

2 2SSB 5425 - S AMD 592

3 By Senators Rasmussen and Kohl-Welles

4 ADOPTED 02/16/02

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

7 "Sec. 1. RCW 17.24.007 and 2000 c 100 s 6 are each amended to read
8 as follows:

9 Unless the context clearly requires otherwise, the definitions in
10 this section apply throughout this chapter.

11 (1) "Department" means the state department of agriculture.

12 (2) "Director" means the director of the state department of
13 agriculture or the director's designee.

14 (3) "Quarantine" means a rule issued by the department that
15 prohibits or regulates the movement of articles, bees, plants, or plant
16 products from designated quarantine areas within or outside the state
17 to prevent the spread of disease, plant pathogens, or pests to
18 nonquarantine areas.

19 (4) "Plant pest" means a living stage of an insect, mite, nematode,
20 slug, snail, or protozoa, or other invertebrate animal, bacteria,
21 fungus, or parasitic plant, or their reproductive parts, or viruses, or
22 an organism similar to or allied with any of the foregoing plant pests,
23 including a genetically engineered organism, or an infectious substance
24 that can directly or indirectly injure or cause disease or damage in
25 plants or parts of plants or in processed, manufactured, or other
26 products of plants.

27 (5) "Plants and plant products" means trees, shrubs, vines, forage,
28 and cereal plants, and all other plants and plant parts, including
29 cuttings, grafts, scions, buds, fruit, vegetables, roots, bulbs, seeds,
30 wood, lumber, and all products made from the plants and plant products.

31 (6) "Certificate" or "certificate of inspection" means an official
32 document certifying compliance with the requirements of this chapter.
33 The term "certificate" includes labels, rubber stamp imprints, tags,
34 permits, written statements, or a form of inspection and certification
35 document that accompanies the movement of inspected and certified plant

1 material and plant products, or bees, bee hives, or beekeeping
2 equipment.

3 (7) "Compliance agreement" means a written agreement between the
4 department and a person engaged in growing, handling, or moving
5 articles, plants, plant products, or bees, bee hives, or beekeeping
6 equipment regulated under this chapter, in which the person agrees to
7 comply with stipulated requirements.

8 (8) "Distribution" means the movement of a regulated article from
9 the property where it is grown or kept, to property that is not
10 contiguous to the property, regardless of the ownership of the
11 properties.

12 (9) "Genetically engineered organism" means an organism altered or
13 produced through genetic modification from a donor, vector, or
14 recipient organism using recombinant DNA techniques, excluding those
15 organisms covered by the food, drug and cosmetic act (21 U.S.C. Secs.
16 301-392).

17 (10) "Person" means a natural person, individual, firm,
18 partnership, corporation, company, society, or association, and every
19 officer, agent, or employee of any of these entities.

20 (11) "Sell" means to sell, to hold for sale, offer for sale,
21 handle, or to use as inducement for the sale of another article or
22 product.

23 (12) "Noxious weed" means a living stage, including, but not
24 limited to, seeds and reproductive parts, of a parasitic or other plant
25 of a kind that presents a threat to Washington agriculture or
26 environment.

27 (13) "Regulated article" means a plant or plant product, bees or
28 beekeeping equipment, noxious weed or other articles or equipment
29 capable of harboring or transporting plant or bee pests or noxious
30 weeds that is specifically addressed in rules or quarantines adopted
31 under this chapter.

32 (14) "Owner" means the person having legal ownership, possession,
33 or control over a regulated article covered by this chapter including,
34 but not limited to, the owner, shipper, consignee, or their agent.

35 (15) "Nuisance" means a plant, or plant part, apiary, or property
36 found in a commercial area on which is found a pest, pathogen, or
37 disease that is a source of infestation to other properties.

38 (16) "Bees" means adult insects, eggs, larvae, pupae, or other
39 immature stages of the species *Apis mellifera*.

1 (17) "Bee pests" means a mite, other parasite, or disease that
2 causes injury to bees and those honey bees generally recognized to have
3 undesirable behavioral characteristics such as or as found in
4 Africanized honey bees.

5 (18) "Biological control" means the use by humans of living
6 organisms to control or suppress undesirable animals and plants; the
7 action of parasites, predators, or pathogens on a host or prey
8 population to produce a lower general equilibrium than would prevail in
9 the absence of these agents.

10 (19) "Biological control agent" means a parasite, predator, or
11 pathogen intentionally released, by humans, into a target host or prey
12 population with the intent of causing population reduction of that host
13 or prey.

14 (20) "Emergency" means a situation where there is an imminent
15 danger of an infestation of plant pests or disease that seriously
16 threatens the state's agricultural or horticultural industries or
17 environment and that cannot be adequately addressed with normal
18 procedures or existing resources.

19 (21) "Large urban residential area" means that area lying within
20 the incorporated boundaries of a city with a population of greater than
21 one hundred thousand and the urban growth area contiguous to the city,
22 and in which residential uses are a permitted or a conditional use.

23 (22) "Asian gypsy moth" means the Asian strain of the gypsy moth
24 *Lymantria dispar*.

25 **Sec. 2.** RCW 15.58.065 and 1989 c 380 s 5 are each amended to read
26 as follows:

27 (1) In submitting data required by this chapter, the applicant may:

28 (a) Mark clearly any portions which in the applicant's opinion are
29 trade secrets or commercial or financial information; and

30 (b) Submit such marked material separately from other material
31 required to be submitted under this chapter.

32 (2) Except under section 3 of this act and notwithstanding any
33 other provision of this chapter or other law, the director shall not
34 make public information which in the director's judgment should be
35 privileged or confidential because it contains or relates to trade
36 secrets or commercial or financial information except that, when
37 necessary to carry out the provisions of this chapter, information
38 relating to unpublished formulas of products acquired by authorization

1 of this chapter may be revealed to any state or federal agency
2 consulted and may be revealed at a public hearing or in findings of
3 fact issued by the director when necessary under this chapter.

4 (3) Except under section 3 of this act, if the director proposes to
5 release for inspection information which the applicant or registrant
6 believes to be protected from disclosure under subsection (2) of this
7 section, the director shall notify the applicant or registrant in
8 writing, by certified mail. The director shall not thereafter make
9 available for inspection such data until thirty days after receipt of
10 the notice by the applicant or registrant. During this period, the
11 applicant or registrant may institute an action in the superior court
12 of Thurston county for a declaratory judgment as to whether such
13 information is subject to protection under subsection (2) of this
14 section.

15 NEW SECTION. **Sec. 3.** A new section is added to chapter 15.58 RCW,
16 to be codified between RCW 15.58.065 and 15.58.070, to read as follows:

17 (1) When the director proposes to eradicate the Asian gypsy moth
18 through the aerial application of pesticides within a large urban
19 residential area as defined in RCW 17.24.007, the director shall
20 consult with appropriate public university personnel and federal,
21 state, and local health agencies concerning unpublished formulas of
22 products acquired by authorization of this chapter for the purpose of
23 obtaining an independent assessment of the possible human health risks
24 associated with the proposed use.

25 (2) The director shall reveal to consulted individuals the
26 confidential statement of formula for the purpose of assessing the
27 possible human health risks associated with the proposed pesticide use
28 by the department.

29 (3) Consulted individuals shall consider the confidential statement
30 of formula, the proposed pesticide use, the impact on affected
31 populations, and any other considerations that may bear on public
32 health in making an assessment of the possible human health risks.

33 (4) The director shall make any independent assessment available to
34 the public except that the names, chemical abstract service numbers, or
35 other identifying characteristics or percentages of inert ingredients
36 in a pesticide, and any other information that in the director's
37 judgment should be confidential, shall not be disclosed. Additionally,
38 any information or documents used in preparation of an independent

1 assessment that pertain to the confidential statement of formula and
2 any protected trade secret information shall not be disclosed to the
3 public by any person.

4 (5) This section shall be in addition to and shall not limit the
5 authority of the director under any other provision of law to release
6 to the public information relating to pesticide formula, ingredients,
7 or other information.

8 NEW SECTION. **Sec. 4.** A new section is added to chapter 17.24 RCW
9 to read as follows:

10 When surveys and other measures detect the presence of the Asian
11 gypsy moth within a large urban residential area, and when the aerial
12 application of pesticides may be considered as a measure to eradicate
13 the pest, the director shall provide public notice of the survey
14 results and the alternatives for eradication measures. The director
15 shall hold a public meeting within the area to provide information and
16 to receive comments from the public on the survey results, and the
17 alternatives for eradication measures. The director shall accept such
18 comments for a period of thirty days from the date the public meeting
19 is held, or a lesser period as the director determines if immediate
20 action is required to implement eradication measures.

21 **Sec. 5.** RCW 17.24.171 and 1991 c 257 s 21 are each amended to read
22 as follows:

23 (1) If the director determines that there exists an imminent danger
24 of an infestation of plant pests or plant diseases that seriously
25 endangers the agricultural or horticultural industries of the state, or
26 that seriously threatens life, health, or economic well-being, the
27 director shall request the governor to order emergency measures to
28 control the pests or plant diseases under RCW 43.06.010(~~(+14)~~) (13).
29 The director's findings shall contain an evaluation of the affect of
30 the emergency measures on public health. When the requested measures
31 include the aerial application of pesticides in a large urban
32 residential area for the eradication of Asian gypsy moths, the findings
33 shall also include a summary of the information relied upon in
34 determining the extent of the danger, the alternative measures
35 considered, and, when applicable, the director's response to the public
36 comments received under section 4 of this act.

1 (2) If an emergency is declared pursuant to RCW 43.06.010(~~(+14)~~)
2 (13), the director may appoint a committee to advise the governor
3 through the director and to review emergency measures necessary under
4 the authority of RCW 43.06.010(~~(+14)~~) (13) and this section and make
5 subsequent recommendations to the governor. The committee shall
6 include representatives of the agricultural and silvicultural
7 industries, state and local government, public health interests,
8 technical service providers, and environmental organizations.

9 (3) Upon the order of the governor of the use of emergency
10 measures, the director is authorized to implement the emergency
11 measures to prevent, control, or eradicate plant pests or plant
12 diseases that are the subject of the emergency order. Such measures,
13 after thorough evaluation of all other alternatives, may include the
14 aerial application of pesticides.

15 (4) Upon the order of the governor of the use of emergency
16 measures, the director is authorized to enter into agreements with
17 individuals or companies, or both, to accomplish the prevention,
18 control, or eradication of plant pests or plant diseases,
19 notwithstanding the provisions of chapter 15.58 or 17.21 RCW, or any
20 other statute.

21 (5) When emergency measures taken include the aerial application of
22 pesticides in a large urban residential area for the eradication of
23 Asian gypsy moths:

24 (a) The director shall implement procedures for notifying the
25 community in the application area before each aerial application. The
26 procedures shall include notifying individuals who request individual
27 notice, and include notice to major employers and institutional
28 facilities, including but not limited to schools, child care
29 facilities, senior residential and day care facilities, health care
30 facilities, and community centers; and

31 (b) The local health jurisdiction, with support from the department
32 of health, shall monitor public health effects following the
33 implementation of the measures in such areas.

34 (6) The director shall continually evaluate the emergency measures
35 taken and report to the governor at intervals of not less than ten
36 days. The director shall immediately advise the governor if he or she
37 finds that the emergency no longer exists or if certain emergency
38 measures should be discontinued.

1 **Sec. 6.** RCW 43.06.010 and 1994 c 223 s 3 are each amended to read
2 as follows:

3 In addition to those prescribed by the Constitution, the governor
4 may exercise the powers and perform the duties prescribed in this and
5 the following sections:

6 (1) The governor shall supervise the conduct of all executive and
7 ministerial offices;

8 (2) The governor shall see that all offices are filled, including
9 as provided in RCW 42.12.070, and the duties thereof performed, or in
10 default thereof, apply such remedy as the law allows; and if the remedy
11 is imperfect, acquaint the legislature therewith at its next session;

12 (3) The governor shall make the appointments and supply the
13 vacancies mentioned in this title;

14 (4) The governor is the sole official organ of communication
15 between the government of this state and the government of any other
16 state or territory, or of the United States;

17 (5) Whenever any suit or legal proceeding is pending against this
18 state, or which may affect the title of this state to any property, or
19 which may result in any claim against the state, the governor may
20 direct the attorney general to appear on behalf of the state, and
21 report the same to the governor, or to any grand jury designated by the
22 governor, or to the legislature when next in session;

23 (6) The governor may require the attorney general or any
24 prosecuting attorney to inquire into the affairs or management of any
25 corporation existing under the laws of this state, or doing business in
26 this state, and report the same to the governor, or to any grand jury
27 designated by the governor, or to the legislature when next in session;

28 (7) The governor may require the attorney general to aid any
29 prosecuting attorney in the discharge of the prosecutor's duties;

30 (8) The governor may offer rewards, not exceeding one thousand
31 dollars in each case, payable out of the state treasury, for
32 information leading to the apprehension of any person convicted of a
33 felony who has escaped from a state correctional institution or for
34 information leading to the arrest of any person who has committed or is
35 charged with the commission of a felony;

36 (9) The governor shall perform such duties respecting fugitives
37 from justice as are prescribed by law;

38 (10) The governor shall issue and transmit election proclamations
39 as prescribed by law;

1 (11) The governor may require any officer or board to make, upon
2 demand, special reports to the governor, in writing;

3 (12) The governor may, after finding that a public disorder,
4 disaster, energy emergency, or riot exists within this state or any
5 part thereof which affects life, health, property, or the public peace,
6 proclaim a state of emergency in the area affected, and the powers
7 granted the governor during a state of emergency shall be effective
8 only within the area described in the proclamation;

9 (13) The governor may, after finding that there exists within this
10 state an imminent danger of infestation of plant pests as defined in
11 RCW 17.24.007 or plant diseases which seriously endangers the
12 agricultural, silvicultural, or horticultural industries of the state
13 of Washington, or which seriously threatens life, health, or economic
14 well-being, order emergency measures to prevent or abate the
15 infestation or disease situation, which measures, after thorough
16 evaluation of all other alternatives, may include the aerial
17 application of pesticides. The governor shall not approve a proposed
18 emergency measure that includes the aerial application of pesticides in
19 a large urban residential area for Asian gypsy moth eradication unless
20 the governor determines that all other alternatives are not feasible or
21 likely to eradicate the pest;

22 (14) On all compacts forwarded to the governor pursuant to RCW
23 9.46.360(6), the governor is authorized and empowered to execute on
24 behalf of the state compacts with federally recognized Indian tribes in
25 the state of Washington pursuant to the federal Indian Gaming
26 Regulatory Act, 25 U.S.C. Sec. 2701 et seq., for conducting class III
27 gaming, as defined in the Act, on Indian lands."

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29 By Senators Rasmussen and Kohl-Welles

30 ADOPTED 02/16/02

31 On page 1, line 2 of the title, after "pests;" strike the remainder
32 of the title and insert "amending RCW 17.24.007, 15.58.065, 17.24.171,
33 and 43.06.010; adding a new section to chapter 15.58 RCW; and adding a
34 new section to chapter 17.24 RCW."

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