
SENATE BILL 5534

State of Washington

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By Senators Eide, Rasmussen, Swecker, Patterson, Fairley, Roach, Jacobsen, Kohl-Welles, Costa, Spanel, Franklin, Shin, B. Sheldon, Constantine, Hargrove, Kastama, Prentice, Kline and Gardner; by request of Department of Agriculture

Read first time 01/25/2001. Referred to Committee on Education.

1 AN ACT Relating to persons applying pesticides at schools; amending
2 RCW 17.21.020, 17.21.100, 17.21.126, 17.21.128, and 17.21.150; adding
3 a new section to chapter 17.21 RCW; and providing an effective date.

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

5 **Sec. 1.** RCW 17.21.020 and 1994 c 283 s 1 are each amended to read
6 as follows:

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

9 (1) "Agricultural commodity" means any plant or part of a plant, or
10 animal, or animal product, produced by a person (including farmers,
11 ranchers, vineyardists, plant propagators, Christmas tree growers,
12 aquaculturists, floriculturists, orchardists, foresters, or other
13 comparable persons) primarily for sale, consumption, propagation, or
14 other use by people or animals.

15 (2) "Agricultural land" means land on which an agricultural
16 commodity is produced or land that is in a government-recognized
17 conservation reserve program. This definition does not apply to
18 private gardens where agricultural commodities are produced for
19 personal consumption.

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

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

15 (~~(4)~~) (5) "Arthropod" means any invertebrate animal that belongs
16 to the phylum arthropoda, which in addition to insects, includes allied
17 classes whose members are wingless and usually have more than six legs;
18 for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

19 (~~(5)~~) (6) "Certified applicator" means any individual who is
20 licensed as a commercial pesticide applicator, commercial pesticide
21 operator, public operator, private-commercial applicator, demonstration
22 and research applicator, or certified private applicator, or any other
23 individual who is certified by the director to use or supervise the use
24 of any pesticide which is classified by the EPA or the director as a
25 restricted use pesticide.

26 (~~(6)~~) (7) "Commercial pesticide applicator" means any person who
27 engages in the business of applying pesticides to the land of another.

28 (~~(7)~~) (8) "Commercial pesticide operator" means any employee of
29 a commercial pesticide applicator who uses or supervises the use of any
30 pesticide and who is required to be licensed under provisions of this
31 chapter.

32 (~~(8)~~) (9) "Defoliant" means any substance or mixture of
33 substances intended to cause the leaves or foliage to drop from a plant
34 with or without causing abscission.

35 (~~(9)~~) (10) "Department" means the Washington state department of
36 agriculture.

37 (~~(10)~~) (11) "Desiccant" means any substance or mixture of
38 substances intended to artificially accelerate the drying of plant
39 tissues.

1 (~~(11)~~) (12) "Device" means any instrument or contrivance intended
2 to trap, destroy, control, repel, or mitigate pests, but not including
3 equipment used for the application of pesticides when sold separately
4 from the pesticides.

5 (~~(12)~~) (13) "Direct supervision" by certified private applicators
6 shall mean that the designated restricted use pesticide shall be
7 applied for purposes of producing any agricultural commodity on land
8 owned or rented by the applicator or the applicator's employer, by a
9 competent person acting under the instructions and control of a
10 certified private applicator who is available if and when needed, even
11 though such certified private applicator is not physically present at
12 the time and place the pesticide is applied. The certified private
13 applicator shall have direct management responsibility and familiarity
14 of the pesticide, manner of application, pest, and land to which the
15 pesticide is being applied. Direct supervision by all other certified
16 applicators and licensed school facility applicators means direct on-
17 the-job supervision and shall require that the certified applicator be
18 physically present at the application site and that the person making
19 the application be in voice and visual contact with the certified
20 applicator at all times during the application. Direct supervision of
21 an aerial apparatus means the pilot of the aircraft must be
22 appropriately certified.

23 (~~(13)~~) (14) "Director" means the director of the department or a
24 duly authorized representative.

25 (~~(14)~~) (15) "Engage in business" means any application of
26 pesticides by any person upon lands or crops of another.

27 (~~(15)~~) (16) "EPA" means the United States environmental
28 protection agency.

29 (~~(16)~~) (17) "EPA restricted use pesticide" means any pesticide
30 classified for restricted use by the administrator, EPA.

31 (~~(17)~~) (18) "FIFRA" means the federal insecticide, fungicide and
32 rodenticide act as amended (61 Stat. 163, 7 U.S.C. Sec. 136 et seq.).

33 (~~(18)~~) (19) "Fumigant" means any pesticide product or combination
34 of products that is a vapor or gas or forms a vapor or gas on
35 application and whose method of pesticidal action is through the
36 gaseous state.

37 (~~(19)~~) (20) "Fungi" means all nonchlorophyll-bearing thallophytes
38 (all nonchlorophyll-bearing plants of lower order than mosses and

1 liverworts); for example, rusts, smuts, mildews, molds, and yeasts,
2 except those on or in a living person or other animals.

3 ~~((+20+))~~ (21) "Fungicide" means any substance or mixture of
4 substances intended to prevent, destroy, repel, or mitigate any fungi.

5 ~~((+21+))~~ (22) "Herbicide" means any substance or mixture of
6 substances intended to prevent, destroy, repel, or mitigate any weed or
7 other higher plant.

8 ~~((+22+))~~ (23) "Immediate service call" means a landscape
9 application to satisfy an emergency customer request for service, or a
10 treatment to control a pest to landscape plants.

11 ~~((+23+))~~ (24) "Insect" means any small invertebrate animal, in any
12 life stage, whose adult form is segmented and which generally belongs
13 to the class insecta, comprised of six-legged, usually winged forms,
14 as, for example, beetles, bugs, bees, and flies. The term insect shall
15 also apply to other allied classes of arthropods whose members are
16 wingless and usually have more than six legs, for example, spiders,
17 mites, ticks, centipedes, and isopod crustaceans.

18 ~~((+24+))~~ (25) "Insecticide" means any substance or mixture of
19 substances intended to prevent, destroy, repel, or mitigate any insect.

20 ~~((+25+))~~ (26) "Land" means all land and water areas, including
21 airspace and all plants, animals, structures, buildings, devices, and
22 contrivances, appurtenant to or situated on, fixed or mobile, including
23 any used for transportation.

24 ~~((+26+))~~ (27) "Landscape application" means an application ~~((by a~~
25 ~~certified applicator))~~ of any EPA registered pesticide to any exterior
26 landscape ~~((plants found))~~ area around residential property, commercial
27 properties such as apartments or shopping centers, parks, golf courses,
28 schools including nursery schools and licensed day cares, or cemeteries
29 or similar areas. This definition shall not apply to: (a)
30 Applications made by certified private applicators; (b) mosquito
31 abatement, gypsy moth eradication, or similar wide-area pest control
32 programs sponsored by governmental entities; and (c) commercial
33 pesticide applicators making structural applications.

34 ~~((+27+))~~ (28) "Nematocide" means any substance or mixture of
35 substances intended to prevent, destroy, repel, or mitigate nematodes.

36 ~~((+28+))~~ (29) "Nematode" means any invertebrate animal of the
37 phylum nemathelminthes and class nematoda, that is, unsegmented round
38 worms with elongated, fusiform, or saclike bodies covered with cuticle,

1 and inhabiting soil, water, plants or plant parts. Nematodes may also
2 be called nemas or eelworms.

3 ~~((+29+))~~ (30) "Person" means any individual, partnership,
4 association, corporation, or organized group of persons whether or not
5 incorporated.

6 ~~((+30+))~~ (31) "Pest" means, but is not limited to, any insect,
7 rodent, nematode, snail, slug, weed, and any form of plant or animal
8 life or virus, except virus, bacteria, or other microorganisms on or in
9 a living person or other animal or in or on processed food or beverages
10 or pharmaceuticals, which is normally considered to be a pest, or which
11 the director may declare to be a pest.

12 ~~((+31+))~~ (32) "Pesticide" means, but is not limited to:

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

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

17 (c) Any spray adjuvant, such as a wetting agent, spreading agent,
18 deposit builder, adhesive, emulsifying agent, deflocculating agent,
19 water modifier, or similar agent with or without toxic properties of
20 its own intended to be used with any pesticide as an aid to the
21 application or effect thereof, and sold in a package or container
22 separate from that of the pesticide with which it is to be used.

23 ~~((+32+))~~ (33) "Pesticide advisory board" means the pesticide
24 advisory board as provided for in this chapter.

25 ~~((+33+))~~ (34) "Plant regulator" means any substance or mixture of
26 substances intended through physiological action, to accelerate or
27 retard the rate of growth or maturation, or to otherwise alter the
28 behavior of ornamental or crop plants or their produce, but shall not
29 include substances insofar as they are intended to be used as plant
30 nutrients, trace elements, nutritional chemicals, plant inoculants, or
31 soil amendments.

32 ~~((+34+))~~ (35) "Private applicator" means a certified applicator who
33 uses or is in direct supervision of the use of any pesticide classified
34 by the EPA or the director as a restricted use pesticide, for the
35 purposes of producing any agricultural commodity and for any associated
36 noncrop application on land owned or rented by the applicator or the
37 applicator's employer or if applied without compensation other than
38 trading of personal services between producers of agricultural
39 commodities on the land of another person.

1 (~~(35)~~) (36) "Private-commercial applicator" means a certified
2 applicator who uses or supervises the use of any pesticide classified
3 by the EPA or the director as a restricted use pesticide for purposes
4 other than the production of any agricultural commodity on lands owned
5 or rented by the applicator or the applicator's employer.

6 (~~(36)~~) (37) "Residential property" includes property less than
7 one acre in size zoned as residential by a city, town, or county, but
8 does not include property zoned as agricultural or agricultural
9 homesites.

10 (~~(37)~~) (38) "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 (~~(38)~~) (39) "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 (~~(39)~~) (40) "School facility" means any facility used for
22 licensed day care center, kindergarten, or elementary or secondary
23 school purposes. School facility includes the buildings or structures,
24 playgrounds, landscape areas, athletic fields, school vehicles, or any
25 other area of school property.

26 (41) "School facility applicator" means a licensed applicator that
27 uses or supervises the use of any nonrestricted use pesticide, except
28 an antimicrobial pesticide, on any school facility. A school facility
29 applicator may not apply any pesticide by means of an apparatus as
30 defined in this section.

31 (42) "Snails or slugs" include all harmful mollusks.

32 (~~(40)~~) (43) "Unreasonable adverse effects on the environment"
33 means any unreasonable risk to people or the environment taking into
34 account the economic, social, and environmental costs and benefits of
35 the use of any pesticide, or as otherwise determined by the director.

36 (~~(41)~~) (44) "Weed" means any plant which grows where it is not
37 wanted.

1 **Sec. 2.** RCW 17.21.100 and 1994 c 283 s 9 are each amended to read
2 as follows:

3 (1) Certified applicators and school facility applicators licensed
4 under the provisions of this chapter, persons required to be licensed
5 under this chapter, all persons applying pesticides to more than one
6 acre of agricultural land in a calendar year, including public entities
7 engaged in roadside spraying of pesticides, and all other persons
8 making landscape applications of pesticides to types of property
9 listed in RCW 17.21.410(1) (b), (c), (d), and (e), shall keep records
10 for each application which shall include the following information:

11 (a) The location of the land where the pesticide was applied;

12 (b) The year, month, day and beginning and ending time of the
13 application of the pesticide each day the pesticide was applied;

14 (c) The product name used on the registered label and the United
15 States environmental protection agency registration number, if
16 applicable, of the pesticide which was applied;

17 (d) The crop or site to which the pesticide was applied;

18 (e) The amount of pesticide applied per acre or other appropriate
19 measure;

20 (f) The concentration of pesticide that was applied;

21 (g) The number of acres, or other appropriate measure, to which the
22 pesticide was applied;

23 (h) The licensed applicator's name, address, and telephone number
24 and the name of the individual or individuals making the application
25 and their license number, if applicable;

26 (i) The direction and estimated velocity of the wind during the
27 time the pesticide was applied. This subsection (1)(i) shall not apply
28 to applications of baits in bait stations and pesticide applications
29 within structures; and

30 (j) Any other reasonable information required by the director in
31 rule.

32 (2)(a) The required information shall be recorded on the same day
33 that a pesticide is applied.

34 (b) A commercial pesticide applicator who applies a pesticide to an
35 agricultural crop or agricultural lands shall provide a copy of the
36 records required under subsection (1) of this section for the
37 application to the owner, or to the lessee if applied on behalf of the
38 lessee, of the lands to which the pesticide is applied. Records
39 provided by a commercial pesticide applicator to the owner or lessee of

1 agricultural lands under this subsection need not be provided on a form
2 adopted by the department.

3 (c) A commercial pesticide applicator who applies a pesticide to a
4 school facility shall provide a copy of the records required under
5 subsection (1) of this section to the school within twenty-four hours
6 of when the pesticide is applied.

7 (3) The records required under this section shall be maintained and
8 preserved by the licensed pesticide applicator or such other person or
9 entity applying the pesticides for no less than seven years from the
10 date of the application of the pesticide to which such records refer.
11 If the pesticide was applied by a commercial pesticide applicator to
12 the agricultural crop or agricultural lands of a person who employs one
13 or more employees, as "employee" is defined in RCW 49.70.020, the
14 records shall also be kept by the employer for a period of seven years
15 from the date of the application of the pesticide to which the records
16 refer.

17 (4)(a) The pesticide records shall be readily accessible to the
18 department for inspection. Copies of the records shall be provided on
19 request to: The department; the department of labor and industries;
20 treating health care personnel initiating diagnostic testing or therapy
21 for a patient with a suspected case of pesticide poisoning; the
22 department of health; the pesticide incident reporting and tracking
23 review panel; and, in the case of an industrial insurance claim filed
24 under Title 51 RCW with the department of labor and industries, the
25 employee or the employee's designated representative. In addition, the
26 director may require the submission of the records on a routine basis
27 within thirty days of the application of any restricted use pesticide
28 in prescribed areas controlling the use of the restricted use
29 pesticide. When a request for records is made under this subsection by
30 treating health care personnel and the record is required for
31 determining treatment, copies of the record shall be provided
32 immediately. For all other requests, copies of the record shall be
33 provided within seventy-two hours.

34 (b) Copies of records provided to a person or entity under this
35 subsection (4) shall, if so requested, be provided on a form adopted
36 under subsection (7) of this section. Information for treating health
37 care personnel shall be made immediately available by telephone, if
38 requested, with a copy of the records provided within twenty-four
39 hours.

1 (5) If a request for a copy of the record is made under this
2 section from an applicator referred to in subsection (1) of this
3 section and the applicator refuses to provide a copy, the requester may
4 notify the department of the request and the applicator's refusal.
5 Within seven working days, the department shall request that the
6 applicator provide the department with all pertinent copies of the
7 records, except that in a medical emergency the request shall be made
8 within two working days. The applicator shall provide copies of the
9 records to the department within twenty-four hours after the
10 department's request.

11 (6) The department shall include inspection of the records required
12 under this section as part of any on-site inspection conducted under
13 this chapter on agricultural lands. The inspection shall determine
14 whether the records are readily transferable to a form adopted by the
15 department and are readily accessible to employees. However, no person
16 subject to a department inspection may be inspected under this
17 subsection (6) more than once in any calendar year, unless a previous
18 inspection has found recordkeeping violations. If recordkeeping
19 violations are found, the department may conduct reasonable multiple
20 inspections, pursuant to rules adopted by the department. Nothing in
21 this subsection (6) limits the department's inspection of records
22 pertaining to pesticide-related injuries, illnesses, fatalities,
23 accidents, or complaints.

24 (7) The department of agriculture and the department of labor and
25 industries shall jointly adopt, by rule, forms that satisfy the
26 information requirements of this section.

27 (8) The recordkeeping requirements of this section do not apply to
28 applications of antimicrobial pesticides to school facilities.

29 NEW SECTION. Sec. 3. A new section is added to chapter 17.21 RCW,
30 to be codified between RCW 17.21.126 and 17.21.128, to read as follows:

31 It is unlawful for any person to act as a school facility
32 applicator without having obtained a school facility applicator license
33 from the director. Application for a school facility applicator
34 license must be accompanied by a fee of twenty-five dollars. Private
35 commercial applicators and public operators are exempt from the
36 requirements of this section when acting under the authority of their
37 existing license.

1 **Sec. 4.** RCW 17.21.126 and 1997 c 242 s 14 are each amended to read
2 as follows:

3 It shall be unlawful for any person to act as a private pesticide
4 applicator without first complying with requirements determined by the
5 director as necessary to prevent unreasonable adverse effects on the
6 environment, including injury to the pesticide applicator or other
7 persons, for each specific pesticide use.

8 (1) Certification standards to determine the individual's
9 competency with respect to the use and handling of the pesticide or
10 class of pesticides for which the private pesticide applicator is
11 certified shall be relative to hazards of the particular type of
12 application, class of pesticides, or handling procedure. In
13 determining these standards the director shall take into consideration
14 standards of the EPA and is authorized to adopt these standards by
15 rule.

16 (2) Application for a private pesticide applicator license shall be
17 accompanied by a fee of twenty-five dollars. Individuals with a valid
18 certified applicator license, school facility applicator license, pest
19 control consultant license, or dealer manager license who qualify in
20 the appropriate statewide or agricultural license categories are exempt
21 from the private applicator fee requirement. However, licensed public
22 pesticide operators, otherwise exempted from the public pesticide
23 operator license fee requirement, are not also exempted from the
24 private pesticide applicator fee requirement.

25 **Sec. 5.** RCW 17.21.128 and 1994 c 283 s 13 are each amended to read
26 as follows:

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

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

36 (a) Licensed pesticide applicators may qualify for continued
37 licensure through accumulation of recertification credits.

1 (i) Private pesticide applicators and school facility applicators
2 shall accumulate a minimum of twenty department-approved credits every
3 five years with no more than eight credits allowed per year provided
4 that school facility applicators must obtain a minimum of four credits
5 on integrated pest management in schools as designated by the
6 department;

7 (ii) All other license types established under this chapter shall
8 accumulate a minimum of forty department-approved credits every five
9 years with no more than fifteen credits allowed per year.

10 (b) Certified pesticide applicators may qualify for continued
11 licensure through meeting the examination requirements necessary to
12 become licensed in those areas in which the licensee operates.

13 (3) At the termination of a licensee's five-year recertification
14 period, the director may waive the requirements identified in
15 subsection (2) of this section if the licensee can demonstrate that he
16 or she is meeting comparable recertification standards through another
17 state or jurisdiction or through a federal environmental protection
18 agency approved government agency plan.

19 **Sec. 6.** RCW 17.21.150 and 1994 c 283 s 18 are each amended to read
20 as follows:

21 A person who has committed any of the following acts is declared to
22 be in violation of this chapter:

23 (1) Made false or fraudulent claims through any media,
24 misrepresenting the effect of materials or methods to be utilized;

25 (2) Applied worthless or improper pesticides;

26 (3) Operated a faulty or unsafe apparatus;

27 (4) Operated in a faulty, careless, or negligent manner;

28 (5) Refused or neglected to comply with the provisions of this
29 chapter, the rules adopted hereunder, or of any lawful order of the
30 director including a final order of the director directing payment of
31 a civil penalty. In an adjudicative proceeding arising from the
32 department's denial of a license for failure to pay a civil penalty the
33 subject shall be limited to whether the payment was made and the
34 proceeding may not be used to collaterally attack the final order;

35 (6) Refused or neglected to keep and maintain the pesticide
36 application records required by rule, or to make reports when and as
37 required;

38 (7) Made false or fraudulent records, invoices, or reports;

1 (8) Acted as a certified applicator or school facility applicator
2 without having provided direct supervision to an unlicensed person as
3 defined in RCW 17.21.020(12);

4 (9) Operated an unlicensed apparatus or an apparatus without a
5 license plate issued for that particular apparatus;

6 (10) Used fraud or misrepresentation in making an application for
7 a license or renewal of a license;

8 (11) Is not qualified to perform the type of pest control under the
9 conditions and in the locality in which he or she operates or has
10 operated, regardless of whether or not he or she has previously passed
11 a pesticide license examination;

12 (12) Aided or abetted a licensed or an unlicensed person to evade
13 the provisions of this chapter, combined or conspired with such a
14 licensed or an unlicensed person to evade the provisions of this
15 chapter, or allowed one's license to be used by an unlicensed person;

16 (13) Knowingly made false, misleading or erroneous statements or
17 reports during or after an inspection concerning any infestation or
18 infection of pests found on land or in connection with any pesticide
19 complaint or investigation;

20 (14) Impersonated any state, county or city inspector or official;

21 (15) Applied a restricted use pesticide without having a certified
22 applicator in direct supervision;

23 (16) Operated a commercial pesticide application business: (a)
24 Without an individual licensed as a commercial pesticide applicator or
25 (b) with a licensed commercial pesticide applicator not licensed in the
26 classification or classifications in which the business operates; or

27 (17) Operated as a commercial pesticide applicator without meeting
28 the financial responsibility requirements including not having a
29 properly executed financial responsibility insurance certificate or
30 surety bond form on file with the department.

31 NEW SECTION. **Sec. 7.** This act takes effect January 1, 2002.

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