

CERTIFICATION OF ENROLLMENT

SENATE BILL 5330

68th Legislature
2023 Regular Session

Passed by the Senate March 6, 2023
Yeas 49 Nays 0

President of the Senate

Passed by the House April 12, 2023
Yeas 97 Nays 0

**Speaker of the House of
Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5330** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SENATE BILL 5330

Passed Legislature - 2023 Regular Session

State of Washington

68th Legislature

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By Senators Torres, Muzzall, Shewmake, Van De Wege, Warnick, Kuderer, and Lovick; by request of Department of Agriculture

Read first time 01/12/23. Referred to Committee on Agriculture, Water, Natural Resources & Parks.

1 AN ACT Relating to the Washington pesticide application act;
2 amending RCW 17.21.020, 17.21.130, and 17.21.132; and adding a new
3 section to chapter 17.21 RCW.

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

5 **Sec. 1.** RCW 17.21.020 and 2010 1st sp.s. c 7 s 134 are each
6 amended to read as follows:

7 (~~Unless the context clearly requires otherwise, the~~) The
8 definitions in this section apply throughout this chapter unless the
9 context clearly requires otherwise.

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

16 (2) "Agricultural land" means land on which an agricultural
17 commodity is produced or land that is in a government-recognized
18 conservation reserve program. This definition does not apply to
19 private gardens where agricultural commodities are produced for
20 personal consumption.

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

5 (4) "Apparatus" means any type of ground, water, or aerial
6 equipment, device, or contrivance using motorized, mechanical, or
7 pressurized power and used to apply ~~((any pesticide on land and
8 anything that may be growing, habitating, or stored on or in such
9 land, but shall not include any pressurized handsized household
10 device used to apply any pesticide, or any equipment, device, or
11 contrivance of which the person who is applying the pesticide is the
12 source of power or energy in making such pesticide application, or
13 any other small equipment, device, or contrivance that is transported
14 in a piece of equipment licensed under this chapter as an apparatus))~~
15 pesticides that are mounted, attached to, pulled, or carried on any
16 vehicle, trailer, aircraft, vessel, or all-terrain vehicle designed
17 primarily for transportation and movement, but does not include a
18 device that is handheld, carried by the applicator, or placed in
19 position for a sedentary timed or metered application.

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

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

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

35 (8) "Commercial pesticide operator" means any employee of a
36 commercial pesticide applicator who uses or supervises the use of any
37 pesticide and who is required to be licensed under provisions of this
38 chapter.

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

4 (10) "Department" means the Washington state department of
5 agriculture.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (28) "Landscape application" means an application of any EPA
40 registered pesticide to any exterior landscape area around

1 residential property, commercial properties such as apartments or
2 shopping centers, parks, golf courses, schools including nursery
3 schools and licensed day cares, or cemeteries or similar areas. This
4 definition shall not apply to: (a) Applications made by private
5 applicators, limited private applicators, or rancher private
6 applicators; (b) mosquito abatement, gypsy moth eradication, or
7 similar wide-area pest control programs sponsored by governmental
8 entities; and (c) commercial pesticide applicators making structural
9 applications.

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

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

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

34 (32) "Nematode" means any invertebrate animal of the phylum
35 nemathelminthes and class nematoda, that is, unsegmented round worms
36 with elongated, fusiform, or saclike bodies covered with cuticle, and
37 inhabiting soil, water, plants or plant parts. Nematodes may also be
38 called nemas or eelworms.

39 (33) "Nonproduction agricultural land" means pastures, rangeland,
40 fencerows, and areas around farm buildings but not aquatic sites.

1 (34) "Person" means any individual, partnership, association,
2 corporation, or organized group of persons whether or not
3 incorporated.

4 (35) "Pest" means, but is not limited to, any insect, rodent,
5 nematode, snail, slug, weed, and any form of plant or animal life or
6 virus, except virus, bacteria, or other microorganisms on or in a
7 living person or other animal or in or on processed food or beverages
8 or pharmaceuticals, which is normally considered to be a pest, or
9 which the director may declare to be a pest.

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

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

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

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

16 (37) "Plant regulator" means any substance or mixture of
17 substances intended through physiological action, to accelerate or
18 retard the rate of growth or maturation, or to otherwise alter the
19 behavior of ornamental or crop plants or their produce, but shall not
20 include substances insofar as they are intended to be used as plant
21 nutrients, trace elements, nutritional chemicals, plant inoculants,
22 or soil amendments.

23 (38) "Private applicator" means a certified applicator who uses
24 or is in direct supervision of the use of any pesticide classified by
25 the EPA or the director as a restricted use pesticide, for the
26 purposes of producing any agricultural commodity and for any
27 associated noncrop application on land owned or rented by the
28 applicator or the applicator's employer or if applied without
29 compensation other than trading of personal services between
30 producers of agricultural commodities on the land of another person.

31 (39) "Private-commercial applicator" means a certified applicator
32 who uses or supervises the use of any pesticide classified by the EPA
33 or the director as a restricted use pesticide for purposes other than
34 the production of any agricultural commodity on lands owned or rented
35 by the applicator or the applicator's employer.

36 (40) "Rancher private applicator" means a certified applicator
37 who uses or is in direct supervision, as defined for private
38 applicators in this section, of the use of any herbicide or any
39 rodenticide classified by the EPA or the director as a restricted use
40 pesticide for the purpose of controlling weeds and pest animals on

1 nonproduction agricultural land and limited production agricultural
2 land owned or rented by the applicator or the applicator's employer.
3 Rancher private applicators may also use restricted use pesticides on
4 timber areas, excluding aquatic sites, to control weeds designated
5 for mandatory control under chapters 17.04, 17.06, and 17.10 RCW and
6 state and local regulations adopted under chapters 17.04, 17.06, and
7 17.10 RCW. A rancher private applicator may apply restricted use
8 herbicides and rodenticides to the types of land described in this
9 subsection of another person if applied without compensation other
10 than trading of personal services between the applicator and the
11 other person. This license is only valid when making applications in
12 counties of Washington located east of the crest of the Cascade
13 mountains.

14 (41) "Residential property" includes property less than one acre
15 in size zoned as residential by a city, town, or county, but does not
16 include property zoned as agricultural or agricultural homesites.

17 (42) "Restricted use pesticide" means any pesticide or device
18 which, when used as directed or in accordance with a widespread and
19 commonly recognized practice, the director determines, subsequent to
20 a hearing, requires additional restrictions for that use to prevent
21 unreasonable adverse effects on the environment including people,
22 lands, beneficial insects, animals, crops, and wildlife, other than
23 pests.

24 (43) "Rodenticide" means any substance or mixture of substances
25 intended to prevent, destroy, repel, or mitigate rodents, or any
26 other vertebrate animal which the director may declare by rule to be
27 a pest.

28 (44) "School facility" means any facility used for licensed day
29 care center purposes or for the purposes of a public kindergarten or
30 public elementary or secondary school. School facility includes the
31 buildings or structures, playgrounds, landscape areas, athletic
32 fields, school vehicles, or any other area of school property.

33 (45) "Snails or slugs" include all harmful mollusks.

34 (46) "Unreasonable adverse effects on the environment" means any
35 unreasonable risk to people or the environment taking into account
36 the economic, social, and environmental costs and benefits of the use
37 of any pesticide, or as otherwise determined by the director.

38 (47) "Weed" means any plant which grows where it is not wanted.

1 (48) "Mishap" means an event that adversely affects humans or the
2 environment and that is related to the use or presence of a pesticide
3 whether the event was unexpected or unintentional.

4 (49) "Noncertified applicator" means an individual who is not
5 licensed by the director in accordance with this chapter to use or
6 supervise the use of any pesticide that is classified by EPA or the
7 director as a restricted use pesticide in the classification
8 appropriate to the type of application being conducted.

9 (50) "Use" as in "to use a pesticide," means:

10 (a) Whenever the "restricted use pesticide" designation statement
11 appears on a pesticide label, "use" means any of the following:

12 (i) Preapplication activities involving mixing and loading the
13 pesticide;

14 (ii) Applying the pesticide including, but not limited to,
15 supervising the use of a pesticide by a noncertified applicator; and

16 (iii) Other pesticide-related activities including, but not
17 limited to, transporting or storing pesticide containers that have
18 been opened, cleaning equipment, and disposing of excess pesticides,
19 spray mix, equipment wash waters, pesticide containers, and other
20 pesticide-containing materials.

21 (b) Whenever the "restricted use pesticide" designation statement
22 does not appear on a pesticide label, "use" means any of the
23 following:

24 (i) Preapplication activities involving mixing and loading the
25 pesticide;

26 (ii) Applying the pesticide including, but not limited to,
27 supervising the use of a pesticide by a noncertified applicator; and

28 (iii) Other activities required by the label instructions.

29 (51) "Use-specific instruction" means the information and
30 requirements specific to a particular pesticide product or work site
31 that an applicator needs in order to use the pesticide in accordance
32 with applicable requirements and without causing unreasonable adverse
33 effects.

34 **Sec. 2.** RCW 17.21.130 and 1997 c 58 s 877 are each amended to
35 read as follows:

36 (1) Any license, permit, or certification provided for in this
37 chapter may be revoked or suspended, and any license, permit, or
38 certification application may be denied by the director for cause. If
39 the director suspends a license under this chapter with respect to

1 activity of a continuing nature under chapter 34.05 RCW, the director
2 may elect to suspend the license for a subsequent license year during
3 a period that coincides with the period commencing (~~(thirty)~~) 30 days
4 before and ending (~~(thirty)~~) 30 days after the date of the incident
5 or incidents giving rise to the violation.

6 (2) The director shall immediately suspend the license or
7 certificate of a person who has been certified pursuant to RCW
8 74.20A.320 by the department of social and health services as a
9 person who is not in compliance with a support order (~~(or a~~
10 ~~residential or visitation order)~~). If the person has continued to
11 meet all other requirements for reinstatement during the suspension,
12 reissuance of the license or certificate shall be automatic upon the
13 director's receipt of a release issued by the department of social
14 and health services stating that the licensee is in compliance with
15 the order.

16 (3) The director may elect to suspend or revoke any license or
17 certification that is based in whole or in part on a license or
18 certification from another state or jurisdiction upon notification
19 that the applicator's original certification was terminated because
20 the certified applicator has been convicted under section 14(b) of
21 FIFRA or has been subject to a final order imposing a civil penalty
22 under section 14(a) of FIFRA.

23 **Sec. 3.** RCW 17.21.132 and 2004 c 100 s 4 are each amended to
24 read as follows:

25 Any person applying for a license or certification authorized
26 under the provisions of this chapter shall file an application on a
27 form prescribed by the director.

28 (1) The application shall state the license or certification and
29 the classification(s) for which the applicant is applying and the
30 method in which the pesticides are to be applied.

31 (2) For all classes of licenses (~~(except private applicator,~~
32 ~~limited private applicator, and rancher private applicator)~~), all
33 applicants shall be at least (~~(eighteen)~~) 18 years of age on the date
34 that the application is made. (~~(Applicants for a private applicator,~~
35 ~~limited private applicator, or rancher private applicator license~~
36 ~~shall be at least sixteen years of age on the date that the~~
37 ~~application is made.)~~)

1 (3) Application for a license to apply pesticides shall be
2 accompanied by the required fee. No license may be issued until the
3 required fee has been received by the department.

4 (4) Each classification of license issued under this chapter
5 except the limited private applicator and the rancher private
6 applicator expires annually on a date set by rule by the director.
7 Limited and rancher private applicator licenses expire on the fifth
8 December 31st after issuance. Renewal applications shall be filed on
9 or before the applicable expiration date.

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

12 The department shall adopt by rule standards for pesticide
13 applications made by noncertified applicators of restricted use
14 pesticides under the direct supervision of a certified applicator.
15 Standards must be at least as effective as the federal certification
16 and training standards for pesticide applicators and must include
17 requirements for both the noncertified applicator and the certified
18 applicator directly supervising the noncertified applicator.

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