting persons who may suffer legal damages  
34 as a result of actions by the structural pest inspector. The director  
35 shall not accept a surety bond or insurance policy except from  
36 authorized insurers in this state.

1 (3) Evidence of financial responsibility shall be supplied to the  
2 department on a financial responsibility insurance certificate or  
3 surety bond form.

4 NEW SECTION. **Sec. 4.** A new section is added to chapter 15.58 RCW  
5 to read as follows:

6 (1) The following requirements apply to the amount of surety bond  
7 or insurance required for structural pest inspectors.

8 (a) The amount of the surety bond or errors and omissions  
9 insurance, as provided for in section 3 of this act, shall be not less  
10 than twenty-five thousand dollars and fifty thousand dollars  
11 respectively. The surety bond or insurance policy shall be maintained  
12 at not less than the required sum at all times during the licensed  
13 period.

14 (b) The director shall be notified ten days before any reduction of  
15 insurance coverage at the request of the applicant or cancellation of  
16 the surety bond or insurance by the surety or insurer and by the  
17 insured.

18 (c) The total and aggregate of the surety and insurer for all  
19 claims is limited to the face of the surety bond or insurance policy.  
20 The director may accept a surety bond or insurance policy in the proper  
21 sum that has a deductible clause in an amount not exceeding five  
22 thousand dollars for the total amount of surety bond or insurance  
23 required by this section. If the applicant has not satisfied the  
24 requirement of the deductible amount in any prior legal claim the  
25 deductible clause shall not be accepted by the director unless the  
26 applicant furnishes the director with a surety bond or insurance policy  
27 which shall satisfy the amount of the deductible as to all claims that  
28 may arise.

29 (2) Insurance policies must be written on an occurrence basis.

30 (3) Insurance policies shall have a minimum three-year occurrence  
31 clause.

32 NEW SECTION. **Sec. 5.** A new section is added to chapter 15.58 RCW  
33 to read as follows:

34 Whenever a structural pest inspector's surety bond or insurance  
35 policy is reduced below the requirements of section 4 of this act, or  
36 whenever the person has failed to provide evidence of financial  
37 responsibility as required by section 3 of this act by the expiration

1 date of the previous surety bond or insurance policy, the director  
2 shall immediately suspend the person's structural pest inspector  
3 license until the person's surety bond or insurance policy again meets  
4 the requirements of section 4 of this act.

5 **Sec. 6.** RCW 15.58.150 and 1991 c 264 s 3 are each amended to read  
6 as follows:

7 (1) It is unlawful for any person to distribute within the state or  
8 deliver for transportation or transport in intrastate commerce or  
9 between points within this state through any point outside this state  
10 any of the following:

11 (a) Any pesticide which has not been registered pursuant to the  
12 provisions of this chapter;

13 (b) Any pesticide if any of the claims made for it or any of the  
14 directions for its use or other labeling differs from the  
15 representations made in connection with its registration, or if the  
16 composition of a pesticide differs from its composition as represented  
17 in connection with its registration: PROVIDED, That at the discretion  
18 of the director, a change in the labeling or formula of a pesticide may  
19 be made within a registration period without requiring reregistration  
20 of the product;

21 (c) Any pesticide unless it is in the registrant's or the  
22 manufacturer's unbroken immediate container and there is affixed to  
23 such container, and to the outside container or wrapper of the retail  
24 package, if there is one through which the required information on the  
25 immediate container cannot be clearly read, a label bearing the  
26 information required in this chapter and the rules adopted under this  
27 chapter;

28 (d) Any pesticide including arsenicals, fluorides, fluosilicates,  
29 and/or any other white powdered pesticides unless they have been  
30 distinctly denatured as to color, taste, odor, or form if so required  
31 by rule;

32 (e) Any pesticide which is adulterated or misbranded, or any device  
33 which is misbranded;

34 (f) Any pesticide in containers, violating rules adopted pursuant  
35 to RCW 15.58.040(2)(f) or pesticides found in containers which are  
36 unsafe due to damage.

37 (2) It shall be unlawful:

1 (a) To sell or deliver any pesticide to any person who is required  
2 by law or rules promulgated under such law to be certified, licensed,  
3 or have a permit to use or purchase the pesticide unless such person or  
4 the person's agent, to whom sale or delivery is made, has a valid  
5 certification, license, or permit to use or purchase the kind and  
6 quantity of such pesticide sold or delivered: PROVIDED, That, subject  
7 to conditions established by the director, such permit may be obtained  
8 immediately prior to sale or delivery from any person designated by the  
9 director;

10 (b) For any person to detach, alter, deface or destroy, wholly or  
11 in part, any label or labeling provided for in this chapter or rules  
12 adopted under this chapter, or to add any substance to, or take any  
13 substance from, a pesticide in a manner that may defeat the purpose of  
14 this chapter or the rules adopted thereunder;

15 (c) For any person to use or cause to be used any pesticide  
16 contrary to label directions or to regulations of the director if those  
17 regulations differ from or further restrict the label directions:  
18 PROVIDED, The compliance to the term "contrary to label directions" is  
19 enforced by the director consistent with the intent of this chapter;

20 (d) For any person to use for his or her own advantage or to  
21 reveal, other than to the director or proper officials or employees of  
22 the state, or to the courts of the state in response to a subpoena, or  
23 to physicians, or in emergencies to pharmacists and other qualified  
24 persons for use in the preparation of antidotes, any information  
25 relative to formulas of products acquired by authority of RCW  
26 15.58.060;

27 (e) For any person to make false, misleading, or erroneous  
28 statements or reports concerning any pest during or after a pest  
29 inspection or to fail to comply with criteria established by rule for  
30 structural pest (~~control~~) inspections;

31 (f) For any person to make false, misleading, or erroneous  
32 statements or reports in connection with any pesticide complaint or  
33 investigation;

34 (g) For any person to advertise as a licensed structural pest  
35 inspector without having a valid pest control consultant license in the  
36 category of structural pest inspector.

37 **Sec. 7.** RCW 15.58.233 and 1997 c 242 s 10 are each amended to read  
38 as follows:

1 (1) The director may renew any license issued under this chapter  
2 subject to the recertification standards identified in subsection (2)  
3 of this section or an examination requiring new knowledge that may be  
4 required to apply pesticides.

5 (2) Except as provided in subsection (3) of this section, all  
6 individuals licensed under this chapter shall meet the recertification  
7 standards identified in (a) or (b) of this subsection, every five  
8 years, in order to qualify for continuing licensure.

9 (a) (~~Licensed pesticide applicators~~) Individuals licensed under  
10 this chapter may qualify for continued licensure through accumulation  
11 of recertification credits. Individuals licensed under this chapter  
12 shall accumulate a minimum of forty department-approved credits every  
13 five years with no more than fifteen credits allowed per year.

14 (b) (~~Licensed pesticide applicators~~) Individuals licensed under  
15 this chapter may qualify for continued licensure through meeting the  
16 examination requirements necessary to become licensed in those areas in  
17 which the licensee operates.

18 (3) At the termination of a licensee's five-year recertification  
19 period, the director may waive the recertification requirements if the  
20 licensee can demonstrate that he or she is meeting comparable  
21 recertification standards through another state or jurisdiction or  
22 through a federal environmental protection agency-approved government  
23 agency plan.

24 **Sec. 8.** RCW 15.58.040 and 1997 c 242 s 1 are each amended to read  
25 as follows:

26 (1) The director shall administer and enforce the provisions of  
27 this chapter and rules adopted under this chapter. All the authority  
28 and requirements provided for in chapter 34.05 RCW (Administrative  
29 Procedure Act) and chapter 42.30 RCW shall apply to this chapter in the  
30 adoption of rules including those requiring due notice and a hearing  
31 for the adoption of permanent rules.

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

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

1 (b) Determining that certain pesticides are highly toxic to people.  
2 For the purpose of this chapter, highly toxic pesticide means any  
3 pesticide that conforms to the criteria in 40 C.F.R. Sec. 156.10 for  
4 toxicity category I due to oral inhalation or dermal toxicity. The  
5 director shall publish a list of all pesticides, determined to be  
6 highly toxic, by their common or generic name and their trade or brand  
7 name if practical. Such list shall be kept current and shall, upon  
8 request, be made available to any interested party;

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

11 (d) The collection and examination of samples of pesticides or  
12 devices;

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

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

21 (g) Procedures in making of pesticide recommendations;

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

35 (i) Label requirements of all pesticides required to be registered  
36 under provisions of this chapter;

37 (j) Regulating the labeling of devices;

38 (k) The establishment of criteria governing the conduct of a  
39 structural pest (~~control~~) inspection; and

1 (1) Declaring crops, when grown to produce seed specifically for  
2 crop reproduction purposes, to be nonfood and/or nonfeed sites of  
3 pesticide application. The director may include in the rule any  
4 restrictions or conditions regarding: (i) The application of  
5 pesticides to the designated crops; and (ii) the disposition of any  
6 portion of the treated crop.

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

12 **Sec. 9.** RCW 15.58.210 and 1997 c 242 s 6 are each amended to read  
13 as follows:

14 (1) Except as provided in subsection (2) of this section, no  
15 individual may perform services as a pest control consultant without  
16 obtaining a license from the director. The license shall expire  
17 annually on a date set by rule by the director. Except as provided in  
18 subsection (3) of this section, no individual may act as a structural  
19 pest (~~control~~) inspector without first obtaining from the director a  
20 pest control consultant license in the special category of structural  
21 pest (~~control~~) inspector. Application for a license shall be on a  
22 form prescribed by the director and shall be accompanied by a fee of  
23 forty-five dollars.

24 (2) The following are exempt from the licensing requirements of  
25 subsection (1) of this section when acting within the authorities of  
26 their existing licenses issued under chapter 17.21 RCW: Licensed  
27 commercial pesticide applicators and operators; licensed  
28 private-commercial applicators; and licensed demonstration and research  
29 applicators. The following are also exempt from the licensing  
30 requirements of subsection (1) of this section: Employees of federal,  
31 state, county, or municipal agencies when acting in their official  
32 governmental capacities; and pesticide dealer managers and employees  
33 working under the direct supervision of the pesticide dealer manager  
34 and only at a licensed pesticide dealer's outlet.

35 (3) The following are exempt from the structural pest (~~control~~)  
36 inspector licensing requirement: Individuals inspecting for damage  
37 caused by wood destroying organisms if such inspections are solely for  
38 the purpose of: (a) Repairing or making specific recommendations for

1 the repair of such damage, or (b) assessing a monetary value for the  
2 structure inspected. Individuals performing wood destroying organism  
3 inspections that incorporate but are not limited to the activities  
4 described in (a) or (b) of this subsection are not exempt from the  
5 structural pest (~~control~~) inspector licensing requirement.

6 NEW SECTION. **Sec. 10.** This act takes effect July 1, 2000.

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