
SENATE BILL 6063

State of Washington

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By Senators Wellman, Billig, Rolfes, Hunt, Kuderer, and Hasegawa

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1 AN ACT Relating to aerial application of crop protection products
2 from an agricultural aircraft near school facilities; amending RCW
3 17.21.020; adding a new section to chapter 17.21 RCW; adding a new
4 section to chapter 28A.320 RCW; adding a new section to chapter
5 43.215 RCW; adding a new section to chapter 43.216 RCW; recodifying
6 RCW 43.215.---; and providing an effective date.

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

8 **Sec. 1.** RCW 17.21.020 and 2010 1st sp.s. c 7 s 134 are each
9 amended to read as follows:

10 ((Unless the context clearly requires otherwise,)) The
11 definitions in this section apply throughout this chapter unless the
12 context clearly requires otherwise.

13 (1) "Aerial application" means the spraying or dusting of crops
14 with crop protection products, including but not limited to
15 commercial fertilizer, pesticide, fungicide, weed killer, or
16 herbicide, from an agricultural aircraft.

17 (2) "Agricultural commodity" means any plant or part of a plant,
18 or animal, or animal product, produced by a person (including
19 farmers, ranchers, vineyardists, plant propagators, Christmas tree
20 growers, aquaculturists, floriculturists, orchardists, foresters, or

1 other comparable persons) primarily for sale, consumption,
2 propagation, or other use by people or animals.

3 ~~((+2))~~ (3) "Agricultural land" means land on which an
4 agricultural commodity is produced or land that is in a government-
5 recognized conservation reserve program. This definition does not
6 apply to private gardens where agricultural commodities are produced
7 for personal consumption.

8 ~~((+3))~~ (4) "Antimicrobial pesticide" means a pesticide that is
9 used for the control of microbial pests, including but not limited to
10 viruses, bacteria, algae, and protozoa, and is intended for use as a
11 disinfectant or sanitizer.

12 ~~((+4))~~ (5) "Apparatus" means any type of ground, water, or
13 aerial equipment, device, or contrivance using motorized, mechanical,
14 or pressurized power and used to apply any pesticide on land and
15 anything that may be growing, habitating, or stored on or in such
16 land, but shall not include any pressurized handsized household
17 device used to apply any pesticide, or any equipment, device, or
18 contrivance of which the person who is applying the pesticide is the
19 source of power or energy in making such pesticide application, or
20 any other small equipment, device, or contrivance that is transported
21 in a piece of equipment licensed under this chapter as an apparatus.

22 ~~((+5))~~ (6) "Arthropod" means any invertebrate animal that
23 belongs to the phylum arthropoda, which in addition to insects,
24 includes allied classes whose members are wingless and usually have
25 more than six legs; for example, spiders, mites, ticks, centipedes,
26 and isopod crustaceans.

27 ~~((+6))~~ (7) "Certified applicator" means any individual who is
28 licensed as a commercial pesticide applicator, commercial pesticide
29 operator, public operator, private-commercial applicator,
30 demonstration and research applicator, private applicator, limited
31 private applicator, rancher private applicator, or any other
32 individual who is certified by the director to use or supervise the
33 use of any pesticide which is classified by the EPA or the director
34 as a restricted use pesticide.

35 ~~((+7))~~ (8) "Commercial pesticide applicator" means any person
36 who engages in the business of applying pesticides to the land of
37 another.

38 ~~((+8))~~ (9) "Commercial pesticide operator" means any employee of
39 a commercial pesticide applicator who uses or supervises the use of

1 any pesticide and who is required to be licensed under provisions of
2 this chapter.

3 ~~((9))~~ (10) "Defoliant" means any substance or mixture of
4 substances intended to cause the leaves or foliage to drop from a
5 plant with or without causing abscission.

6 ~~((10))~~ (11) "Department" means the Washington state department
7 of agriculture.

8 ~~((11))~~ (12) "Desiccant" means any substance or mixture of
9 substances intended to artificially accelerate the drying of plant
10 tissues.

11 ~~((12))~~ (13) "Device" means any instrument or contrivance
12 intended to trap, destroy, control, repel, or mitigate pests, but not
13 including equipment used for the application of pesticides when sold
14 separately from the pesticides.

15 ~~((13))~~ (14) "Direct supervision" by certified private
16 applicators shall mean that the designated restricted use pesticide
17 shall be applied for purposes of producing any agricultural commodity
18 on land owned or rented by the applicator or the applicator's
19 employer, by a competent person acting under the instructions and
20 control of a certified private applicator who is available if and
21 when needed, even though such certified private applicator is not
22 physically present at the time and place the pesticide is applied.
23 The certified private applicator shall have direct management
24 responsibility and familiarity of the pesticide, manner of
25 application, pest, and land to which the pesticide is being applied.
26 Direct supervision by all other certified applicators means direct
27 on-the-job supervision and shall require that the certified
28 applicator be physically present at the application site and that the
29 person making the application be in voice and visual contact with the
30 certified applicator at all times during the application. However,
31 direct supervision for forest application does not require constant
32 voice and visual contact when general use pesticides are applied
33 using nonapparatus type equipment, the certified applicator is
34 physically present and readily available in the immediate application
35 area, and the certified applicator directly observes pesticide mixing
36 and batching. Direct supervision of an aerial apparatus means the
37 pilot of the aircraft must be appropriately certified.

38 ~~((14))~~ (15) "Director" means the director of the department or
39 a duly authorized representative.

1 ~~((15))~~ (16) "Engage in business" means any application of
2 pesticides by any person upon lands or crops of another.

3 ~~((16))~~ (17) "EPA" means the United States environmental
4 protection agency.

5 ~~((17))~~ (18) "EPA restricted use pesticide" means any pesticide
6 classified for restricted use by the administrator, EPA.

7 ~~((18))~~ (19) "FIFRA" means the federal insecticide, fungicide
8 and rodenticide act as amended (61 Stat. 163, 7 U.S.C. Sec. 136 et
9 seq.).

10 ~~((19))~~ (20) "Forest application" means the application of
11 pesticides to agricultural land used to grow trees for the commercial
12 production of wood or wood fiber for products such as dimensional
13 lumber, shakes, plywood, poles, posts, pilings, particle board,
14 hardboard, oriented strand board, pulp, paper, cardboard, or other
15 similar products.

16 ~~((20))~~ (21) "Fumigant" means any pesticide product or
17 combination of products that is a vapor or gas or forms a vapor or
18 gas on application and whose method of pesticidal action is through
19 the gaseous state.

20 ~~((21))~~ (22) "Fungi" means all nonchlorophyll-bearing
21 thallophytes (all nonchlorophyll-bearing plants of lower order than
22 mosses and liverworts); for example, rusts, smuts, mildews, molds,
23 and yeasts, except those on or in a living person or other animals.

24 ~~((22))~~ (23) "Fungicide" means any substance or mixture of
25 substances intended to prevent, destroy, repel, or mitigate any
26 fungi.

27 ~~((23))~~ (24) "Herbicide" means any substance or mixture of
28 substances intended to prevent, destroy, repel, or mitigate any weed
29 or other higher plant.

30 ~~((24))~~ (25) "Immediate service call" means a landscape
31 application to satisfy an emergency customer request for service, or
32 a treatment to control a pest to landscape plants.

33 ~~((25))~~ (26) "Insect" means any small invertebrate animal, in
34 any life stage, whose adult form is segmented and which generally
35 belongs to the class insecta, comprised of six-legged, usually winged
36 forms, as, for example, beetles, bugs, bees, and flies. The term
37 insect shall also apply to other allied classes of arthropods whose
38 members are wingless and usually have more than six legs, for
39 example, spiders, mites, ticks, centipedes, and isopod crustaceans.

1 (~~(26)~~) (27) "Insecticide" means any substance or mixture of
2 substances intended to prevent, destroy, repel, or mitigate any
3 insect.

4 (~~(27)~~) (28) "Land" means all land and water areas, including
5 airspace and all plants, animals, structures, buildings, devices, and
6 contrivances, appurtenant to or situated on, fixed or mobile,
7 including any used for transportation.

8 (~~(28)~~) (29) "Landscape application" means an application of any
9 EPA registered pesticide to any exterior landscape area around
10 residential property, commercial properties such as apartments or
11 shopping centers, parks, golf courses, schools including nursery
12 schools and licensed day cares, or cemeteries or similar areas. This
13 definition shall not apply to: (a) Applications made by private
14 applicators, limited private applicators, or rancher private
15 applicators; (b) mosquito abatement, gypsy moth eradication, or
16 similar wide-area pest control programs sponsored by governmental
17 entities; and (c) commercial pesticide applicators making structural
18 applications.

19 (~~(29)~~) (30) "Limited private applicator" means a certified
20 applicator who uses or is in direct supervision, as defined for
21 private applicators in this section, of the use of any herbicide
22 classified by the EPA or the director as a restricted use pesticide,
23 for the sole purpose of controlling weeds on nonproduction
24 agricultural land owned or rented by the applicator or the
25 applicator's employer. Limited private applicators may also use
26 restricted use pesticides on timber areas, excluding aquatic sites,
27 to control weeds designated for mandatory control under chapters
28 17.04, 17.06, and 17.10 RCW and state and local regulations adopted
29 under chapters 17.04, 17.06, and 17.10 RCW. A limited private
30 applicator may apply restricted use herbicides to the types of land
31 described in this subsection of another person if applied without
32 compensation other than trading of personal services between the
33 applicator and the other person. This license is only valid when
34 making applications in counties of Washington located east of the
35 crest of the Cascade mountains.

36 (~~(30)~~) (31) "Limited production agricultural land" means land
37 used to grow hay and grain crops that are consumed by the livestock
38 on the farm where produced. No more than ten percent of the hay and
39 grain crops grown on limited production agricultural land may be sold

1 each crop year. Limited production agricultural land does not include
2 aquatic sites.

3 ~~((31))~~ (32) "Nematocide" means any substance or mixture of
4 substances intended to prevent, destroy, repel, or mitigate
5 nematodes.

6 ~~((32))~~ (33) "Nematode" means any invertebrate animal of the
7 phylum nemathelminthes and class nematoda, that is, unsegmented round
8 worms with elongated, fusiform, or saclike bodies covered with
9 cuticle, and inhabiting soil, water, plants or plant parts. Nematodes
10 may also be called nemas or eelworms.

11 ~~((33))~~ (34) "Nonproduction agricultural land" means pastures,
12 rangeland, fencerows, and areas around farm buildings but not aquatic
13 sites.

14 ~~((34))~~ (35) "Person" means any individual, partnership,
15 association, corporation, or organized group of persons whether or
16 not incorporated.

17 ~~((35))~~ (36) "Pest" means, but is not limited to, any insect,
18 rodent, nematode, snail, slug, weed, and any form of plant or animal
19 life or virus, except virus, bacteria, or other microorganisms on or
20 in a living person or other animal or in or on processed food or
21 beverages or pharmaceuticals, which is normally considered to be a
22 pest, or which the director may declare to be a pest.

23 ~~((36))~~ (37) "Pesticide" means, but is not limited to:

24 (a) Any substance or mixture of substances intended to prevent,
25 destroy, control, repel, or mitigate any pest;

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

28 (c) Any spray adjuvant as defined in RCW 15.58.030.

29 ~~((37))~~ (38) "Plant regulator" means any substance or mixture of
30 substances intended through physiological action, to accelerate or
31 retard the rate of growth or maturation, or to otherwise alter the
32 behavior of ornamental or crop plants or their produce, but shall not
33 include substances insofar as they are intended to be used as plant
34 nutrients, trace elements, nutritional chemicals, plant inoculants,
35 or soil amendments.

36 ~~((38))~~ (39) "Private applicator" means a certified applicator
37 who uses or is in direct supervision of the use of any pesticide
38 classified by the EPA or the director as a restricted use pesticide,
39 for the purposes of producing any agricultural commodity and for any
40 associated noncrop application on land owned or rented by the

1 applicator or the applicator's employer or if applied without
2 compensation other than trading of personal services between
3 producers of agricultural commodities on the land of another person.

4 ~~((39))~~ (40) "Private-commercial applicator" means a certified
5 applicator who uses or supervises the use of any pesticide classified
6 by the EPA or the director as a restricted use pesticide for purposes
7 other than the production of any agricultural commodity on lands
8 owned or rented by the applicator or the applicator's employer.

9 ~~((40))~~ (41) "Rancher private applicator" means a certified
10 applicator who uses or is in direct supervision, as defined for
11 private applicators in this section, of the use of any herbicide or
12 any rodenticide classified by the EPA or the director as a restricted
13 use pesticide for the purpose of controlling weeds and pest animals
14 on nonproduction agricultural land and limited production
15 agricultural land owned or rented by the applicator or the
16 applicator's employer. Rancher private applicators may also use
17 restricted use pesticides on timber areas, excluding aquatic sites,
18 to control weeds designated for mandatory control under chapters
19 17.04, 17.06, and 17.10 RCW and state and local regulations adopted
20 under chapters 17.04, 17.06, and 17.10 RCW. A rancher private
21 applicator may apply restricted use herbicides and rodenticides to
22 the types of land described in this subsection of another person if
23 applied without compensation other than trading of personal services
24 between the applicator and the other person. This license is only
25 valid when making applications in counties of Washington located east
26 of the crest of the Cascade mountains.

27 ~~((41))~~ (42) "Residential property" includes property less than
28 one acre in size zoned as residential by a city, town, or county, but
29 does not include property zoned as agricultural or agricultural
30 homesites.

31 ~~((42))~~ (43) "Restricted use pesticide" means any pesticide or
32 device which, when used as directed or in accordance with a
33 widespread and commonly recognized practice, the director determines,
34 subsequent to a hearing, requires additional restrictions for that
35 use to prevent unreasonable adverse effects on the environment
36 including people, lands, beneficial insects, animals, crops, and
37 wildlife, other than pests.

38 ~~((43))~~ (44) "Rodenticide" means any substance or mixture of
39 substances intended to prevent, destroy, repel, or mitigate rodents,

1 or any other vertebrate animal which the director may declare by rule
2 to be a pest.

3 ~~((44))~~ (45) "School facility" means any facility used for
4 licensed day care center purposes or for the purposes of a public
5 kindergarten or public elementary or secondary school. School
6 facility includes the buildings or structures, playgrounds, landscape
7 areas, athletic fields, school vehicles, or any other area of school
8 property.

9 ~~((45))~~ (46) "Snails or slugs" include all harmful mollusks.

10 ~~((46))~~ (47) "Unreasonable adverse effects on the environment"
11 means any unreasonable risk to people or the environment taking into
12 account the economic, social, and environmental costs and benefits of
13 the use of any pesticide, or as otherwise determined by the director.

14 ~~((47))~~ (48) "Weed" means any plant which grows where it is not
15 wanted.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 17.21
17 RCW to read as follows:

18 (1) Forty-eight hours prior to an aerial application that is
19 conducted within one-quarter mile of a school facility, the
20 applicator must provide written notification to the affected school
21 facility.

22 (2) The written notification must include the heading "Notice:
23 Aerial Application" and, at a minimum, must provide the following
24 information:

- 25 (a) The product name to be applied;
26 (b) The intended date and time of application;
27 (c) The location to which the pesticide is to be applied;
28 (d) The purpose of the application; and
29 (e) The name and phone number of the applicator.

30 (3) The prenotification requirements of this section do not apply
31 if the aerial application is made when the school is not occupied by
32 students during and at least two consecutive days after the
33 application.

34 (4) The application must be made within forty-eight hours
35 following the intended date and time stated in the notification or
36 the notification process must be repeated.

37 NEW SECTION. **Sec. 3.** A new section is added to chapter 28A.320
38 RCW to read as follows:

1 (1) Any school that receives an aerial application notice in
2 accordance with section 2 of this act must post notification of the
3 aerial application at least twenty-four hours prior to the aerial
4 application. The notification must be posted in a prominent place in
5 or nearby the main office of the school.

6 (2) The posted notification must include the heading "Notice:
7 Aerial Application" and, at a minimum, must provide the following
8 information:

- 9 (a) The product name to be applied;
- 10 (b) The intended date and time of application;
- 11 (c) The location to which the pesticide is to be applied;
- 12 (d) The purpose of the application;
- 13 (e) The name and phone number of the applicator; and
- 14 (f) The name and phone number of a contact person at the school.

15 (3) The posted notification must remain in place for at least
16 twenty-four hours from the time the application is completed.

17 (4) The school must keep the students inside the school during
18 the intended date and time of the aerial application.

19 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.215
20 RCW to read as follows:

21 (1) Any licensed day care center that receives an aerial
22 application notice in accordance with section 2 of this act must post
23 notification of the aerial application at least twenty-four hours
24 prior to the aerial application. The notification must be posted in a
25 prominent place in or nearby the main office of the licensed day care
26 center.

27 (2) The posted notification must include the heading "Notice:
28 Aerial Application" and, at a minimum, must provide the following
29 information:

- 30 (a) The product name to be applied;
- 31 (b) The intended date and time of application;
- 32 (c) The location to which the pesticide is to be applied;
- 33 (d) The purpose of the application;
- 34 (e) The name and phone number of the applicator; and
- 35 (f) The name and phone number of a contact person at the licensed
36 day care center.

37 (3) The posted notification must remain in place for at least
38 twenty-four hours from the time the application is completed.

1 (4) The licensed day care center must keep the children inside
2 the center during the intended date and time of the aerial
3 application.

4 NEW SECTION. **Sec. 5.** Effective July 1, 2018, RCW 43.215.---
5 (section 4 of this act) is recodified as a section in chapter 43.216
6 RCW.

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