

2 SHB 2378 - S COMM AMD

3 By Committee on Agriculture & Rural Economic Development

4 ADOPTED 3/2/00

5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 15.58.030 and 1992 c 170 s 1 are each amended to read
8 as follows:

9 As used in this chapter the words and phrases defined in this
10 section shall have the meanings indicated unless the context clearly
11 requires otherwise.

12 (1) "Active ingredient" means any ingredient which will prevent,
13 destroy, repel, control, or mitigate pests, or which will act as a
14 plant regulator, defoliant, desiccant, or spray adjuvant.

15 (2) "Antidote" means the most practical immediate treatment in case
16 of poisoning and includes first aid treatment.

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

21 (4) "Defoliant" means any substance or mixture of substances
22 intended to cause the leaves or foliage to drop from a plant with or
23 without causing abscission.

24 (5) "Department" means the Washington state department of
25 agriculture.

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

28 (7) "Device" means any instrument or contrivance intended to trap,
29 destroy, control, repel, or mitigate pests, or to destroy, control,
30 repel or mitigate fungi, nematodes, or such other pests, as may be
31 designated by the director, but not including equipment used for the
32 application of pesticides when sold separately from the pesticides.

33 (8) "Director" means the director of the department or a duly
34 authorized representative.

35 (9) "Distribute" means to offer for sale, hold for sale, sell,
36 barter, or supply pesticides in this state.

1 (10) "EPA" means the United States environmental protection agency.

2 (11) "EPA restricted use pesticide" means any pesticide with
3 restricted uses as classified for restricted use by the administrator,
4 EPA.

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

7 (13) "Fungi" means all nonchlorophyll-bearing thallophytes (all
8 nonchlorophyll-bearing plants of a lower order than mosses and
9 liverworts); for example, rusts, smuts, mildews, molds, yeasts, and
10 bacteria, except those on or in living persons or other animals.

11 (14) "Fungicide" means any substance or mixture of substances
12 intended to prevent, destroy, repel, or mitigate any fungi.

13 (15) "Herbicide" means any substance or mixture of substances
14 intended to prevent, destroy, repel, or mitigate any weed.

15 (16) "Inert ingredient" means an ingredient which is not an active
16 ingredient.

17 (17) "Ingredient statement" means a statement of the name and
18 percentage of each active ingredient together with the total percentage
19 of the inert ingredients in the pesticide, and when the pesticide
20 contains arsenic in any form, the ingredient statement shall also
21 include percentages of total and water soluble arsenic, each calculated
22 as elemental arsenic. In the case of a spray adjuvant the ingredient
23 statement need contain only the names of the principal functioning
24 agents and the total percentage of the constituents ineffective as
25 spray adjuvants. If more than three functioning agents are present,
26 only the three principal ones need be named.

27 (18) "Insect" means any of the numerous small invertebrate animals
28 whose bodies are more or less obviously segmented, and which for the
29 most part belong to the class insecta, comprising six-legged, usually
30 winged forms, for example, beetles, bugs, bees, flies, and to other
31 allied classes of arthropods whose members are wingless and usually
32 have more than six legs, for example, spiders, mites, ticks,
33 centipedes, and isopod crustaceans.

34 (19) "Insecticide" means any substance or mixture of substances
35 intended to prevent, destroy, repel, or mitigate any insects which may
36 be present in any environment whatsoever.

37 (20) "Inspection control number" means a number obtained from the
38 department that is recorded on wood destroying organism inspection

1 reports issued by a structural pest inspector in conjunction with the
2 transfer, exchange, or refinancing of any structure.

3 (21) "Label" means the written, printed, or graphic matter on, or
4 attached to, the pesticide, device, or immediate container, and the
5 outside container or wrapper of the retail package.

6 ~~((+21+))~~ (22) "Labeling" means all labels and other written,
7 printed, or graphic matter:

8 (a) Upon the pesticide, device, or any of its containers or
9 wrappers;

10 (b) Accompanying the pesticide, or referring to it in any other
11 media used to disseminate information to the public; and

12 (c) To which reference is made on the label or in literature
13 accompanying or referring to the pesticide or device except when
14 accurate nonmisleading reference is made to current official
15 publications of the department, United States departments of
16 agriculture; interior; education; health and human services; state
17 agricultural colleges; and other similar federal or state institutions
18 or agencies authorized by law to conduct research in the field of
19 pesticides.

20 ~~((+22+))~~ (23) "Land" means all land and water areas, including
21 airspace and all plants, animals, structures, buildings, devices and
22 contrivances, appurtenant thereto or situated thereon, fixed or mobile,
23 including any used for transportation.

24 ~~((+23+))~~ (24) "Master license system" means the mechanism
25 established by chapter 19.02 RCW by which master licenses, endorsed for
26 individual state-issued licenses, are issued and renewed using a master
27 application and a master license expiration date common to each
28 renewable license endorsement.

29 ~~((+24+))~~ (25) "Nematocide" means any substance or mixture of
30 substances intended to prevent, destroy, repel, or mitigate nematodes.

31 ~~((+25+))~~ (26) "Nematode" means any invertebrate animal of the
32 phylum nemathelminthes and class nematoda, that is, unsegmented round
33 worms with elongated, fusiform, or saclike bodies covered with cuticle,
34 and inhabiting soil, water, plants or plant parts, may also be called
35 nemas or eelworms.

36 ~~((+26+))~~ (27) "Person" means any individual, partnership,
37 association, corporation, or organized group of persons whether or not
38 incorporated.

1 (~~(27)~~) (28) "Pest" means, but is not limited to, any insect,
2 rodent, nematode, snail, slug, weed and any form of plant or animal
3 life or virus, except virus on or in a living person or other animal,
4 which is normally considered to be a pest or which the director may
5 declare to be a pest.

6 (~~(28)~~) (29) "Pest control consultant" means any individual who
7 acts as a structural pest (~~control~~) inspector, who sells or offers
8 for sale at other than a licensed pesticide dealer outlet or location
9 where they are employed, or who offers or supplies technical advice,
10 supervision, or aid, or makes recommendations to the user of:

11 (a) Highly toxic pesticides, as determined under RCW 15.58.040;

12 (b) EPA restricted use pesticides or restricted use pesticides
13 which are restricted by rule to distribution by licensed pesticide
14 dealers only; or

15 (c) Any other pesticide except those pesticides which are labeled
16 and intended for home and garden use only.

17 (~~(29)~~) (30) "Pesticide" means, but is not limited to:

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

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

25 (c) Any spray adjuvant.

26 (~~(30)~~) (31) "Pesticide advisory board" means the pesticide
27 advisory board as provided for in the Washington pesticide application
28 act.

29 (~~(31)~~) (32) "Pesticide dealer" means any person who distributes
30 any of the following pesticides:

31 (a) Highly toxic pesticides, as determined under RCW 15.58.040;

32 (b) EPA restricted use pesticides or restricted use pesticides
33 which are restricted by rule to distribution by licensed pesticide
34 dealers only; or

35 (c) Any other pesticide except those pesticides which are labeled
36 and intended for home and garden use only.

37 (~~(32)~~) (33) "Pesticide dealer manager" means the owner or other
38 individual supervising pesticide distribution at one outlet holding a
39 pesticide dealer license.

1 (~~(33)~~) (34) "Plant regulator" means any substance or mixture of
2 substances intended through physiological action, to accelerate or
3 retard the rate of growth or maturation, or to otherwise alter the
4 behavior of ornamental or crop plants or their produce, but shall not
5 include substances insofar as they are intended to be used as plant
6 nutrients, trace elements, nutritional chemicals, plant inoculants, or
7 soil amendments.

8 (~~(34)~~) (35) "Registrant" means the person registering any
9 pesticide under the provisions of this chapter.

10 (~~(35)~~) (36) "Restricted use pesticide" means any pesticide or
11 device which, when used as directed or in accordance with a widespread
12 and commonly recognized practice, the director determines, subsequent
13 to a hearing, requires additional restrictions for that use to prevent
14 unreasonable adverse effects on the environment including people,
15 lands, beneficial insects, animals, crops, and wildlife, other than
16 pests.

17 (~~(36)~~) (37) "Rodenticide" means any substance or mixture of
18 substances intended to prevent, destroy, repel, or mitigate rodents, or
19 any other vertebrate animal which the director may declare by rule to
20 be a pest.

21 (~~(37)~~) (38) "Spray adjuvant" means any wetting agent, spreading
22 agent, deposit builder, adhesive, emulsifying agent, deflocculating
23 agent, water modifier, or similar agent with or without toxic
24 properties of its own, intended to be used with any other pesticide as
25 an aid to the application or to the effect of the pesticide, and which
26 is in a package or container separate from that of the pesticide with
27 which it is to be used.

28 (~~(38)~~) (39) "Special local needs registration" means a
29 registration issued by the director pursuant to provisions of section
30 24(c) of FIFRA.

31 (~~(39)~~) (40) "Structural pest (~~control~~) inspector" means any
32 individual who performs the service of inspecting a building for wood
33 destroying organisms, their damage, or conditions conducive to their
34 infestation.

35 (~~(40)~~) (41) "Unreasonable adverse effects on the environment"
36 means any unreasonable risk to people or the environment taking into
37 account the economic, social, and environmental costs and benefits of
38 the use of any pesticide, or as otherwise determined by the director.

39 (~~(41)~~) (42) "Weed" means any plant which grows where not wanted.

1 (43) "Wood destroying organism inspection report" means any written
2 document that reports or comments on the presence or absence of wood
3 destroying organisms, their damage, and/or conducive conditions leading
4 to the establishment of such organisms.

5 NEW SECTION. Sec. 2. A new section is added to chapter 15.58 RCW
6 to read as follows:

7 It is unlawful for any person to issue a wood destroying organism
8 inspection report, prepared in conjunction with the transfer, exchange,
9 or refinancing of any structure, without recording a unique inspection
10 control number on the wood destroying organism inspection report. All
11 wood destroying organism inspection reports completed by the same
12 inspector, relating to a single transfer, exchange, or refinance, shall
13 bear the same unique inspection control number. The responsibility to
14 record the unique inspection control number on the report under this
15 section lies solely with the person issuing the wood destroying
16 organism inspection report.

17 NEW SECTION. Sec. 3. A new section is added to chapter 15.58 RCW
18 to read as follows:

19 (1) The director shall not issue a license to any person who
20 intends to act as a structural pest inspector until the person has
21 furnished evidence of financial responsibility.

22 (2) Evidence of financial responsibility shall consist of either
23 a surety bond or an errors and omissions insurance policy or
24 certification thereof, protecting persons who may suffer legal damages
25 as a result of actions by the structural pest inspector. The director
26 shall not accept a surety bond or insurance policy except from
27 authorized insurers in this state.

28 (3) Evidence of financial responsibility shall be supplied to the
29 department on a financial responsibility insurance certificate or
30 surety bond form.

31 NEW SECTION. Sec. 4. A new section is added to chapter 15.58 RCW
32 to read as follows:

33 (1) The following requirements apply to the amount of surety bond
34 or insurance required for structural pest inspectors.

35 (a) The amount of the surety bond or errors and omissions
36 insurance, as provided for in section 3 of this act, shall be not less

1 than twenty-five thousand dollars and fifty thousand dollars
2 respectively. The surety bond or insurance policy shall be maintained
3 at not less than the required sum at all times during the licensed
4 period.

5 (b) The director shall be notified ten days before any reduction of
6 insurance coverage at the request of the applicant or cancellation of
7 the surety bond or insurance by the surety or insurer and by the
8 insured.

9 (c) The total and aggregate of the surety and insurer for all
10 claims is limited to the face of the surety bond or insurance policy.
11 The director may accept a surety bond or insurance policy in the proper
12 sum that has a deductible clause in an amount not exceeding five
13 thousand dollars for the total amount of surety bond or insurance
14 required by this section. If the applicant has not satisfied the
15 requirement of the deductible amount in any prior legal claim the
16 deductible clause shall not be accepted by the director unless the
17 applicant furnishes the director with a surety bond or insurance policy
18 which shall satisfy the amount of the deductible as to all claims that
19 may arise.

20 (2) Insurance policies must be written on an occurrence basis.

21 (3) Insurance policies shall have a minimum three-year occurrence
22 clause.

23 NEW SECTION. **Sec. 5.** A new section is added to chapter 15.58 RCW
24 to read as follows:

25 Whenever a structural pest inspector's surety bond or insurance
26 policy is reduced below the requirements of section 4 of this act, or
27 whenever the person has failed to provide evidence of financial
28 responsibility as required by section 3 of this act by the expiration
29 date of the previous surety bond or insurance policy, the director
30 shall immediately suspend the person's structural pest inspector
31 license until the person's surety bond or insurance policy again meets
32 the requirements of section 4 of this act.

33 **Sec. 6.** RCW 15.58.150 and 1991 c 264 s 3 are each amended to read
34 as follows:

35 (1) It is unlawful for any person to distribute within the state or
36 deliver for transportation or transport in intrastate commerce or

1 between points within this state through any point outside this state
2 any of the following:

3 (a) Any pesticide which has not been registered pursuant to the
4 provisions of this chapter;

5 (b) Any pesticide if any of the claims made for it or any of the
6 directions for its use or other labeling differs from the
7 representations made in connection with its registration, or if the
8 composition of a pesticide differs from its composition as represented
9 in connection with its registration: PROVIDED, That at the discretion
10 of the director, a change in the labeling or formula of a pesticide may
11 be made within a registration period without requiring reregistration
12 of the product;

13 (c) Any pesticide unless it is in the registrant's or the
14 manufacturer's unbroken immediate container and there is affixed to
15 such container, and to the outside container or wrapper of the retail
16 package, if there is one through which the required information on the
17 immediate container cannot be clearly read, a label bearing the
18 information required in this chapter and the rules adopted under this
19 chapter;

20 (d) Any pesticide including arsenicals, fluorides, fluosilicates,
21 and/or any other white powdered pesticides unless they have been
22 distinctly denatured as to color, taste, odor, or form if so required
23 by rule;

24 (e) Any pesticide which is adulterated or misbranded, or any device
25 which is misbranded;

26 (f) Any pesticide in containers, violating rules adopted pursuant
27 to RCW 15.58.040(2)(f) or pesticides found in containers which are
28 unsafe due to damage.

29 (2) It shall be unlawful:

30 (a) To sell or deliver any pesticide to any person who is required
31 by law or rules promulgated under such law to be certified, licensed,
32 or have a permit to use or purchase the pesticide unless such person or
33 the person's agent, to whom sale or delivery is made, has a valid
34 certification, license, or permit to use or purchase the kind and
35 quantity of such pesticide sold or delivered: PROVIDED, That, subject
36 to conditions established by the director, such permit may be obtained
37 immediately prior to sale or delivery from any person designated by the
38 director;

1 (b) For any person to detach, alter, deface or destroy, wholly or
2 in part, any label or labeling provided for in this chapter or rules
3 adopted under this chapter, or to add any substance to, or take any
4 substance from, a pesticide in a manner that may defeat the purpose of
5 this chapter or the rules adopted thereunder;

6 (c) For any person to use or cause to be used any pesticide
7 contrary to label directions or to regulations of the director if those
8 regulations differ from or further restrict the label directions:
9 PROVIDED, The compliance to the term "contrary to label directions" is
10 enforced by the director consistent with the intent of this chapter;

11 (d) For any person to use for his or her own advantage or to
12 reveal, other than to the director or proper officials or employees of
13 the state, or to the courts of the state in response to a subpoena, or
14 to physicians, or in emergencies to pharmacists and other qualified
15 persons for use in the preparation of antidotes, any information
16 relative to formulas of products acquired by authority of RCW
17 15.58.060;

18 (e) For any person to make false, misleading, or erroneous
19 statements or reports concerning any pest during or after a pest
20 inspection or to fail to comply with criteria established by rule for
21 structural pest (~~control~~) inspections;

22 (f) For any person to make false, misleading, or erroneous
23 statements or reports in connection with any pesticide complaint or
24 investigation;

25 (g) For any person to advertise that the person is a licensed
26 structural pest inspector without having a valid pest control
27 consultant license in the category of structural pest inspector.

28 **Sec. 7.** RCW 15.58.233 and 1997 c 242 s 10 are each amended to read
29 as follows:

30 (1) The director may renew any license issued under this chapter
31 subject to the recertification standards identified in subsection (2)
32 of this section or an examination requiring new knowledge that may be
33 required to apply pesticides.

34 (2) Except as provided in subsection (3) of this section, all
35 individuals licensed under this chapter shall meet the recertification
36 standards identified in (a) or (b) of this subsection, every five
37 years, in order to qualify for continuing licensure.

1 (a) (~~Licensed pesticide applicators~~) Individuals licensed under
2 this chapter may qualify for continued licensure through accumulation
3 of recertification credits. Individuals licensed under this chapter
4 shall accumulate a minimum of forty department-approved credits every
5 five years with no more than fifteen credits allowed per year.

6 (b) (~~Licensed pesticide applicators~~) Individuals licensed under
7 this chapter may qualify for continued licensure through meeting the
8 examination requirements necessary to become licensed in those areas in
9 which the licensee operates.

10 (3) At the termination of a licensee's five-year recertification
11 period, the director may waive the recertification requirements if the
12 licensee can demonstrate that he or she is meeting comparable
13 recertification standards through another state or jurisdiction or
14 through a federal environmental protection agency-approved government
15 agency plan.

16 **Sec. 8.** RCW 15.58.040 and 1997 c 242 s 1 are each amended to read
17 as follows:

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

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

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

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

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

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

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

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

13 (g) Procedures in making of pesticide recommendations;

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

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

29 (j) Regulating the labeling of devices;

30 (k) The establishment of criteria governing the conduct of a
31 structural pest ((~~control~~)) inspection; and

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

38 (3) For the purpose of uniformity and to avoid confusion
39 endangering the public health and welfare the director may adopt rules

1 in conformity with the primary pesticide standards, particularly as to
2 labeling, established by the United States environmental protection
3 agency or any other federal agency.

4 **Sec. 9.** RCW 15.58.210 and 1997 c 242 s 6 are each amended to read
5 as follows:

6 (1) Except as provided in subsection (2) of this section, no
7 individual may perform services as a pest control consultant without
8 obtaining a license from the director. The license shall expire
9 annually on a date set by rule by the director. Except as provided in
10 subsection (3) of this section, no individual may act as a structural
11 pest (~~control~~) inspector without first obtaining from the director a
12 pest control consultant license in the special category of structural
13 pest (~~control~~) inspector. Application for a license shall be on a
14 form prescribed by the director and shall be accompanied by a fee of
15 forty-five dollars.

16 (2) The following are exempt from the licensing requirements of
17 subsection (1) of this section when acting within the authorities of
18 their existing licenses issued under chapter 17.21 RCW: Licensed
19 commercial pesticide applicators and operators; licensed
20 private-commercial applicators; and licensed demonstration and research
21 applicators. The following are also exempt from the licensing
22 requirements of subsection (1) of this section: Employees of federal,
23 state, county, or municipal agencies when acting in their official
24 governmental capacities; and pesticide dealer managers and employees
25 working under the direct supervision of the pesticide dealer manager
26 and only at a licensed pesticide dealer's outlet.

27 (3) The following are exempt from the structural pest (~~control~~)
28 inspector licensing requirement: Individuals inspecting for damage
29 caused by wood destroying organisms if such inspections are solely for
30 the purpose of: (a) Repairing or making specific recommendations for
31 the repair of such damage, or (b) assessing a monetary value for the
32 structure inspected. Individuals performing wood destroying organism
33 inspections that incorporate but are not limited to the activities
34 described in (a) or (b) of this subsection are not exempt from the
35 structural pest (~~control~~) inspector licensing requirement.

36 NEW SECTION. **Sec. 10.** This act takes effect July 1, 2000."

1 **SHB 2378** - S COMM AMD
2 By Committee on Agriculture & Rural Economic Development

3 ADOPTED 3/2/00

4 On page 1, line 1 of the title, after "inspections;" strike the
5 remainder of the title and insert "amending RCW 15.58.030, 15.58.150,
6 15.58.233, 15.58.040, and 15.58.210; adding new sections to chapter
7 15.58 RCW; prescribing penalties; providing an effective date; and
8 providing an expiration date."

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