
SECOND SUBSTITUTE HOUSE BILL 2413

State of Washington

62nd Legislature

2012 Regular Session

By House Health & Human Services Appropriations & Oversight (originally sponsored by Representatives Reykdal, Sells, Appleton, Ladenburg, Ormsby, Hunt, Moscoso, Ryu, Roberts, Wylie, Green, Hasegawa, McCoy, Kenney, Hudgins, Cody, Moeller, Fitzgibbon, Pollet, and Jinkins)

READ FIRST TIME 02/06/12.

1 AN ACT Relating to protecting workers and other community members
2 from pesticide drift; amending RCW 49.70.020 and 49.70.110; adding new
3 sections to chapter 49.70 RCW; creating a new section; prescribing
4 penalties; and providing an expiration date.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 49.70 RCW
7 to read as follows:

8 The legislature finds that pesticide exposure in agricultural
9 communities results in lost wages and worker productivity, increased
10 industrial insurance costs, and acute and chronic health problems for
11 workers and other community members. Further, the legislature finds
12 that drift from pesticide spray applications poses significant risks to
13 workers and community members in the vicinity of the pesticide
14 application. The legislature therefore declares that workers and other
15 community members in agricultural communities have a right to be
16 protected from pesticide exposure and notified of certain pesticide
17 applications to prevent exposure. The legislature further declares its
18 policy and purpose to protect workers from hazardous exposure to

1 pesticides in accordance with the mandates of Article II, section 35 of
2 the state Constitution.

3 The legislature further finds that the issue of pesticide drift
4 exposure requires study to determine if additional restrictions,
5 education, and notification are needed to prevent exposure.

6 **Sec. 2.** RCW 49.70.020 and 1985 c 409 s 1 are each amended to read
7 as follows:

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

10 (1) "Department" means the department of labor and industries.

11 (2) "Employee" means an employee of an employer who is employed in
12 the business of his or her employer whether by way of manual labor or
13 otherwise and every person in this state who is engaged in the
14 employment of or who is working under an independent contract the
15 essence of which is personal labor for an employer under this chapter
16 whether by way of manual labor or otherwise. However, for the purposes
17 of this chapter, employee shall not mean immediate family members of
18 the officers of any corporation, partnership, sole proprietorship or
19 other business entity or officers of any closely held corporation
20 engaged in agricultural production of crops or livestock.

21 (3) "Employer" means any person, firm, corporation, partnership,
22 business trust, legal representative, or other business entity that
23 engages in any business, industry, profession, or activity in this
24 state and employs one or more employees or who contract with one or
25 more persons, the essence of which is the personal labor of such person
26 or persons and includes the state, counties, cities, and all municipal
27 corporations, public corporations, political subdivisions of the state,
28 and charitable organizations.

29 (4) "Farm" means any operation engaged in the outdoor production of
30 plants destined in whole or in part for human or animal ingestion or
31 direct application to the body, seed crops for such plants, and cover
32 crops used in the production of such plants.

33 (5) "Person" includes any natural person, firm, partnership,
34 association, or corporation.

35 (6) "Pesticide" means, but is not limited to:

36 (a) Any substance or mixture of substances intended to prevent,
37 destroy, control, repel, or mitigate any insect, rodent, nematode,

1 snail, slug, fungus, weed, and any other form of plant or animal life
2 or virus, except virus on or in a living human being or other animal,
3 which is normally considered to be a pest or which the director of
4 agriculture may declare to be a pest;

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

7 (c) Any spray adjuvant, such as a wetting agent, spreading agent,
8 deposit builder, adhesive, emulsifying agent, deflocculating agent,
9 water modifier, or similar agent with or without toxic properties of
10 its own intended to be used with any other pesticide as an aid to the
11 application or effect thereof, and sold in a package or container
12 separate from that of the pesticide with which it is to be used; or

13 (d) Any fungicide, rodenticide, herbicide, insecticide, and
14 nematocide.

15 (7) "Restricted-entry interval" means the time after the end of a
16 pesticide application during which entry into the treated area is
17 restricted.

18 NEW SECTION. Sec. 3. A new section is added to chapter 49.70 RCW
19 to read as follows:

20 (1) Except as provided in subsection (3) of this section, any
21 person applying any pesticide on a farm by aircraft or air-blast
22 sprayer must provide written notice to properties adjacent to the
23 intended pesticide application area.

24 (a) The applicator must provide the written notice a minimum of
25 twenty-four hours before the earliest time of application listed on the
26 notice, but no sooner than forty-eight hours before the earliest time
27 of application listed on the notice. If the applicator is unable to
28 apply the pesticide within the time specified on the notice because of
29 conditions, the applicator must make a reasonable effort to contact
30 adjacent properties and provide updated information on the time of
31 intended application. Five days after the latest time specified on the
32 written notice, the notice expires and the applicator must provide new
33 written notice.

34 (b) Notice of the intended pesticide application must be provided
35 in person if feasible to owners or lessees, and if in-person notice is
36 not feasible, posted on the primary entrance of buildings. If neither

1 of these notice methods is feasible, the applicator must make
2 reasonable efforts to notify adjacent properties by other means.

3 (c) Notice must be translated into an appropriate language when the
4 applicator knows or a reasonable person would know that persons
5 entitled to notice do not speak English as their primary language.

6 (2) The notice must include:

7 (a) Date and location of the application;

8 (b) The time of application, which may be stated as a range of no
9 greater than twenty-four hours;

10 (c) Name, telephone number, and address of the person applying the
11 pesticide;

12 (d) Name, address, and telephone number of the person who contracts
13 for the application;

14 (e) A list of the common names and active ingredients of all
15 pesticides to be applied;

16 (f) Telephone number of the Washington poison control center;

17 (g) A list of the precautions related to drift that appear on the
18 label of the pesticide to be applied; and

19 (h) The restricted-entry interval on the pesticide label, and a
20 statement that if the pesticide lands in an area persons should stay
21 out of that area for the restricted-entry interval. When two or more
22 pesticides are applied at the same time, the restricted-entry interval
23 used in the notice is the longest of the applicable intervals.

24 (3) Employers who employ persons who work outdoors on a farm or
25 nursery within one-quarter mile of the intended application area must
26 provide their employees with copies of the notice provided by the
27 applicator. When employees entitled to notice under this subsection do
28 not speak English as their primary language, the employer must also
29 provide each employee written notice in an appropriate language for the
30 employee or give a full verbal translation of the notice to each
31 employee. The employer must give the notice to the employees at least
32 four hours before the earliest time listed on the notice for pesticide
33 application and must also give notice to employees of any updated time
34 of application provided by the applicator. Employers shall ensure that
35 employees remain at least one-quarter mile from the intended areas of
36 pesticide application or work in fully enclosed indoor work spaces
37 during application of pesticides. For purposes of this subsection,

1 "nursery" means any operation engaged in the outdoor production of
2 plants to produce cut flowers or ferns or plants that will be used in
3 their entirety in another location.

4 (4) A state or local government or its contractor applying
5 pesticide in compliance with a state-issued permit is exempt from
6 subsections (1) and (2) of this section if other notice to the public
7 is required by law or permitting processes.

8 (5) Compliance with this section does not limit the liability of
9 any person for pesticide exposure to other persons.

10 (6) RCW 49.70.180 does not apply to this section.

11 **Sec. 4.** RCW 49.70.110 and 1984 c 289 s 16 are each amended to read
12 as follows:

13 No employer may discharge, cause to be discharged, or otherwise
14 discipline, penalize, or discriminate against any employee because the
15 employee or the employee's representative has exercised any right
16 established in this chapter. The discrimination provisions of chapter
17 49.17 RCW apply to this chapter, except as provided in section 5 of
18 this act.

19 NEW SECTION. **Sec. 5.** A new section is added to chapter 49.70 RCW
20 to read as follows:

21 (1) Any employer who discharges, causes to be discharged, or
22 otherwise disciplines, penalizes, changes the terms or conditions of
23 employment, intimidates, or discriminates against an employee who has
24 or whose representative has made or is planning to make any complaint,
25 participated in an investigation, or has been part of a lawsuit
26 regarding any provision of section 3 of this act is liable in a civil
27 action for actual damages or for statutory damages of five thousand
28 dollars, whichever is greater, including costs of litigation and
29 reasonable attorneys' fees.

30 (2) Any person who attempts to intimidate another person because
31 that person or that person's representative has made or plans to make
32 a complaint, participate in an investigation, or has been part of a
33 lawsuit regarding any provision of section 3 of this act is liable in
34 a civil action for actual damages or for statutory damages of five
35 thousand dollars, whichever is greater, including costs of litigation
36 and reasonable attorneys' fees.

1 (3) Subject to Title 51 RCW, any person exposed to pesticides by a
2 person willfully applying pesticides in violation of section 3 of this
3 act may bring a civil action for twice the amount of damages suffered
4 or statutory damages of five thousand dollars, whichever is greater.

5 (4) Any employee entitled to the protections of section 3(4) of
6 this act may bring a civil action against an employer who receives
7 notice of pesticide application and who acts willfully in violation of
8 section 3(3) of this act for statutory damages of five hundred dollars.

9 (5) The remedies in this section are in addition to, and do not
10 affect, any other remedy.

11 NEW SECTION. **Sec. 6.** (1) The joint select committee on pesticide
12 drift exposure is established. The purpose of the committee is to
13 formulate a state policy to reduce exposure of workers and other
14 community members to pesticide drift while not adversely affecting the
15 agricultural and other economic sectors of this state that use
16 pesticides.

17 (2)(a) The joint select committee shall consist of the following
18 members:

19 (i) The chair and ranking minority member of the senate labor,
20 commerce and consumer protection committee or their designees; and

21 (ii) The chair and ranking minority member of the house of
22 representatives labor and workforce development committee or their
23 designees;

24 (b) The joint select committee shall choose its chair or cochairs
25 from among its legislative membership. The chairs of the senate labor,
26 commerce and consumer protection committee and the house of
27 representatives labor and workforce development committee shall convene
28 the initial meeting of the committee.

29 (3) The joint select committee shall consult with representatives
30 of workers, employers, agricultural interests, applicators,
31 environmental groups, and others, and may form advisory committees to
32 assist the committee. Members of such an advisory committee are not
33 entitled to expense reimbursement.

34 (4)(a) The joint select committee shall use legislative facilities
35 and staff support shall be provided by senate committee services and
36 the house of representatives office of program research.

1 (b) Legislative members of the joint select committee must be
2 reimbursed for travel expenses in accordance with RCW 44.04.120.

3 (c) The expenses of the joint select committee must be paid jointly
4 by the senate and the house of representatives. Expenditures are
5 subject to approval by the senate facilities and operations committee
6 and the house of representatives executive rules committee, or their
7 successor committees.

8 (5) The joint select committee shall report its findings and
9 recommendations to the legislature by January 1, 2013.

10 (6) This section expires July 1, 2013.

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