
HOUSE BILL 1388

State of Washington

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By Representatives Upthegrove, Moeller, Morrell, Simpson, Roberts, P. Sullivan, Hunt, Cody, Darneille, Schual-Berke, Appleton, Dunshee, Chase, Campbell, Kenney, O'Brien, Kagi, McIntire, Santos, McDermott and Hudgins

Read first time 01/21/2005. Referred to Committee on Economic Development, Agriculture & Trade.

1 AN ACT Relating to pesticide application in school facilities;
2 amending RCW 17.21.020 and 17.21.150; adding new sections to chapter
3 17.21 RCW; and creating new sections.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that children are more
6 vulnerable than adults to the hazardous effects of pesticides. The
7 intent of this act is to limit, for the protection of students and
8 staff, the use of high hazard pesticides in and on school facilities.

9 **Sec. 2.** RCW 17.21.020 and 2004 c 100 s 1 are each amended to read
10 as follows:

11 Unless the context clearly requires otherwise, the definitions in
12 this section apply throughout this chapter.

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

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

6 (3) "Antimicrobial pesticide" means a pesticide that is used for
7 the control of microbial pests, including but not limited to viruses,
8 bacteria, algae, and protozoa, and is intended for use as a
9 disinfectant or sanitizer.

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

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

24 (6) "Certified applicator" means any individual who is licensed as
25 a commercial pesticide applicator, commercial pesticide operator,
26 public operator, private-commercial applicator, demonstration and
27 research applicator, private applicator, limited private applicator,
28 rancher private applicator, or any other individual who is certified by
29 the director to use or supervise the use of any pesticide which is
30 classified by the EPA or the director as a restricted use pesticide.

31 (7) "Commercial pesticide applicator" means any person who engages
32 in the business of applying pesticides to the land of another.

33 (8) "Commercial pesticide operator" means any employee of a
34 commercial pesticide applicator who uses or supervises the use of any
35 pesticide and who is required to be licensed under provisions of this
36 chapter.

37 (9) "Defoliant" means any substance or mixture of substances

1 intended to cause the leaves or foliage to drop from a plant with or
2 without causing abscission.

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

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

7 (12) "Device" means any instrument or contrivance intended to trap,
8 destroy, control, repel, or mitigate pests, but not including equipment
9 used for the application of pesticides when sold separately from the
10 pesticides.

11 (13) "Direct supervision" by certified private applicators shall
12 mean that the designated restricted use pesticide shall be applied for
13 purposes of producing any agricultural commodity on land owned or
14 rented by the applicator or the applicator's employer, by a competent
15 person acting under the instructions and control of a certified private
16 applicator who is available if and when needed, even though such
17 certified private applicator is not physically present at the time and
18 place the pesticide is applied. The certified private applicator shall
19 have direct management responsibility and familiarity of the pesticide,
20 manner of application, pest, and land to which the pesticide is being
21 applied. Direct supervision by all other certified applicators means
22 direct on-the-job supervision and shall require that the certified
23 applicator be physically present at the application site and that the
24 person making the application be in voice and visual contact with the
25 certified applicator at all times during the application. However,
26 direct supervision for forest application does not require constant
27 voice and visual contact when general use pesticides are applied using
28 nonapparatus type equipment, the certified applicator is physically
29 present and readily available in the immediate application area, and
30 the certified applicator directly observes pesticide mixing and
31 batching. Direct supervision of an aerial apparatus means the pilot of
32 the aircraft must be appropriately certified.

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

35 (15) "Engage in business" means any application of pesticides by
36 any person upon lands or crops of another.

37 (16) "EPA" means the United States environmental protection agency.

1 (17) "EPA restricted use pesticide" means any pesticide classified
2 for restricted use by the administrator, EPA.

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

5 (19) "Forest application" means the application of pesticides to
6 agricultural land used to grow trees for the commercial production of
7 wood or wood fiber for products such as dimensional lumber, shakes,
8 plywood, poles, posts, pilings, particle board, hardboard, oriented
9 strand board, pulp, paper, cardboard, or other similar products.

10 (20) "Fumigant" means any pesticide product or combination of
11 products that is a vapor or gas or forms a vapor or gas on application
12 and whose method of pesticidal action is through the gaseous state.

13 (21) "Fungi" means all nonchlorophyll-bearing thallophytes (all
14 nonchlorophyll-bearing plants of lower order than mosses and
15 liverworts); for example, rusts, smuts, mildews, molds, and yeasts,
16 except those on or in a living person or other animals.

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

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

22 (24) "High hazard pesticide" means a pesticide product on the list
23 adopted under section 4 of this act.

24 (25) "Immediate service call" means a landscape application to
25 satisfy an emergency customer request for service, or a treatment to
26 control a pest to landscape plants.

27 ((+25)) (26) "Insect" means any small invertebrate animal, in any
28 life stage, whose adult form is segmented and which generally belongs
29 to the class insecta, comprised of six-legged, usually winged forms,
30 as, for example, beetles, bugs, bees, and flies. The term insect shall
31 also apply to other allied classes of arthropods whose members are
32 wingless and usually have more than six legs, for example, spiders,
33 mites, ticks, centipedes, and isopod crustaceans.

34 ((+26)) (27) "Insecticide" means any substance or mixture of
35 substances intended to prevent, destroy, repel, or mitigate any insect.

36 ((+27)) (28) "Land" means all land and water areas, including
37 airspace and all plants, animals, structures, buildings, devices, and

1 contrivances, appurtenant to or situated on, fixed or mobile, including
2 any used for transportation.

3 ~~((+28+))~~ (29) "Landscape application" means an application of any
4 EPA registered pesticide to any exterior landscape area around
5 residential property, commercial properties such as apartments or
6 shopping centers, parks, golf courses, schools including nursery
7 schools and licensed day cares, or cemeteries or similar areas. This
8 definition shall not apply to: (a) Applications made by private
9 applicators, limited private applicators, or rancher private
10 applicators; (b) mosquito abatement, gypsy moth eradication, or similar
11 wide-area pest control programs sponsored by governmental entities; and
12 (c) commercial pesticide applicators making structural applications.

13 ~~((+29+))~~ (30) "Limited private applicator" means a certified
14 applicator who uses or is in direct supervision, as defined for private
15 applicators in this section, of the use of any herbicide classified by
16 the EPA or the director as a restricted use pesticide, for the sole
17 purpose of controlling weeds on nonproduction agricultural land owned
18 or rented by the applicator or the applicator's employer. Limited
19 private applicators may also use restricted use pesticides on timber
20 areas, excluding aquatic sites, to control weeds designated for
21 mandatory control under chapters 17.04, 17.06, and 17.10 RCW and state
22 and local regulations adopted under chapters 17.04, 17.06, and 17.10
23 RCW. A limited private applicator may apply restricted use herbicides
24 to the types of land described in this subsection of another person if
25 applied without compensation other than trading of personal services
26 between the applicator and the other person. This license is only
27 valid when making applications in counties of Washington located east
28 of the crest of the Cascade mountains.

29 ~~((+30+))~~ (31) "Limited production agricultural land" means land
30 used to grow hay and grain crops that are consumed by the livestock on
31 the farm where produced. No more than ten percent of the hay and grain
32 crops grown on limited production agricultural land may be sold each
33 crop year. Limited production agricultural land does not include
34 aquatic sites.

35 ~~((+31+))~~ (32) "Nematocide" means any substance or mixture of
36 substances intended to prevent, destroy, repel, or mitigate nematodes.

37 ~~((+32+))~~ (33) "Nematode" means any invertebrate animal of the
38 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 ~~((+33+))~~ (34) "Nonproduction agricultural land" means pastures,
5 rangeland, fencerows, and areas around farm buildings but not aquatic
6 sites.

7 ~~((+34+))~~ (35) "Person" means any individual, partnership,
8 association, corporation, or organized group of persons whether or not
9 incorporated.

10 ~~((+35+))~~ (36) "Pest" means, but is not limited to, any insect,
11 rodent, nematode, snail, slug, weed, and any form of plant or animal
12 life or virus, except virus, bacteria, or other microorganisms on or in
13 a living person or other animal or in or on processed food or beverages
14 or pharmaceuticals, which is normally considered to be a pest, or which
15 the director may declare to be a pest.

16 ~~((+36+))~~ (37) "Pesticide" means, but is not limited to:

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

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

21 (c) Any spray adjuvant as defined in RCW 15.58.030.

22 ~~((+37+))~~ (38) "Pesticide advisory board" means the pesticide
23 advisory board as provided for in this chapter.

24 ~~((+38+))~~ (39) "Plant regulator" means any substance or mixture of
25 substances intended through physiological action, to accelerate or
26 retard the rate of growth or maturation, or to otherwise alter the
27 behavior of ornamental or crop plants or their produce, but shall not
28 include substances insofar as they are intended to be used as plant
29 nutrients, trace elements, nutritional chemicals, plant inoculants, or
30 soil amendments.

31 ~~((+39+))~~ (40) "Private applicator" means a certified applicator who
32 uses or is in direct supervision of the use of any pesticide classified
33 by the EPA or the director as a restricted use pesticide, for the
34 purposes of producing any agricultural commodity and for any associated
35 noncrop application on land owned or rented by the applicator or the
36 applicator's employer or if applied without compensation other than
37 trading of personal services between producers of agricultural
38 commodities on the land of another person.

1 (~~(40)~~) (41) "Private-commercial applicator" means a certified
2 applicator who uses or supervises the use of any pesticide classified
3 by the EPA or the director as a restricted use pesticide for purposes
4 other than the production of any agricultural commodity on lands owned
5 or rented by the applicator or the applicator's employer.

6 (~~(41)~~) (42) "Rancher private applicator" means a certified
7 applicator who uses or is in direct supervision, as defined for private
8 applicators in this section, of the use of any herbicide or any
9 rodenticide classified by the EPA or the director as a restricted use
10 pesticide for the purpose of controlling weeds and pest animals on
11 nonproduction agricultural land and limited production agricultural
12 land owned or rented by the applicator or the applicator's employer.
13 Rancher private applicators may also use restricted use pesticides on
14 timber areas, excluding aquatic sites, to control weeds designated for
15 mandatory control under chapters 17.04, 17.06, and 17.10 RCW and state
16 and local regulations adopted under chapters 17.04, 17.06, and 17.10
17 RCW. A rancher private applicator may apply restricted use herbicides
18 and rodenticides to the types of land described in this subsection of
19 another person if applied without compensation other than trading of
20 personal services between the applicator and the other person. This
21 license is only valid when making applications in counties of
22 Washington located east of the crest of the Cascade mountains.

23 (~~(42)~~) (43) "Residential property" includes property less than
24 one acre in size zoned as residential by a city, town, or county, but
25 does not include property zoned as agricultural or agricultural
26 homesites.

27 (~~(43)~~) (44) "Restricted use pesticide" means any pesticide or
28 device which, when used as directed or in accordance with a widespread
29 and commonly recognized practice, the director determines, subsequent
30 to a hearing, requires additional restrictions for that use to prevent
31 unreasonable adverse effects on the environment including people,
32 lands, beneficial insects, animals, crops, and wildlife, other than
33 pests.

34 (~~(44)~~) (45) "Rodenticide" means any substance or mixture of
35 substances intended to prevent, destroy, repel, or mitigate rodents, or
36 any other vertebrate animal which the director may declare by rule to
37 be a pest.

1 (~~(45)~~) (46) "School facility" means any facility used for
2 licensed day care center purposes or for the purposes of a public
3 kindergarten or public elementary or secondary school. School facility
4 includes the buildings or structures, playgrounds, landscape areas,
5 athletic fields, school vehicles, or any other area of school property.

6 (~~(46)~~) (47) "Single-use waiver" means an approval for a single
7 application of a pesticide at a single location of a school facility.
8 It does not mean multiple applications of one chemical or multiple
9 applications at more than one location.

10 (48) "Snails or slugs" include all harmful mollusks.

11 (~~(47)~~) (49) "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 (~~(48)~~) (50) "Weed" means any plant which grows where it is not
16 wanted.

17 NEW SECTION. **Sec. 3.** A new section is added to chapter 17.21 RCW
18 to read as follows:

19 (1) Except as provided in subsection (2) or (3) of this section, no
20 person may apply a high hazard pesticide at a school facility.

21 (2) The director of a licensed day care center or the board of
22 directors of a school district or the superintendent of the district
23 may authorize for their facility a single-use waiver from the
24 prohibition provided by subsection (1) of this section. The waiver may
25 be authorized only if each of the following conditions are met:

26 (a) The director, board, or superintendent determines that an
27 immediate human health or safety hazard exists that warrants the use of
28 a high hazard pesticide;

29 (b) Nonchemical or least-toxic pest prevention and control measures
30 have been used unsuccessfully;

31 (c) The underlying causes of the pest outbreak will also be
32 addressed by other actions to prevent future outbreaks; and

33 (d) Students or staff other than those making the application are
34 not in the area at the time of application or for forty-eight hours
35 following the application.

36 (3) This section does not limit the authority of a county health
37 officer, state agency, mosquito control district, or noxious weed

1 control board that is responsible for pest management decisions
2 regarding school facilities to make decisions and take actions
3 regarding those facilities.

4 (4) This section does not limit the authority of the director of a
5 licensed day care center or the officers of a school district to
6 establish pesticide application policies that are more restrictive than
7 the policy provided by subsection (1) of this section.

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

10 (1) The state board of health shall adopt by rule a list of
11 products that the board considers to pose a high hazard to the health
12 of children or staff if applied in or on school facilities. In
13 developing the list, the board shall include at least products that
14 fall in each of the following categories. Products that:

15 (a) Meet the criteria of toxicity category I or toxicity category
16 II for pesticides as defined by the United States environmental
17 protection agency in 40 C.F.R. Sec. 156.62 as it exists on the
18 effective date of this section;

19 (b) Are classified as known, likely, probable, or possible
20 carcinogens by the United States environmental protection agency on the
21 effective date of this section; listed as causing cancer under the
22 state of California's Proposition 65 on the effective date of this
23 section; or classified by the international agency for research on
24 cancer as a known, probable, or possible carcinogen on the effective
25 date of this section;

26 (c) Are determined to be known, probable, or suspected endocrine
27 disruptors by the state of Illinois's environmental protection agency
28 on the effective date of this section;

29 (d) Are identified by the United States toxics release inventory on
30 the effective date of this section as having chronic neurologic effects
31 or contain N-methyl-carbamate, neuro-toxic organophosphorus compounds,
32 or pyrethroids;

33 (e) Are identified on the effective date of this section by the
34 United States toxics release inventory or listed on the effective date
35 of this section under the state of California's Proposition 65 as
36 causing birth defects, reproductive harm, or developmental harm;

1 (f) Are labeled as part of its state or federal registration as
2 being toxic to fish, birds, bees, wildlife, or domestic animals; and

3 (g) Are persistent in soil, as defined by a half-life in soil of
4 more than sixty days, except for minerals, i.e., nonorganic chemicals.

5 (2) The state board of health shall review and update the list
6 developed in subsection (1) of this section at least every five years,
7 and may amend the rules it adopts under this section.

8 **Sec. 5.** RCW 17.21.150 and 1994 c 283 s 18 are each amended to read
9 as follows:

10 A person who has committed any of the following acts is declared to
11 be in violation of this chapter:

12 (1) Made false or fraudulent claims through any media,
13 misrepresenting the effect of materials or methods to be utilized;

14 (2) Applied worthless or improper pesticides;

15 (3) Operated a faulty or unsafe apparatus;

16 (4) Operated in a faulty, careless, or negligent manner;

17 (5) Refused or neglected to comply with the provisions of this
18 chapter, the rules adopted hereunder, or of any lawful order of the
19 director including a final order of the director directing payment of
20 a civil penalty. In an adjudicative proceeding arising from the
21 department's denial of a license for failure to pay a civil penalty the
22 subject shall be limited to whether the payment was made and the
23 proceeding may not be used to collaterally attack the final order;

24 (6) Refused or neglected to keep and maintain the pesticide
25 application records required by rule, or to make reports when and as
26 required;

27 (7) Made false or fraudulent records, invoices, or reports;

28 (8) Acted as a certified applicator without having provided direct
29 supervision to an unlicensed person as defined in RCW 17.21.020(~~(+12)~~)
30 (13);

31 (9) Operated an unlicensed apparatus or an apparatus without a
32 license plate issued for that particular apparatus;

33 (10) Used fraud or misrepresentation in making an application for
34 a license or renewal of a license;

35 (11) Is not qualified to perform the type of pest control under the
36 conditions and in the locality in which he or she operates or has

1 operated, regardless of whether or not he or she has previously passed
2 a pesticide license examination;

3 (12) Aided or abetted a licensed or an unlicensed person to evade
4 the provisions of this chapter, combined or conspired with such a
5 licensed or an unlicensed person to evade the provisions of this
6 chapter, or allowed one's license to be used by an unlicensed person;

7 (13) Knowingly made false, misleading or erroneous statements or
8 reports during or after an inspection concerning any infestation or
9 infection of pests found on land or in connection with any pesticide
10 complaint or investigation;

11 (14) Impersonated any state, county or city inspector or official;

12 (15) Applied a restricted use pesticide without having a certified
13 applicator in direct supervision;

14 (16) Operated a commercial pesticide application business: (a)
15 Without an individual licensed as a commercial pesticide applicator or
16 (b) with a licensed commercial pesticide applicator not licensed in the
17 classification or classifications in which the business operates;
18 ((~~or~~))

19 (17) Operated as a commercial pesticide applicator without meeting
20 the financial responsibility requirements including not having a
21 properly executed financial responsibility insurance certificate or
22 surety bond form on file with the department; or

23 (18) Applied a pesticide in violation of section 3 of this act.

24 NEW SECTION. Sec. 6. Sections 3 and 4 of this act may be known
25 and cited as the healthy schools act of 2005.

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