

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2378

56th Legislature
2000 Regular Session

Passed by the House March 7, 2000
Yeas 98 Nays 0

Speaker of the House of Representatives

Speaker of the House of Representatives

Passed by the Senate March 2, 2000
Yeas 47 Nays 1

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

We, Timothy A. Martin and Cynthia Zehnder, Co-Chief Clerks of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2378** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

Chief Clerk

FILED

Secretary of State
State of Washington

SUBSTITUTE HOUSE BILL 2378

AS AMENDED BY THE SENATE

Passed Legislature - 2000 Regular Session

State of Washington 56th Legislature 2000 Regular Session

By House Committee on Agriculture & Ecology (originally sponsored by Representatives Linville, G. Chandler and Haigh; by request of Department of Agriculture)

Read first time 01/27/2000. Referred to Committee on .

1 AN ACT Relating to structural pest inspections; amending RCW
2 15.58.030, 15.58.150, 15.58.233, 15.58.040, and 15.58.210; adding new
3 sections to chapter 15.58 RCW; prescribing penalties; and providing an
4 effective date.

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

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

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

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

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

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

1 (4) "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 (5) "Department" means the Washington state department of
5 agriculture.

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

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

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

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

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

18 (11) "EPA restricted use pesticide" means any pesticide with
19 restricted uses as classified for restricted use by the administrator,
20 EPA.

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

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

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

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

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

33 (17) "Ingredient statement" means a statement of the name and
34 percentage of each active ingredient together with the total percentage
35 of the inert ingredients in the pesticide, and when the pesticide
36 contains arsenic in any form, the ingredient statement shall also
37 include percentages of total and water soluble arsenic, each calculated
38 as elemental arsenic. In the case of a spray adjuvant the ingredient
39 statement need contain only the names of the principal functioning

1 agents and the total percentage of the constituents ineffective as
2 spray adjuvants. If more than three functioning agents are present,
3 only the three principal ones need be named.

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

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

14 (20) "Inspection control number" means a number obtained from the
15 department that is recorded on wood destroying organism inspection
16 reports issued by a structural pest inspector in conjunction with the
17 transfer, exchange, or refinancing of any structure.

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

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

23 (a) Upon the pesticide, device, or any of its containers or
24 wrappers;

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

27 (c) To which reference is made on the label or in literature
28 accompanying or referring to the pesticide or device except when
29 accurate nonmisleading reference is made to current official
30 publications of the department, United States departments of
31 agriculture; interior; education; health and human services; state
32 agricultural colleges; and other similar federal or state institutions
33 or agencies authorized by law to conduct research in the field of
34 pesticides.

35 (~~(22)~~) (23) "Land" means all land and water areas, including
36 airspace and all plants, animals, structures, buildings, devices and
37 contrivances, appurtenant thereto or situated thereon, fixed or mobile,
38 including any used for transportation.

1 (~~(23)~~) (24) "Master license system" means the mechanism
2 established by chapter 19.02 RCW by which master licenses, endorsed for
3 individual state-issued licenses, are issued and renewed using a master
4 application and a master license expiration date common to each
5 renewable license endorsement.

6 (~~(24)~~) (25) "Nematocide" means any substance or mixture of
7 substances intended to prevent, destroy, repel, or mitigate nematodes.

8 (~~(25)~~) (26) "Nematode" means any invertebrate animal of the
9 phylum nemathelminthes and class nematoda, that is, unsegmented round
10 worms with elongated, fusiform, or saclike bodies covered with cuticle,
11 and inhabiting soil, water, plants or plant parts, may also be called
12 nemas or eelworms.

13 (~~(26)~~) (27) "Person" means any individual, partnership,
14 association, corporation, or organized group of persons whether or not
15 incorporated.

16 (~~(27)~~) (28) "Pest" means, but is not limited to, any insect,
17 rodent, nematode, snail, slug, weed and any form of plant or animal
18 life or virus, except virus on or in a living person or other animal,
19 which is normally considered to be a pest or which the director may
20 declare to be a pest.

21 (~~(28)~~) (29) "Pest control consultant" means any individual who
22 acts as a structural pest (~~control~~) inspector, who sells or offers
23 for sale at other than a licensed pesticide dealer outlet or location
24 where they are employed, or who offers or supplies technical advice,
25 supervision, or aid, or makes recommendations to the user of:

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

27 (b) EPA restricted use pesticides or restricted use pesticides
28 which are restricted by rule to distribution by licensed pesticide
29 dealers only; or

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

32 (~~(29)~~) (30) "Pesticide" means, but is not limited to:

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

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

1 (c) Any spray adjuvant.

2 (~~(30)~~) (31) "Pesticide advisory board" means the pesticide
3 advisory board as provided for in the Washington pesticide application
4 act.

5 (~~(31)~~) (32) "Pesticide dealer" means any person who distributes
6 any of the following pesticides:

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

8 (b) EPA restricted use pesticides or restricted use pesticides
9 which are restricted by rule to distribution by licensed pesticide
10 dealers only; or

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

13 (~~(32)~~) (33) "Pesticide dealer manager" means the owner or other
14 individual supervising pesticide distribution at one outlet holding a
15 pesticide dealer license.

16 (~~(33)~~) (34) "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, or
22 soil amendments.

23 (~~(34)~~) (35) "Registrant" means the person registering any
24 pesticide under the provisions of this chapter.

25 (~~(35)~~) (36) "Restricted use pesticide" means any pesticide or
26 device which, when used as directed or in accordance with a widespread
27 and commonly recognized practice, the director determines, subsequent
28 to a hearing, requires additional restrictions for that use to prevent
29 unreasonable adverse effects on the environment including people,
30 lands, beneficial insects, animals, crops, and wildlife, other than
31 pests.

32 (~~(36)~~) (37) "Rodenticide" means any substance or mixture of
33 substances intended to prevent, destroy, repel, or mitigate rodents, or
34 any other vertebrate animal which the director may declare by rule to
35 be a pest.

36 (~~(37)~~) (38) "Spray adjuvant" means any wetting agent, spreading
37 agent, deposit builder, adhesive, emulsifying agent, deflocculating
38 agent, water modifier, or similar agent with or without toxic
39 properties of its own, intended to be used with any other pesticide as

1 an aid to the application or to the effect of the pesticide, and which
2 is in a package or container separate from that of the pesticide with
3 which it is to be used.

4 ~~((+38+))~~ (39) "Special local needs registration" means a
5 registration issued by the director pursuant to provisions of section
6 24(c) of FIFRA.

7 ~~((+39+))~~ (40) "Structural pest ~~((control))~~ inspector" means any
8 individual who performs the service of inspecting a building for wood
9 destroying organisms, their damage, or conditions conducive to their
10 infestation.

11 ~~((+40+))~~ (41) "Unreasonable adverse effects on the environment"
12 means any unreasonable risk to people or the environment taking into
13 account the economic, social, and environmental costs and benefits of
14 the use of any pesticide, or as otherwise determined by the director.

15 ~~((+41+))~~ (42) "Weed" means any plant which grows where not wanted.

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

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

22 It is unlawful for any person to issue a wood destroying organism
23 inspection report, prepared in conjunction with the transfer, exchange,
24 or refinancing of any structure, without recording a unique inspection
25 control number on the wood destroying organism inspection report. All
26 wood destroying organism inspection reports completed by the same
27 inspector, relating to a single transfer, exchange, or refinance, shall
28 bear the same unique inspection control number. The responsibility to
29 record the unique inspection control number on the report under this
30 section lies solely with the person issuing the wood destroying
31 organism inspection report.

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

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

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

7 (3) Evidence of financial responsibility shall be supplied to the
8 department on a financial responsibility insurance certificate or
9 surety bond form.

10 NEW SECTION. **Sec. 4.** A new section is added to chapter 15.58 RCW
11 to read as follows:

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

14 (a) The amount of the surety bond or errors and omissions
15 insurance, as provided for in section 3 of this act, shall be not less
16 than twenty-five thousand dollars and fifty thousand dollars
17 respectively. The surety bond or insurance policy shall be maintained
18 at not less than the required sum at all times during the licensed
19 period.

20 (b) The director shall be notified ten days before any reduction of
21 insurance coverage at the request of the applicant or cancellation of
22 the surety bond or insurance by the surety or insurer and by the
23 insured.

24 (c) The total and aggregate of the surety and insurer for all
25 claims is limited to the face of the surety bond or insurance policy.
26 The director may accept a surety bond or insurance policy in the proper
27 sum that has a deductible clause in an amount not exceeding five
28 thousand dollars for the total amount of surety bond or insurance
29 required by this section. If the applicant has not satisfied the
30 requirement of the deductible amount in any prior legal claim the
31 deductible clause shall not be accepted by the director unless the
32 applicant furnishes the director with a surety bond or insurance policy
33 which shall satisfy the amount of the deductible as to all claims that
34 may arise.

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

36 (3) Insurance policies shall have a minimum three-year occurrence
37 clause.

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

3 Whenever a structural pest inspector's surety bond or insurance
4 policy is reduced below the requirements of section 4 of this act, or
5 whenever the person has failed to provide evidence of financial
6 responsibility as required by section 3 of this act by the expiration
7 date of the previous surety bond or insurance policy, the director
8 shall immediately suspend the person's structural pest inspector
9 license until the person's surety bond or insurance policy again meets
10 the requirements of section 4 of this act.

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

13 (1) It is unlawful for any person to distribute within the state or
14 deliver for transportation or transport in intrastate commerce or
15 between points within this state through any point outside this state
16 any of the following:

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

19 (b) Any pesticide if any of the claims made for it or any of the
20 directions for its use or other labeling differs from the
21 representations made in connection with its registration, or if the
22 composition of a pesticide differs from its composition as represented
23 in connection with its registration: PROVIDED, That at the discretion
24 of the director, a change in the labeling or formula of a pesticide may
25 be made within a registration period without requiring reregistration
26 of the product;

27 (c) Any pesticide unless it is in the registrant's or the
28 manufacturer's unbroken immediate container and there is affixed to
29 such container, and to the outside container or wrapper of the retail
30 package, if there is one through which the required information on the
31 immediate container cannot be clearly read, a label bearing the
32 information required in this chapter and the rules adopted under this
33 chapter;

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

1 (e) Any pesticide which is adulterated or misbranded, or any device
2 which is misbranded;

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

6 (2) It shall be unlawful:

7 (a) To sell or deliver any pesticide to any person who is required
8 by law or rules promulgated under such law to be certified, licensed,
9 or have a permit to use or purchase the pesticide unless such person or
10 the person's agent, to whom sale or delivery is made, has a valid
11 certification, license, or permit to use or purchase the kind and
12 quantity of such pesticide sold or delivered: PROVIDED, That, subject
13 to conditions established by the director, such permit may be obtained
14 immediately prior to sale or delivery from any person designated by the
15 director;

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

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

26 (d) For any person to use for his or her own advantage or to
27 reveal, other than to the director or proper officials or employees of
28 the state, or to the courts of the state in response to a subpoena, or
29 to physicians, or in emergencies to pharmacists and other qualified
30 persons for use in the preparation of antidotes, any information
31 relative to formulas of products acquired by authority of RCW
32 15.58.060;

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

37 (f) For any person to make false, misleading, or erroneous
38 statements or reports in connection with any pesticide complaint or
39 investigation;

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

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

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

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

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

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

23 (3) At the termination of a licensee's five-year recertification
24 period, the director may waive the recertification requirements if the
25 licensee can demonstrate that he or she is meeting comparable
26 recertification standards through another state or jurisdiction or
27 through a federal environmental protection agency-approved government
28 agency plan.

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

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

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

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

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

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

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

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

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

27 (g) Procedures in making of pesticide recommendations;

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

1 permits to maintain records as to the use of all the restricted use
2 pesticides;

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

5 (j) Regulating the labeling of devices;

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

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

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

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

21 (1) Except as provided in subsection (2) of this section, no
22 individual may perform services as a pest control consultant without
23 obtaining a license from the director. The license shall expire
24 annually on a date set by rule by the director. Except as provided in
25 subsection (3) of this section, no individual may act as a structural
26 pest (~~control~~) inspector without first obtaining from the director a
27 pest control consultant license in the special category of structural
28 pest (~~control~~) inspector. Application for a license shall be on a
29 form prescribed by the director and shall be accompanied by a fee of
30 forty-five dollars.

31 (2) The following are exempt from the licensing requirements of
32 subsection (1) of this section when acting within the authorities of
33 their existing licenses issued under chapter 17.21 RCW: Licensed
34 commercial pesticide applicators and operators; licensed
35 private-commercial applicators; and licensed demonstration and research
36 applicators. The following are also exempt from the licensing
37 requirements of subsection (1) of this section: Employees of federal,
38 state, county, or municipal agencies when acting in their official

1 governmental capacities; and pesticide dealer managers and employees
2 working under the direct supervision of the pesticide dealer manager
3 and only at a licensed pesticide dealer's outlet.

4 (3) The following are exempt from the structural pest (~~control~~)
5 inspector licensing requirement: Individuals inspecting for damage
6 caused by wood destroying organisms if such inspections are solely for
7 the purpose of: (a) Repairing or making specific recommendations for
8 the repair of such damage, or (b) assessing a monetary value for the
9 structure inspected. Individuals performing wood destroying organism
10 inspections that incorporate but are not limited to the activities
11 described in (a) or (b) of this subsection are not exempt from the
12 structural pest (~~control~~) inspector licensing requirement.

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

--- END ---