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SENATE BILL 6322

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State of Washington

65th Legislature

2018 Regular Session

By Senators Saldaña, Ranker, Cleveland, Rolfes, Van De Wege, McCoy, Chase, Conway, Hasegawa, and Hunt

Read first time 01/12/18. Referred to Committee on Energy, Environment & Technology.

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) "Adjacent property" means any property located within one-  
9 quarter mile distance from the intended pesticide application.

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

13 (3) "Department" means the department of health.

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

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

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

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

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

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

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

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

1       (8) "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       (9) "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 a school, as defined in RCW  
14 17.21.415, or a child day care center, as defined in RCW 43.216.010,  
15 on any adjacent 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 persons,  
37 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) The school or child day care center that receives notice  
16 under subsection (2) of this section must:

17 (a) Post notification of the intended pesticide application at  
18 least twenty-four hours prior to the application. Notification must  
19 be posted in a prominent place in or nearby the main office of the  
20 school or child day care center. The posted notification must include  
21 the heading "Intended Pesticide Application on Adjacent Property" and  
22 contain the information provided in subsection (2) of this section.  
23 The posted notification must remain in place for at least twenty-four  
24 hours from the time of the intended pesticide application; and

25 (b) Keep the students or children inside the school or child day  
26 care center during the intended date and time of the intended  
27 pesticide application.

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

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

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

35 (1) The department shall develop a list of individuals who apply  
36 to receive notification of pesticide applications on any adjacent  
37 property.

38 (2) An applicant for inclusion on the pesticide notification list  
39 may apply to the department at any time and shall provide the

1 department, on the department's form, the applicant's name, street  
2 address, email address, and telephone number of the applicant.

3 (3) A person whose name has been included on the pesticide  
4 notification list shall notify the department of a need to update the  
5 list as soon as possible after a change of email address, street  
6 address, or telephone number. An applicant shall receive verification  
7 that the applicant's name has been placed on the pesticide  
8 notification list. The pesticide notification list shall not expire;  
9 however, an applicant may request to be removed from the list at any  
10 time.

11 (4) A pesticide user shall provide notice to the department of an  
12 intended pesticide application in accordance with the requirements  
13 provided by the department in rule and containing the information  
14 described in subsection (5) of this section. The notice shall be  
15 provided at least four business days before the intended application.

16 (5) Upon receipt of the notice of intended pesticide application,  
17 the department shall notify all persons on the pesticide notification  
18 list whose street addresses are on adjacent properties to the  
19 property of the intended pesticide application. The notification by  
20 the department shall be at least two hours prior to the scheduled  
21 application. Notification by the department may be by email, text  
22 message, or by telephone, and shall disclose the date and approximate  
23 time of the application and provide a link to a web page that  
24 contains at least the following:

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

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

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

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

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

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

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

39 (h) The restricted-entry interval on the pesticide label and a  
40 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 NEW SECTION. **Sec. 5.** A new section is added to chapter 70.104  
11 RCW to read as follows:

12 (1) A person who is required by RCW 17.21.100 or 49.70.119 to  
13 keep records of pesticide applications shall submit to the department  
14 a monthly report containing the information required by RCW  
15 17.21.100(1) and 49.70.119(1), as well as any other information  
16 reasonably required by the department.

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

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

26 NEW SECTION. **Sec. 6.** A new section is added to chapter 49.70  
27 RCW to read as follows:

28 The department may investigate and assess a civil fine in  
29 accordance with administrative procedures under RCW 49.70.180 for  
30 violation of sections 3 and 4 of this act. A civil fine issued under  
31 this section may not exceed seven thousand five hundred dollars.

32 **Sec. 7.** RCW 70.104.030 and 2009 c 495 s 10 are each amended to  
33 read as follows:

34 (1) The department of health may investigate all suspected human  
35 cases of pesticide poisoning and such cases of suspected pesticide  
36 poisoning of animals that may relate to human illness. The department  
37 shall establish time periods by rule to determine investigation

1 response time. Time periods shall range from immediate to forty-eight  
2 hours to initiate an investigation, depending on the severity of the  
3 case or suspected case of pesticide poisoning.

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

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

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

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

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

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

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

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

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

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

1 (d) The crop or site to which the pesticide was applied;  
2 (e) The amount of pesticide applied per acre or other appropriate  
3 measure;  
4 (f) The concentration of pesticide that was applied;  
5 (g) The number of acres, or other appropriate measure, to which  
6 the pesticide was applied;  
7 (h) The licensed applicator's name, address, and telephone number  
8 and the name of the individual or individuals making the application  
9 and their license number, if applicable;  
10 (i) The direction and estimated velocity of the wind during the  
11 time the pesticide was applied. This subsection (1)(i) shall not  
12 apply to applications of baits in bait stations and pesticide  
13 applications within structures; and  
14 (j) Any other reasonable information required by the director in  
15 rule.  
16 (2)(a) The required information shall be recorded on the same day  
17 that a pesticide is applied.  
18 (b) A commercial pesticide applicator who applies a pesticide to  
19 an agricultural crop or agricultural lands shall provide a copy of  
20 the records required under subsection (1) of this section for the  
21 application to the owner, or to the lessee if applied on behalf of  
22 the lessee, of the lands to which the pesticide is applied. Records  
23 provided by a commercial pesticide applicator to the owner or lessee  
24 of agricultural lands under this subsection need not be provided on a  
25 form adopted by the department.  
26 (3) The records required under this section shall be maintained  
27 and preserved by the licensed pesticide applicator or such other  
28 person or entity applying the pesticides for no less than seven years  
29 from the date of the application of the pesticide to which such  
30 records refer. If the pesticide was applied by a commercial pesticide  
31 applicator to the agricultural crop or agricultural lands of a person  
32 who employs one or more employees, as "employee" is defined in RCW  
33 49.70.020, the records shall also be kept by the employer for a  
34 period of seven years from the date of the application of the  
35 pesticide to which the records refer.  
36 (4)(a) The pesticide records shall be readily accessible to the  
37 department for inspection. Copies of the records shall be provided on  
38 request to: The department; the department of labor and industries;  
39 treating health care personnel initiating diagnostic testing or  
40 therapy for a patient with a suspected case of pesticide poisoning;

1 the department of health; and, in the case of an industrial insurance  
2 claim filed under Title 51 RCW with the department of labor and  
3 industries, the employee or the employee's designated representative.  
4 In addition, the director may require the submission of the records  
5 on a routine basis within thirty days of the application of any  
6 restricted use pesticide in prescribed areas controlling the use of  
7 the restricted use pesticide. When a request for records is made  
8 under this subsection by treating health care personnel and the  
9 record is required for determining treatment, copies of the record  
10 shall be provided immediately. For all other requests, copies of the  
11 record shall be provided within seventy-two hours.

12 (b) The pesticide records must be provided to the department of  
13 health on a monthly basis in accordance with section 5 of this act  
14 and any rules adopted by the department of health.

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

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

31 (6) The department shall include inspection of the records  
32 required under this section as part of any on-site inspection  
33 conducted under this chapter on agricultural lands. The inspection  
34 shall determine whether the records are readily transferable to a  
35 form adopted by the department and are readily accessible to  
36 employees. However, no person subject to a department inspection may  
37 be inspected under this subsection (6) more than once in any calendar  
38 year, unless a previous inspection has found recordkeeping  
39 violations. If recordkeeping violations are found, the department may  
40 conduct reasonable multiple inspections, pursuant to rules adopted by

1 the department. Nothing in this subsection (6) limits the  
2 department's inspection of records pertaining to pesticide-related  
3 injuries, illnesses, fatalities, accidents, or complaints.

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

7 **Sec. 9.** RCW 49.70.119 and 1992 c 173 s 3 are each amended to  
8 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (5) If activities for which the records are maintained cease, the  
37 records shall be filed with the department. If an employer subject to  
38 this section is succeeded or replaced in that function by another  
39 person, the person who succeeds or replaces the employer shall retain  
40 the records as required by this section but is not liable for

1 violations committed by the former employer under this chapter or  
2 rules adopted under this chapter, including violations relating to  
3 the retention and preservation of records.

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

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

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

29 (d) The records required under subsections (1) and (2) of this  
30 section must be provided to the department of health on a monthly  
31 basis in accordance with section 5 of this act and any rules adopted  
32 by the department of health.

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

1 records to the department within twenty-four hours after the  
2 department's request.

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

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

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

24 NEW SECTION. **Sec. 10.** This act takes effect July 1, 2018.

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