
SECOND SUBSTITUTE HOUSE BILL 1806

State of Washington 60th Legislature 2007 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Pedersen, Upthegrove, Campbell, Kenney, McDermott, Morrell, Chase, Appleton, Dunshee, McIntire, Santos, Moeller, Darneille, Roberts, Hudgins, Hunt, Hasegawa, Conway, O'Brien, Green, Rolfes, Simpson, Schual-Berke, Goodman, Wood and Lantz)

READ FIRST TIME 03/05/07.

1 AN ACT Relating to pesticide application in school facilities;
2 amending RCW 17.21.020; adding a new section to chapter 17.21 RCW;
3 adding a new section to chapter 28A.300 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 protect children and staff by making it easier
8 for school districts and licensed day care centers to adopt nonchemical
9 child-friendly pest management strategies. This will be accomplished
10 in part through development and use of a model child-friendly pest
11 management policy that emphasizes use of nonchemical pest control
12 measures and allows use of high hazard pesticides only as a last
13 resort. High hazard pesticides include United States environmental
14 protection agency toxicity categories I and II; and may include general
15 categories of pesticides that are known, likely, or probable
16 carcinogens; known or probable endocrine disruptors; known to have
17 neurologic effects; known to cause birth defects, reproductive harm, or
18 developmental harm; or are persistent in soil.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 28A.300
2 RCW to read as follows:

3 The Washington state school directors' association, in consultation
4 with the department of health and the department of agriculture, shall
5 develop a model child-friendly pest management policy that emphasizes
6 use of nonchemical pest control measures and allows use of high-hazard
7 pesticides only as a last resort. The policy must be completed by
8 September 1, 2008, and must be disseminated to all school districts and
9 licensed day care centers. The Washington state school directors'
10 association shall review and, if appropriate, update the policy at
11 least once every five years.

12 **Sec. 3.** RCW 17.21.020 and 2004 c 100 s 1 are each amended to read
13 as follows:

14 Unless the context clearly requires otherwise, the definitions in
15 this section apply throughout this chapter.

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

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

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

31 (4) "Apparatus" means any type of ground, water, or aerial
32 equipment, device, or contrivance using motorized, mechanical, or
33 pressurized power and used to apply any pesticide on land and anything
34 that may be growing, habitating, or stored on or in such land, but
35 shall not include any pressurized handsized household device used to
36 apply any pesticide, or any equipment, device, or contrivance of which
37 the person who is applying the pesticide is the source of power or

1 energy in making such pesticide application, or any other small
2 equipment, device, or contrivance that is transported in a piece of
3 equipment licensed under this chapter as an apparatus.

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

8 (6) "Certified applicator" means any individual who is licensed as
9 a commercial pesticide applicator, commercial pesticide operator,
10 public operator, private-commercial applicator, demonstration and
11 research applicator, private applicator, limited private applicator,
12 rancher private applicator, or any other individual who is certified by
13 the director to use or supervise the use of any pesticide which is
14 classified by the EPA or the director as a restricted use pesticide.

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

17 (8) "Commercial pesticide operator" means any employee of a
18 commercial pesticide applicator who uses or supervises the use of any
19 pesticide and who is required to be licensed under provisions of this
20 chapter.

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

24 (10) "Department" means the Washington state department of
25 agriculture.

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

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

32 (13) "Direct supervision" by certified private applicators shall
33 mean that the designated restricted use pesticide shall be applied for
34 purposes of producing any agricultural commodity on land owned or
35 rented by the applicator or the applicator's employer, by a competent
36 person acting under the instructions and control of a certified private
37 applicator who is available if and when needed, even though such
38 certified private applicator is not physically present at the time and

1 place the pesticide is applied. The certified private applicator shall
2 have direct management responsibility and familiarity of the pesticide,
3 manner of application, pest, and land to which the pesticide is being
4 applied. Direct supervision by all other certified applicators means
5 direct on-the-job supervision and shall require that the certified
6 applicator be physically present at the application site and that the
7 person making the application be in voice and visual contact with the
8 certified applicator at all times during the application. However,
9 direct supervision for forest application does not require constant
10 voice and visual contact when general use pesticides are applied using
11 nonapparatus type equipment, the certified applicator is physically
12 present and readily available in the immediate application area, and
13 the certified applicator directly observes pesticide mixing and
14 batching. Direct supervision of an aerial apparatus means the pilot of
15 the aircraft must be appropriately certified.

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

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

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

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

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

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

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

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

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

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

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

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

9 ~~((+25))~~ (26) "Insect" means any small invertebrate animal, in any
10 life stage, whose adult form is segmented and which generally belongs
11 to the class insecta, comprised of six-legged, usually winged forms,
12 as, for example, beetles, bugs, bees, and flies. The term insect shall
13 also apply to other allied classes of arthropods whose members are
14 wingless and usually have more than six legs, for example, spiders,
15 mites, ticks, centipedes, and isopod crustaceans.

16 ~~((+26))~~ (27) "Insecticide" means any substance or mixture of
17 substances intended to prevent, destroy, repel, or mitigate any insect.

18 ~~((+27))~~ (28) "Land" means all land and water areas, including
19 airspace and all plants, animals, structures, buildings, devices, and
20 contrivances, appurtenant to or situated on, fixed or mobile, including
21 any used for transportation.

22 ~~((+28))~~ (29) "Landscape application" means an application of any
23 EPA registered pesticide to any exterior landscape area around
24 residential property, commercial properties such as apartments or
25 shopping centers, parks, golf courses, schools including nursery
26 schools and licensed day cares, or cemeteries or similar areas. This
27 definition shall not apply to: (a) Applications made by private
28 applicators, limited private applicators, or rancher private
29 applicators; (b) mosquito abatement, gypsy moth eradication, or similar
30 wide-area pest control programs sponsored by governmental entities; and
31 (c) commercial pesticide applicators making structural applications.

32 ~~((+29))~~ (30) "Limited private applicator" means a certified
33 applicator who uses or is in direct supervision, as defined for private
34 applicators in this section, of the use of any herbicide classified by
35 the EPA or the director as a restricted use pesticide, for the sole
36 purpose of controlling weeds on nonproduction agricultural land owned
37 or rented by the applicator or the applicator's employer. Limited
38 private applicators may also use restricted use pesticides on timber

1 areas, excluding aquatic sites, to control weeds designated for
2 mandatory control under chapters 17.04, 17.06, and 17.10 RCW and state
3 and local regulations adopted under chapters 17.04, 17.06, and 17.10
4 RCW. A limited private applicator may apply restricted use herbicides
5 to the types of land described in this subsection of another person if
6 applied without compensation other than trading of personal services
7 between the applicator and the other person. This license is only
8 valid when making applications in counties of Washington located east
9 of the crest of the Cascade mountains.

10 ~~((+30+))~~ (31) "Limited production agricultural land" means land
11 used to grow hay and grain crops that are consumed by the livestock on
12 the farm where produced. No more than ten percent of the hay and grain
13 crops grown on limited production agricultural land may be sold each
14 crop year. Limited production agricultural land does not include
15 aquatic sites.

16 ~~((+31+))~~ (32) "Nematocide" means any substance or mixture of
17 substances intended to prevent, destroy, repel, or mitigate nematodes.

18 ~~((+32+))~~ (33) "Nematode" means any invertebrate animal of the
19 phylum nemathelminthes and class nematoda, that is, unsegmented round
20 worms with elongated, fusiform, or saclike bodies covered with cuticle,
21 and inhabiting soil, water, plants or plant parts. Nematodes may also
22 be called nemas or eelworms.

23 ~~((+33+))~~ (34) "Nonproduction agricultural land" means pastures,
24 rangeland, fencerows, and areas around farm buildings but not aquatic
25 sites.

26 ~~((+34+))~~ (35) "Person" means any individual, partnership,
27 association, corporation, or organized group of persons whether or not
28 incorporated.

29 ~~((+35+))~~ (36) "Pest" means, but is not limited to, any insect,
30 rodent, nematode, snail, slug, weed, and any form of plant or animal
31 life or virus, except virus, bacteria, or other microorganisms on or in
32 a living person or other animal or in or on processed food or beverages
33 or pharmaceuticals, which is normally considered to be a pest, or which
34 the director may declare to be a pest.

35 ~~((+36+))~~ (37) "Pesticide" means, but is not limited to:

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

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

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

4 (~~(37)~~) (38) "Pesticide advisory board" means the pesticide
5 advisory board as provided for in this chapter.

6 (~~(38)~~) (39) "Plant regulator" means any substance or mixture of
7 substances intended through physiological action, to accelerate or
8 retard the rate of growth or maturation, or to otherwise alter the
9 behavior of ornamental or crop plants or their produce, but shall not
10 include substances insofar as they are intended to be used as plant
11 nutrients, trace elements, nutritional chemicals, plant inoculants, or
12 soil amendments.

13 (~~(39)~~) (40) "Private applicator" means a certified applicator who
14 uses or is in direct supervision of the use of any pesticide classified
15 by the EPA or the director as a restricted use pesticide, for the
16 purposes of producing any agricultural commodity and for any associated
17 noncrop application on land owned or rented by the applicator or the
18 applicator's employer or if applied without compensation other than
19 trading of personal services between producers of agricultural
20 commodities on the land of another person.

21 (~~(40)~~) (41) "Private-commercial applicator" means a certified
22 applicator who uses or supervises the use of any pesticide classified
23 by the EPA or the director as a restricted use pesticide for purposes
24 other than the production of any agricultural commodity on lands owned
25 or rented by the applicator or the applicator's employer.

26 (~~(41)~~) (42) "Rancher private applicator" means a certified
27 applicator who uses or is in direct supervision, as defined for private
28 applicators in this section, of the use of any herbicide or any
29 rodenticide classified by the EPA or the director as a restricted use
30 pesticide for the purpose of controlling weeds and pest animals on
31 nonproduction agricultural land and limited production agricultural
32 land owned or rented by the applicator or the applicator's employer.
33 Rancher private applicators may also use restricted use pesticides on
34 timber areas, excluding aquatic sites, to control weeds designated for
35 mandatory control under chapters 17.04, 17.06, and 17.10 RCW and state
36 and local regulations adopted under chapters 17.04, 17.06, and 17.10
37 RCW. A rancher private applicator may apply restricted use herbicides
38 and rodenticides to the types of land described in this subsection of

1 another person if applied without compensation other than trading of
2 personal services between the applicator and the other person. This
3 license is only valid when making applications in counties of
4 Washington located east of the crest of the Cascade mountains.

5 ~~((42))~~ (43) "Residential property" includes property less than
6 one acre in size zoned as residential by a city, town, or county, but
7 does not include property zoned as agricultural or agricultural
8 homesites.

9 ~~((43))~~ (44) "Restricted use pesticide" means any pesticide or
10 device which, when used as directed or in accordance with a widespread
11 and commonly recognized practice, the director determines, subsequent
12 to a hearing, requires additional restrictions for that use to prevent
13 unreasonable adverse effects on the environment including people,
14 lands, beneficial insects, animals, crops, and wildlife, other than
15 pests.

16 ~~((44))~~ (45) "Rodenticide" means any substance or mixture of
17 substances intended to prevent, destroy, repel, or mitigate rodents, or
18 any other vertebrate animal which the director may declare by rule to
19 be a pest.

20 ~~((45))~~ (46) "School facility" means any facility used for
21 licensed day care center purposes or for the purposes of a public
22 kindergarten or public elementary or secondary school. School facility
23 includes the buildings or structures, playgrounds, landscape areas,
24 athletic fields, school vehicles, or any other area of school property.

25 ~~((46))~~ (47) "Snails or slugs" include all harmful mollusks.

26 ~~((47))~~ (48) "Unreasonable adverse effects on the environment"
27 means any unreasonable risk to people or the environment taking into
28 account the economic, social, and environmental costs and benefits of
29 the use of any pesticide, or as otherwise determined by the director.

30 ~~((48))~~ (49) "Weed" means any plant which grows where it is not
31 wanted.

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

34 (1) The state board of health shall adopt by rule a list of
35 products that the board considers to pose a high hazard to the health
36 of children or staff if applied in or on school facilities.

1 (2) In developing the list, the board shall include products that
2 meet the criteria of toxicity category I or toxicity category II for
3 pesticides as defined by the United States environmental protection
4 agency in 40 C.F.R. Sec. 156.62 as it exists on the effective date of
5 this section.

6 (3) The state board of health shall consider including in the list
7 products in the following general categories of pesticides: Known,
8 likely, or probable carcinogens; known or probable endocrine
9 disruptors; pesticides known to have neurologic effects; pesticides
10 known to cause birth defects, reproductive harm, or developmental harm;
11 or pesticides that are persistent in soil.

12 (4) The state board of health shall review and update the list
13 developed under this section at least every five years, and may amend
14 the rules it adopts under this section.

15 NEW SECTION. **Sec. 5.** Sections 1, 2, and 4 of this act may be
16 known and cited as the healthy schools act of 2007.

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