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**HOUSE BILL 2392**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** Representatives Ortiz-Self, Walkinshaw, Appleton, Robinson, Cody, Hudgins, Farrell, Gregerson, Orwall, Fitzgibbon, Jinkins, Moscoso, Tarleton, Stanford, Sells, Ryu, Pollet, and Goodman

AN ACT Relating to protecting community members from pesticides; amending RCW 70.104.020, 70.104.030, 17.21.100, and 49.70.119; adding new sections to chapter 70.104 RCW; adding a new section to chapter 49.70 RCW; creating a new section; prescribing penalties; and providing an effective date.

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

NEW SECTION. **Sec.**  (1) The legislature finds that pesticide exposure can result in acute and chronic health problems for community members. Further, the legislature finds that drift from pesticide spray applications is a consistent source of pesticide exposure and poses significant risks to people in the vicinity of the pesticide application. Lack of communication is a major contributing factor to pesticide drift exposure incidents. The legislature therefore declares that community members should be protected from pesticide exposure and notified of certain pesticide applications to prevent unnecessary exposure. The legislature further declares its policy and purpose to protect workers from hazardous exposure to pesticides.

(2) The legislature further finds that the public has an interest in information about pesticide applications in order to advance knowledge related to public health and welfare, protect public health, and prevent pesticide-related illness.

**Sec.**  RCW 70.104.020 and 2009 c 549 s 1026 are each amended to read as follows:

((~~For the purposes of this chapter~~)) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Complete notice" means a written notice of an intended pesticide application that contains the information required by section 3(2) of this act.

(2) "Department" means the department of health.

(3) "Initial notice" means a written notice of an intended pesticide application that contains the information required by section 3(2)(a), (b), and (f) of this act.

(4) "Person" means an individual, corporation, estate, trust, partnership, association, joint venture, governmental subdivision or agency, or any other legal or commercial entity.

(5) "Pesticide" means, but is not limited to:

((~~(1)~~)) (a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, nematode, snail, slug, fungus, weed and any other form of plant or animal life or virus, except virus on or in a living human being or other animal, which is normally considered to be a pest or which the director of agriculture may declare to be a pest; or

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

((~~(3)~~)) (c) Any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to the application or effect thereof, and sold in a package or container separate from that of the pesticide with which it is to be used; or

((~~(4)~~)) (d) Any fungicide, rodenticide, herbicide, insecticide, and nematocide.

(6) "Pesticide drift" means the movement of pesticide through the air away from the intended target.

(7) "Pesticide user" means a person who applies pesticides by aerial application, air-blast sprayer, or fumigation, or who causes pesticides to be applied by these methods.

(8) "Restricted-entry interval" means the time after the end of a pesticide application during which entry into the treated area is restricted, as indicated on the pesticide label.

NEW SECTION. **Sec.**  A new section is added to chapter 70.104 RCW to read as follows:

(1) A pesticide user shall provide written notice of an intended pesticide application in accordance with the requirements of this section.

(a) The pesticide user shall provide the written notice to a person who owns, manages, or controls any property adjacent to the property of intended pesticide application, such as a teacher or employer of persons on the property.

(b) The pesticide user shall provide the written notice at least two hours before the intended application, but no earlier than forty-eight hours before the intended application.

(c) The pesticide user shall provide notice in person, by email, by text message, or by any other means approved by the department in rule.

(2) The notice required by subsection (1) of this section must include:

(a) The time, date, and location of any intended applications;

(b) The name, address, and telephone number of the pesticide user;

(c) The name, address, and telephone number of any person who has contracted for the application;

(d) A list of all pesticides to be applied, including the product name, environmental protection agency registration number, and active ingredients;

(e) The telephone number of the department's pesticide program;

(f) The telephone number of the Washington poison control center;

(g) A statement containing the following: (i) Only protected pesticide handlers should be in a treated area during pesticide application; and (ii) the pesticide should not contact workers or other persons, directly or through drift;

(h) The restricted-entry interval on the pesticide label and a statement that if pesticide contacts an area, persons should avoid that area for the restricted-entry interval. When two or more pesticides are applied at the same time, the restricted-entry interval provided in the notice must be the longest of the applicable restricted-entry intervals; and

(i) A statement in English and Spanish that the notice pertains to a pesticide application, that the pesticide user can provide further information, and that the pesticide user may be reached at the telephone number provided in the notice. The statement must be in bold-face type at the top of the notice.

(3) The pesticide user may provide an initial notice so long as the initial notice refers the recipient to a complete notice that is immediately accessible through a method specified by the department in rule. Notice provided under this subsection meets the requirements of subsection (1) of this section.

(4) A person who receives notice under subsection (2) of this section shall:

(a) Inform any person who the recipient of the notification knows or should reasonably expect to be on the property at the time of the intended pesticide application of the information required to be contained in an initial notice;

(b) Inform any person who is expected to be on the property at the time of the intended pesticide application that he or she may, upon request, immediately receive a complete notice; and

(c) Promptly provide a complete notice to a person who is expected to be on the property at the time of the intended pesticide application and his or her designated representative, upon request.

(5) The department shall provide a form for use in providing the notice required by this section. At a minimum, the form must be bilingual in English and Spanish.

(6) The department may adopt rules necessary for implementation of this section.

NEW SECTION. **Sec.**  A new section is added to chapter 70.104 RCW to read as follows:

(1) A person who is required by RCW 17.21.100 or 49.70.119 to keep records of pesticide applications shall submit to the department a monthly report containing the information required by RCW 17.21.100(1) and 49.70.119(1), as well as any other information reasonably required by the department.

(2) The department shall collect the data from the monthly reports required by subsection (1) of this section and make the data accessible to the public on the department's internet web site in a searchable, aggregated form that does not identify the persons who submit the data.

(3) The department shall adopt rules necessary for the implementation of this section, including the date for submission of monthly reports, the form for submission of reports, and the means of public access to pesticide use data.

NEW SECTION. **Sec.**  A new section is added to chapter 49.70 RCW to read as follows:

The department may investigate and assess a civil fine in accordance with administrative procedures under RCW 49.70.180 for violation of section 3 of this act. A civil fine issued under this section may not exceed seven thousand five hundred dollars.

**Sec.**  RCW 70.104.030 and 2009 c 495 s 10 are each amended to read as follows:

(1) The department of health may investigate all suspected human cases of pesticide poisoning and such cases of suspected pesticide poisoning of animals that may relate to human illness. The department shall establish time periods by rule to determine investigation response time. Time periods shall range from immediate to forty-eight hours to initiate an investigation, depending on the severity of the case or suspected case of pesticide poisoning.

In order to adequately investigate such cases, the department shall have the power to:

(a) Take all necessary samples and human or animal tissue specimens for diagnostic purposes: PROVIDED, That tissue, if taken from a living human, shall be taken from a living human only with the consent of a person legally qualified to give such consent;

(b) Secure any and all such information as may be necessary to adequately determine the nature and causes of any case of pesticide poisoning.

(2) The department shall immediately notify the department of agriculture, the department of labor and industries, and other appropriate agencies of the results of its investigation for such action as the other departments or agencies deem appropriate. The notification of such investigations and their results may include recommendations for further action by the appropriate department or agency.

(3) The department may investigate and assess a civil fine in accordance with RCW 43.70.095 for violation of section 4 of this act. A civil fine issued under this section may not exceed seven thousand five hundred dollars.

**Sec.**  RCW 17.21.100 and 2011 c 103 s 37 are each amended to read as follows:

(1) Certified applicators licensed under the provisions of this chapter, persons required to be licensed under this chapter, all persons applying pesticides to more than one acre of agricultural land in a calendar year, including public entities engaged in roadside spraying of pesticides, and all other persons making landscape applications of pesticides to types of property listed in RCW 17.21.410(1) (b), (c), (d), and (e), shall keep records for each application which shall include the following information:

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

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

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

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

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

(f) The concentration of pesticide that was applied;

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

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

(i) The direction and estimated velocity of the wind during the time the pesticide was applied. This subsection (1)(i) shall not apply to applications of baits in bait stations and pesticide applications within structures; and

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

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

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

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

(4)(a) The pesticide records shall be readily accessible to the department for inspection. Copies of the records shall be provided on request to: The department; the department of labor and industries; treating health care personnel initiating diagnostic testing or therapy for a patient with a suspected case of pesticide poisoning; the department of health; and, in the case of an industrial insurance claim filed under Title 51 RCW with the department of labor and industries, the employee or the employee's designated representative. In addition, the director may require the submission of the records on a routine basis within thirty days of the application of any restricted use pesticide in prescribed areas controlling the use of the restricted use pesticide. When a request for records is made under this subsection by treating health care personnel and the record is required for determining treatment, copies of the record shall be provided immediately. For all other requests, copies of the record shall be provided within seventy-two hours.

(b) The pesticide records must be provided to the department of health on a monthly basis in accordance with section 4 of this act and any rules adopted by the department of health.

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

(5) If a request for a copy of the record is made under this section from an applicator referred to in subsection (1) of this section and the applicator refuses to provide a copy, the requester may notify the department of the request and the applicator's refusal. Within seven working days, the department shall request that the applicator provide the department with all pertinent copies of the records, except that in a medical emergency the request shall be made within two working days. The applicator shall provide copies of the records to the department within twenty-four hours after the department's request.

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

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

**Sec.**  RCW 49.70.119 and 1992 c 173 s 3 are each amended to read as follows:

(1) An employer who applies pesticides in connection with the production of an agricultural crop, or who causes pesticides to be applied in connection with such production, shall keep records for each application, which shall include the following information:

(a) The location of the land where the pesticide was applied or site where the pesticide was stored;

(b) The year, month, day, and time the pesticide was applied;

(c) The product name used on the registered label and the United States environmental protection agency registration number, if applicable, of the pesticide that was applied or stored;

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

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

(f) The concentration of pesticide that was applied;

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

(h) If applicable, the licensed applicator's name, address, and telephone number and the name of the individual or individuals making the application;

(i) The direction and estimated velocity of the wind at the time the pesticide was applied: PROVIDED, That this subsection (i) shall not apply to applications of baits in bait stations and pesticide applications within structures; and

(j) Any other reasonable information required by the director.

(2) The records shall be updated on the same day that a pesticide is applied. If the employer has been provided a copy of a pesticide application record under RCW 17.21.100(2)(b), the copy may be used as the record of the pesticide application required under this section. The employer shall maintain and preserve the pesticide application records for no less than seven years from the date of the application of the pesticide to which the records refer.

(3) The pesticide application records shall be readily accessible to the employer's employees and their designated representatives in a central location in the workplace beginning on the day the application is made and for at least thirty days following the application. The employee or representative shall be entitled to view the pesticide application records and make his or her own record from the information contained in the application records. New or newly assigned employees shall be made aware of the accessibility of the application records before working with pesticides or in a work area containing pesticides.

(4)(a) An employer subject to this section who stores pesticides shall at least once in each calendar year perform an inventory of the pesticides stored in any work area. The pesticide inventory records shall include the following information:

(i) The location of the site where the pesticide is stored;

(ii) The year, month, day, and time the pesticide was first stored;

(iii) The product name used on the registered label and the United States environmental protection agency registration number, if applicable, of the pesticide that is stored; and

(iv) The amount of pesticide in storage at the time of the inventory.

The inventory records shall be maintained and preserved for no less than seven years.

(b) In addition to performing the annual pesticide inventory required under this subsection, an employer shall maintain a record of pesticide purchases made between the annual inventory dates. In lieu of this purchase record, an employer may obtain from distributors from whom pesticides are purchased a statement obligating the distributor to maintain the purchase records on behalf of the employer and in satisfaction of the employer's obligations under this subsection. The director may require the submission of all purchase records from employers or distributors, covering the purchases during a specified period of time or in a specified geographical area.

(5) If activities for which the records are maintained cease, the records shall be filed with the department. If an employer subject to this section is succeeded or replaced in that function by another person, the person who succeeds or replaces the employer shall retain the records as required by this section but is not liable for violations committed by the former employer under this chapter or rules adopted under this chapter, including violations relating to the retention and preservation of records.

(6)(a) The records required under this section shall be readily accessible to the department for inspection. Copies of the records shall be provided, on request, to: An employee or the employee's designated representative in the case of an industrial insurance claim filed under Title 51 RCW with the department of labor and industries, treating health care personnel, ((~~the pesticide incident reporting and tracking review panel,~~)) or department representative. The designated representative or treating health care personnel are not required to identify the employee represented or treated. The department shall keep the name of any affected employee confidential in accordance with RCW 49.17.080(1). When a request for records is made under this subsection by treating health care personnel and the record is required for determining treatment, copies of the record shall be provided immediately. For all other requests, copies of the records shall be provided within seventy-two hours.

(b) Copies of records provided to any person or entity under this subsection (6) shall, if so requested, be provided or made available on a form adopted under subsection (10) of this section. Information for treating health care personnel shall be made immediately available by telephone, if requested, with a copy of the records provided within twenty-four hours.

(c) If an employer has reason to suspect that an employee is ill or injured because of an exposure to one or more pesticides, the employer shall immediately provide the employee a copy of the relevant pesticide application records.

(d) The records required under subsections (1) and (2) of this section must be provided to the department of health on a monthly basis in accordance with section 4 of this act and any rules adopted by the department of health.

(7) If a request for a copy of a record is made under this section and the employer refuses to provide a copy, the requester may notify the department of the request and the employer's refusal. Within seven working days, the department shall request that the employer provide the department with all pertinent copies of the records, except that in a medical emergency the request shall be made within two working days. The employer shall provide copies of the records to the department within twenty-four hours after the department's request.

(8) The department shall include inspection of the records required under this section as part of any on-site inspection of a workplace conducted under this chapter or chapter 49.17 RCW. The inspection shall determine whether the records are readily transferable to a form adopted by the department, and readily accessible to employees. However, no employer subject to a department inspection may be inspected under this subsection (8) more than once in any calendar year, unless a previous inspection has found recordkeeping violations. If recordkeeping violations are found, the department may conduct reasonable multiple inspections, pursuant to rules adopted by the department. Nothing in this subsection (8) limits the department's inspection of records pertaining to pesticide-related injuries, illnesses, fatalities, accidents, or complaints.

(9) If an employer has failed to maintain and preserve the records or provide access to or copies of the records as required under this section, the employer shall be subject to penalties authorized under RCW 49.17.180.

(10) The department of labor and industries and the department of agriculture shall jointly adopt, by rule, forms that satisfy the information requirements of this section and RCW 17.21.100.

NEW SECTION. **Sec.**  This act takes effect July 1, 2017.

**--- END ---**