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HOUSE BILL 2392

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

Read first time 01/13/16. Referred to Committee on Health Care & Wellness.

1 AN ACT Relating to protecting community members from pesticides;  
2 amending RCW 70.104.020, 70.104.030, 17.21.100, and 49.70.119; adding  
3 new sections to chapter 70.104 RCW; adding a new section to chapter  
4 49.70 RCW; creating a new section; prescribing penalties; and  
5 providing an effective date.

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

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

19 (2) The legislature further finds that the public has an interest  
20 in information about pesticide applications in order to advance

1 knowledge related to public health and welfare, protect public  
2 health, and prevent pesticide-related illness.

3 **Sec. 2.** RCW 70.104.020 and 2009 c 549 s 1026 are each amended to  
4 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

7       NEW SECTION. Sec. 3. A new section is added to chapter 70.104  
8 RCW to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

38       (h) The restricted-entry interval on the pesticide label and a  
39 statement that if pesticide contacts an area, persons should avoid

1 that area for the restricted-entry interval. When two or more  
2 pesticides are applied at the same time, the restricted-entry  
3 interval provided in the notice must be the longest of the applicable  
4 restricted-entry intervals; and

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

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

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

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

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

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

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

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

32 NEW SECTION. **Sec. 4.** A new section is added to chapter 70.104  
33 RCW to read as follows:

34 (1) A person who is required by RCW 17.21.100 or 49.70.119 to  
35 keep records of pesticide applications shall submit to the department  
36 a monthly report containing the information required by RCW  
37 17.21.100(1) and 49.70.119(1), as well as any other information  
38 reasonably required by the department.

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

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

10 NEW SECTION. **Sec. 5.** A new section is added to chapter 49.70  
11 RCW to read as follows:

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

16 **Sec. 6.** RCW 70.104.030 and 2009 c 495 s 10 are each amended to  
17 read as follows:

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

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

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

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

34 (2) The department shall immediately notify the department of  
35 agriculture, the department of labor and industries, and other  
36 appropriate agencies of the results of its investigation for such  
37 action as the other departments or agencies deem appropriate. The  
38 notification of such investigations and their results may include

1 recommendations for further action by the appropriate department or  
2 agency.

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

7 **Sec. 7.** RCW 17.21.100 and 2011 c 103 s 37 are each amended to  
8 read as follows:

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

- 17 (a) The location of the land where the pesticide was applied;
  - 18 (b) The year, month, day and beginning and ending time of the  
19 application of the pesticide each day the pesticide was applied;
  - 20 (c) The product name used on the registered label and the United  
21 States environmental protection agency registration number, if  
22 applicable, of the pesticide which was applied;
  - 23 (d) The crop or site to which the pesticide was applied;
  - 24 (e) The amount of pesticide applied per acre or other appropriate  
25 measure;
  - 26 (f) The concentration of pesticide that was applied;
  - 27 (g) The number of acres, or other appropriate measure, to which  
28 the pesticide was applied;
  - 29 (h) The licensed applicator's name, address, and telephone number  
30 and the name of the individual or individuals making the application  
31 and their license number, if applicable;
  - 32 (i) The direction and estimated velocity of the wind during the  
33 time the pesticide was applied. This subsection (1)(i) shall not  
34 apply to applications of baits in bait stations and pesticide  
35 applications within structures; and
  - 36 (j) Any other reasonable information required by the director in  
37 rule.
- 38 (2)(a) The required information shall be recorded on the same day  
39 that a pesticide is applied.

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

9 (3) The records required under this section shall be maintained  
10 and preserved by the licensed pesticide applicator or such other  
11 person or entity applying the pesticides for no less than seven years  
12 from the date of the application of the pesticide to which such  
13 records refer. If the pesticide was applied by a commercial pesticide  
14 applicator to the agricultural crop or agricultural lands of a person  
15 who employs one or more employees, as "employee" is defined in RCW  
16 49.70.020, the records shall also be kept by the employer for a  
17 period of seven years from the date of the application of the  
18 pesticide to which the records refer.

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

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

38 (c) Copies of records provided to a person or entity under this  
39 subsection (4) shall, if so requested, be provided on a form adopted  
40 under subsection (7) of this section. Information for treating health

1 care personnel shall be made immediately available by telephone, if  
2 requested, with a copy of the records provided within twenty-four  
3 hours.

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

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

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

30 **Sec. 8.** RCW 49.70.119 and 1992 c 173 s 3 are each amended to  
31 read as follows:

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

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

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



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

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

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

7 (f) The concentration of pesticide that was applied;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (6)(a) The records required under this section shall be readily  
30 accessible to the department for inspection. Copies of the records  
31 shall be provided, on request, to: An employee or the employee's  
32 designated representative in the case of an industrial insurance  
33 claim filed under Title 51 RCW with the department of labor and  
34 industries, treating health care personnel, (~~the pesticide incident~~  
35 ~~reporting and tracking review panel,~~) or department representative.  
36 The designated representative or treating health care personnel are  
37 not required to identify the employee represented or treated. The  
38 department shall keep the name of any affected employee confidential  
39 in accordance with RCW 49.17.080(1). When a request for records is  
40 made under this subsection by treating health care personnel and the

1 record is required for determining treatment, copies of the record  
2 shall be provided immediately. For all other requests, copies of the  
3 records shall be provided within seventy-two hours.

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

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

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

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

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

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

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

8           NEW SECTION.   **Sec. 9.** This act takes effect July 1, 2017.

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