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**HOUSE BILL 2624**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** Representatives Shewmake, Kretz, Blake, Dent, and Lekanoff; by request of Department of Agriculture

AN ACT Relating to the authority of the director of the department of agriculture with respect to certain examinations and examination fees; and amending RCW 15.58.040, 15.58.240, 17.21.030, and 17.21.134.

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

**Sec.**  RCW 15.58.040 and 2003 c 212 s 2 are each amended to read as follows:

(1) The director shall administer and enforce the provisions of this chapter and rules adopted under this chapter. All the authority and requirements provided for in chapter 34.05 RCW (Administrative Procedure Act) and chapter 42.30 RCW shall apply to this chapter in the adoption of rules including those requiring due notice and a hearing for the adoption of permanent rules.

(2) The director is authorized to adopt appropriate rules for carrying out the purpose and provisions of this chapter, including but not limited to rules providing for:

(a) Declaring as a pest any form of plant or animal life or virus which is injurious to plants, people, animals (domestic or otherwise), land, articles, or substances;

(b) Determining that certain pesticides are highly toxic to people. For the purpose of this chapter, highly toxic pesticide means any pesticide that conforms to the criteria in 40 C.F.R. Sec. 156.10 for toxicity category I due to oral inhalation or dermal toxicity. The director shall publish a list of all pesticides, determined to be highly toxic, by their common or generic name and their trade or brand name if practical. Such list shall be kept current and shall, upon request, be made available to any interested party;

(c) Determining standards for denaturing pesticides by color, taste, odor, or form;

(d) The collection and examination of samples of pesticides or devices;

(e) The safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers;

(f) Restricting or prohibiting the use of certain types of containers or packages for specific pesticides. These restrictions may apply to type of construction, strength, and/or size to alleviate danger of spillage, breakage, misuse, or any other hazard to the public. The director shall be guided by federal regulations concerning pesticide containers;

(g) Procedures in making of pesticide recommendations;

(h) Adopting a list of restricted use pesticides for the state or for designated areas within the state if the director determines that such pesticides may require rules restricting or prohibiting their distribution or use. The director may include in the rule the time and conditions of distribution or use of such restricted use pesticides and may, if it is found necessary to carry out the purpose and provisions of this chapter, require that any or all restricted use pesticides shall be purchased, possessed, or used only under permit of the director and under the director's direct supervision in certain areas and/or under certain conditions or in certain quantities or concentrations. The director may require all persons issued such permits to maintain records as to the use of all the restricted use pesticides;

(i) Label requirements of all pesticides required to be registered under provisions of this chapter;

(j) Regulating the labeling of devices;

(k) The establishment of criteria governing the conduct of a structural pest inspection;

(l) Declaring crops, when grown to produce seed specifically for crop reproduction purposes, to be nonfood and/or nonfeed sites of pesticide application. The director may include in the rule any restrictions or conditions regarding: (i) The application of pesticides to the designated crops; and (ii) the disposition of any portion of the treated crop;

(m) Governing the fixing and collecting of examination fees; and

(n) Requiring individuals to earn recertification credits in the classifications in which they are licensed.

(3) For the purpose of uniformity and to avoid confusion endangering the public health and welfare the director may adopt rules in conformity with the primary pesticide standards, particularly as to labeling, established by the United States environmental protection agency or any other federal agency.

**Sec.**  RCW 15.58.240 and 1989 c 380 s 20 are each amended to read as follows:

The director may classify licenses to be issued under the provisions of this chapter. Such classifications may include but not be limited to agricultural crops, ornamentals, or noncrop land herbicides. If the licensee has a classified license the licensee shall be limited to practicing within these classifications. Each such classification shall be subject to separate testing procedures and requirements: PROVIDED, That no person shall be required to pay an additional license fee if the person desires to be licensed in one or all of the license classifications provided for by the director under the authority of this section. The director may charge ((~~an~~)) examination fees established by the director by rule ((~~when an examination is necessary, before a license may be issued or when application for a license and examination is made at other than a regularly scheduled examination date~~)). The director may administer or contract with a public or private third-party entity to administer any or all parts of either the examination or the collection of examination fees, or both. Examinations administered by third-party entities must be the same as the examination that would otherwise be administered by the department. The department may direct that the applicant pay the fees to the third-party entity in accordance with department rules governing third-party examinations and fees. The director may renew any applicant's license under the classification for which the applicant is licensed, subject to reexamination or other recertification standards as determined by the director when deemed necessary because new knowledge or new classifications are required to carry out the responsibilities of the licensee.

**Sec.**  RCW 17.21.030 and 1994 c 283 s 2 are each amended to read as follows:

The director shall administer and enforce the provisions of this chapter and rules adopted under this chapter.

(1) The director may adopt rules:

(a) Governing the loading, mixing, application and use, or prohibiting the loading, mixing, application, or use of any pesticide;

(b) Governing the time when, and the conditions under which restricted use pesticides shall or shall not be used in different areas as prescribed by the director in the state;

(c) Providing that any or all restricted use pesticides shall be purchased, possessed or used only under permit of the director and under the director's direct supervision in certain areas and/or under certain conditions or in certain quantities of concentrations; however, any person licensed to sell such pesticides may purchase and possess such pesticides without a permit;

(d) Establishing recordkeeping requirements for licensees, permittees, and certified applicators;

(e) Governing the fixing and collecting of examination fees ((~~and~~));

(f) Fixing and collecting fees for recertification course sponsorship;

((~~(f)~~)) (g) Establishing testing procedures, licensing classifications, and requirements for licenses and permits, and criteria for assigning recertification credit to and procedures for department approval of courses as provided by this chapter;

((~~(g)~~)) (h) Concerning training by employers for employees who mix and load pesticides;

((~~(h)~~)) (i) Concerning minimum performance standards for spray boom and nozzles used in pesticide applications to minimize spray drift and establishing a list of approved spray nozzles that meet these standards; and

((~~(i)~~)) (j) Fixing and collecting permit fees.

(2) The director may adopt any other rules necessary to carry out the purpose and provisions of this chapter.

**Sec.**  RCW 17.21.134 and 1994 c 283 s 17 are each amended to read as follows:

(1) The director shall not issue a commercial pesticide applicator license until the applicant, if he or she is the sole owner and manager of the business has passed examinations in all classifications that the business operates. If there is more than one owner or the owner does not participate in the pesticide application activities, the person managing the pesticide application activities of the business shall be licensed in all classifications that the business operates. The director shall not issue a commercial pesticide operator, public operator, private commercial applicator, or demonstration and research applicator license until the applicant has passed an examination demonstrating knowledge of:

(a) How to apply pesticides under the classification for which he or she has applied, manually or with the various apparatuses that he or she may operate;

(b) The nature and effect of pesticides he or she may apply under such classifications; and

(c) Any other matter the director determines to be a necessary subject for examination.

(2) The director ((~~shall~~)) may charge ((~~an~~)) examination fees ((~~established by rule when an examination is necessary before a license may be issued or when application for such license and examination is made at other than a regularly scheduled examination date~~)) established by the director by rule. The director may administer or contract with a public or private third-party entity to administer any or all parts of either the examination or the collection of examination fees, or both. Examinations administered by third-party entities must be the same as the examination that would otherwise be administered by the department. The department may direct that the applicant pay the fees to the third-party entity in accordance with department rules governing third-party examinations and fees.

(3) The director may prescribe separate testing procedures and requirements for each license.

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