
HOUSE BILL 2611

State of Washington 59th Legislature 2006 Regular Session

By Representatives Sells, Appleton, Williams, Dunshee, Green, Moeller, Kenney, Hunt, Simpson and Hasegawa

Read first time 01/11/2006. Referred to Committee on Economic Development, Agriculture & Trade.

1 AN ACT Relating to pesticide application notification of pesticide-
2 sensitive individuals; amending RCW 17.21.020, 17.21.150, 17.21.420,
3 and 17.21.430; adding a new section to chapter 17.21 RCW; providing an
4 effective date; and declaring an emergency.

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

6 **Sec. 1.** RCW 17.21.020 and 2004 c 100 s 1 are each amended to read
7 as follows:

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

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

16 (2) "Agricultural land" means land on which an agricultural
17 commodity is produced or land that is in a government-recognized
18 conservation reserve program. This definition does not apply to

1 private gardens where agricultural commodities are produced for
2 personal consumption.

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

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

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

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

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

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

34 (9) "Defoliant" means any substance or mixture of substances
35 intended to cause the leaves or foliage to drop from a plant with or
36 without causing abscission.

37 (10) "Department" means the Washington state department of
38 agriculture.

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

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

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

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

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

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

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

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

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

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

9 (21) "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, and yeasts,
12 except those on or in a living person or other animals.

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

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

18 (24) "Immediate service call" means a ~~((landscape))~~ pesticide
19 application to satisfy an emergency customer request for service(~~(, or~~
20 ~~a treatment to control a pest to landscape plants))~~).

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

28 (26) "Insecticide" means any substance or mixture of substances
29 intended to prevent, destroy, repel, or mitigate any insect.

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

34 (28) "Landscape application" means an application of any ~~((EPA~~
35 ~~registered))~~ pesticide registered for use in this state to any exterior
36 landscape area around residential property as defined in this chapter,
37 commercial properties such as apartments or shopping centers, parks,
38 golf courses, schools including nursery schools and licensed day cares,

1 or cemeteries or similar areas. This definition shall not apply to:
2 (a) Applications made by private applicators, limited private
3 applicators, or rancher private applicators; (b) mosquito abatement,
4 gypsy moth eradication, or similar wide-area pest control programs
5 sponsored by governmental entities; and (c) commercial pesticide
6 applicators making structural applications to the perimeter of a
7 structure.

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

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

30 (31) "Maintenance applicator" means any individual, except for a
31 certified applicator, who, in the course of his or her employment,
32 applies pesticides to the pesticide notification area of a pesticide-
33 sensitive individual who lives in a multifamily dwelling, including the
34 manager or owner of the multifamily dwelling.

35 (32) "Nematocide" means any substance or mixture of substances
36 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) "Snails or slugs" include all harmful mollusks.

7 ~~((47))~~ (48) "Unreasonable adverse effects on the environment"
8 means any unreasonable risk to people or the environment taking into
9 account the economic, social, and environmental costs and benefits of
10 the use of any pesticide, or as otherwise determined by the director.

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

13 **Sec. 2.** RCW 17.21.150 and 1994 c 283 s 18 are each amended to read
14 as follows:

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

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

19 (2) Applied worthless or improper pesticides;

20 (3) Operated a faulty or unsafe apparatus;

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

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

29 (6) Refused or neglected to keep and maintain the pesticide
30 application records required by rule, or to make reports when and as
31 required;

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

33 (8) Acted as a certified applicator without having provided direct
34 supervision to an unlicensed person as defined in RCW 17.21.020~~((12))~~
35 (13);

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

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

3 (11) Is not qualified to perform the type of pest control under the
4 conditions and in the locality in which he or she operates or has
5 operated, regardless of whether or not he or she has previously passed
6 a pesticide license examination;

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

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

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

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

18 (16) Operated a commercial pesticide application business: (a)
19 Without an individual licensed as a commercial pesticide applicator or
20 (b) with a licensed commercial pesticide applicator not licensed in the
21 classification or classifications in which the business operates;
22 ((or))

23 (17) Operated as a commercial pesticide applicator without meeting
24 the financial responsibility requirements including not having a
25 properly executed financial responsibility insurance certificate or
26 surety bond form on file with the department; or

27 (18) Failed to notify a pesticide-sensitive individual of a
28 pesticide application as required by this chapter.

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

31 (1) The department shall develop a list of pesticide-sensitive
32 individuals. The list shall include any person with a documented
33 pesticide sensitivity who submits information to the department on an
34 application form developed by the department indicating the person's
35 pesticide sensitivity.

36 (2) An applicant for inclusion on the pesticide-sensitive list may
37 apply to the department at any time and shall provide the department,

1 on the department's form, the name, street address, and telephone
2 number of the applicant and the street address of each (~~property owner~~
3 ~~with~~) property abutting the applicant's principal place of residence.
4 In the case of a multifamily dwelling, the applicant shall provide the
5 name, street address, and telephone number of the property manager.
6 The pesticide sensitivity of an individual shall be certified by a
7 physician who holds a valid license to practice medicine in this state.

8 (3) For a pesticide-sensitive individual who lives in a single-
9 family dwelling, the lands listed on ((an)) the application ((for
10 inclusion on the pesticide-sensitive list)) form shall constitute the
11 pesticide notification area for that ((applicant. For highway or road
12 rights of way, a property abutting shall mean that portion of the
13 property within one-half mile of the principal place of residence))
14 individual for landscape and right of way applications.

15 ~~((3))~~ (4) For a pesticide-sensitive individual who lives in a
16 multifamily dwelling, such as an apartment or condominium, the lands
17 listed on the application form, including all landscape areas on the
18 property of the multifamily dwelling, shall constitute the pesticide
19 notification area for that individual for landscape and right of way
20 applications. The pesticide notification area for that individual for
21 pesticide applications to structures includes:

22 (a) The individual's dwelling;

23 (b) All interior areas of the individual's building that are
24 accessible to the individual, except the interior of other dwellings;

25 (c) All common areas of the multifamily dwelling that are for use
26 by and accessible to the individual, including but not limited to
27 kitchens, laundry rooms, clubhouses, and recreational rooms;

28 (d) All exterior areas, including the perimeter, of any structure
29 on the property of the multifamily dwelling.

30 (5) For highway or road rights of way, a property abutting shall
31 mean that portion of the property within one-half mile of the principal
32 place of residence.

33 (6) A person whose name has been included on the pesticide-
34 sensitive list shall notify the department of a need to update the list
35 as soon as possible after: (a) A change of address or telephone
36 number; (b) ((a change in ownership of property abutting a pesticide-
37 sensitive individual; (c)) a change in the applicant's condition; or
38 ~~((d))~~ (c) the sensitivity is deemed to no longer exist.

1 ~~((4))~~ (7) The pesticide-sensitive list shall expire on December
2 31 of each year. The department shall distribute application forms for
3 the new list at a reasonable time prior to the expiration of the
4 current list, including mailing an application form to each person on
5 the current list at the address given by the person in his or her most
6 recent application. Persons desiring to be placed on or remain on the
7 list shall submit a new application each year.

8 ~~((5))~~ (8) The department shall distribute the list by January 1
9 and June 15 of each year to all certified applicators likely to make
10 ~~((landscape))~~ applications to the pesticide notification area of a
11 pesticide-sensitive individual. The list shall provide multiple
12 methods of accessing the information so that certified applicators
13 making ~~((landscape applications or right-of-way))~~ applications are able
14 to easily determine what properties and individuals require
15 notification for a specific application. An updated list shall be
16 distributed whenever deemed necessary by the department. Certified
17 applicators may request a list of newly registered individuals that
18 have been added to the list since the last distribution. Registered
19 individuals shall receive verification that their name has been placed
20 on the list.

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

23 (1) A certified applicator making a ~~((landscape application or a~~
24 ~~right-of-way))~~ pesticide application to the pesticide notification
25 area ~~((, as defined in RCW 17.21.420(2), of a person))~~ of an individual
26 on the pesticide-sensitive list shall notify the ~~((listed pesticide-~~
27 ~~sensitive))~~ individual of the application. Notification shall be made
28 at least ~~((two))~~ ten hours prior to the scheduled application, or in
29 the case of an immediate service call, the applicator shall provide
30 notification at the time of the application. The applicator must make
31 the application within twenty-four hours following the date and
32 approximate time stated in the notification. If the application is not
33 made within twenty-four hours, the notification process must be
34 repeated.

35 (2) Notification under this section shall be made in writing, in
36 person, or by telephone, and shall disclose the address or the specific
37 location on the property where the pesticide is to be applied and the

1 date and approximate time of the application. In the event a certified
2 applicator is unable to provide prior notification because of the
3 absence or inaccessibility of the individual, the applicator shall
4 leave a written notice at the residence of the individual (~~(listed on~~
5 ~~the pesticide sensitive list))~~) at the time of the application. If (~~(a~~
6 ~~person on the pesticide sensitive list))~~ the individual lives in a
7 multifamily dwelling (~~(such as an apartment or condominium))~~ and the
8 residence is inaccessible, the applicator shall (~~(notify the person on~~
9 ~~the list or shall advise))~~ leave written notice with the manager or
10 other property owner's representative (~~(to))~~ who shall notify the
11 (~~(person on the list))~~ individual of the application.

12 (3) The pesticide-sensitive individual may request in writing, in
13 person, or by telephone that the certified applicator provide the name
14 of each pesticide applied within the individual's pesticide
15 notification area. The applicator shall provide the information within
16 twenty-four hours of the application or of receiving the request.

17 (4) The notification requirements of this section do not apply to
18 routine applications of an antimicrobial pesticide.

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

21 (1) An individual on the pesticide-sensitive list who lives in a
22 multifamily dwelling is entitled to receive prior notification of all
23 pesticide applications made by maintenance applicators to property
24 within the pesticide notification area of that individual. The
25 department shall inform the manager of the property within the
26 individual's pesticide notification area in writing that the individual
27 is on the pesticide-sensitive list and that the manager has certain
28 duties under this section and RCW 17.21.430.

29 (2) Following receipt of the information, the manager of the
30 property shall provide prior notification to the pesticide-sensitive
31 individual of all pesticide applications made by maintenance
32 applicators to property within the pesticide notification area of that
33 individual. Notification must be made at least ten hours prior to the
34 scheduled application, or in the case of an immediate service call, the
35 manager or maintenance applicator shall provide notification at the
36 time of the application. The applicator must make the application

1 within twenty-four hours following the date and approximate time stated
2 in the notification. If the application is not made within twenty-four
3 hours, the notification process must be repeated.

4 (3) Notification must be provided in writing, in person, or by
5 telephone and must disclose the address or the specific location on the
6 property where the pesticide is to be applied and the date and
7 approximate time of the application. In the event the manager of the
8 property is unable to provide prior notification because of the absence
9 or inaccessibility of the pesticide-sensitive individual, the manager
10 shall leave a written notice at the residence of the individual at the
11 time of the application.

12 (4) The pesticide-sensitive individual may request in writing, in
13 person, or by telephone that the property manager or maintenance
14 applicator provide the name of each pesticide applied within the
15 individual's pesticide notification area. The manager or applicator
16 shall provide the information within twenty-four hours of the
17 application or of receiving the request.

18 (5) Requests for notification expire on December 31st of each year.

19 (6) The notification requirements of this section do not apply to
20 routine applications of an antimicrobial pesticide.

21 NEW SECTION. **Sec. 6.** This act is necessary for the immediate
22 preservation of the public peace, health, or safety, or support of the
23 state government and its existing public institutions, and takes effect
24 June 1, 2006.

--- END ---