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**HOUSE BILL 2751**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** Representatives Dent, Blake, Buys, Schmick, Klippert, McCabe, Dye, Griffey, and Haler

AN ACT Relating to investigations of pesticide exposure by the Washington state department of agriculture and other agencies; amending RCW 17.21.100, 70.104.030, and 70.104.055; adding a new section to chapter 15.58 RCW; adding a new section to chapter 17.21 RCW; and prescribing penalties.

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

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

(1)(a) An investigation of suspected human exposure to pesticide should begin on the same day the department learns of the suspected human exposure and must begin no later than forty-eight hours after the department learns of the suspected human exposure.

(b) The department, the department of health, and the department of labor and industries must agree to and designate one of the three agencies as the lead agency for each investigation of an alleged human exposure to pesticide so that people affected by the exposure or an investigation know which agency to contact.

(c) A report produced by the agency following an investigation of suspected human exposure to pesticide that contains information about sampled human exposure must include, if possible, the sampled human exposure expressed as a percentage of the median lethal dose, commonly abbreviated as (LD50), for the type of pesticide sampled based on the type of exposure and information on the pesticide's material safety data sheet and the pesticide's product label. If an agency determines that it is not possible to include in a report produced by the agency following an investigation of suspected human exposure to pesticide information about the sampled exposure expressed as a percentage of the median lethal dose as provided in this subsection (1)(c), then the agency must explain in its report why it is not possible.

(2)(a) A person who has knowledge of a suspected human exposure to pesticide must, once it is apparent that the responsible state agency will not conduct sampling at the scene on the same day that the suspected human exposure occurred, immediately take reasonable steps, as appropriate, to limit the risk of contamination of potential samples. By way of illustration and not limitation, in a case of suspected human exposure to pesticide caused by pesticide spray drift, reasonable steps could include the removal and isolation of clothing worn by persons suspected of being exposed to a pesticide so that the clothing may be tested without being contaminated subsequent to the exposure event but prior to testing.

(b) Any steps taken to preserve samples must be documented in writing and provided to the lead agency that is designated in subsection (1)(b) of this section.

(3) In a case of suspected human exposure to pesticide caused by pesticide spray drift, no civil penalty may be imposed on a person without clear and convincing evidence that the human exposure to pesticide did not come from some other source.

(4)(a) The lead agency must impose a civil penalty of at least three hundred dollars on a person who reports an alleged human exposure to pesticide caused by pesticide spray drift if, after an investigation, the lead agency determines the person made a frivolous report of human exposure to pesticide.

(b) Relevant considerations in making the determination in (a) of this subsection include but are not limited to:

(i) Whether factual assertions that are made to the lead agency by the person reporting the alleged human exposure to pesticide caused by pesticide spray drift are verified during an investigation;

(ii) Whether samples taken at or near the site of the alleged human exposure to pesticide support the person's allegation of a human exposure to pesticide caused by pesticide spray drift; and

(iii) The existence of a possible motive of the person who made the report of the alleged human exposure to pesticide to make a frivolous report.

(c) Imposition of the civil penalty in this subsection is subject to a hearing in conformance with chapter 34.05 RCW.

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

(1)(a) An investigation of suspected human exposure to pesticide should begin on the same day the department learns of the suspected human exposure and must begin no later than forty-eight hours after the department learns of the suspected human exposure.

(b) The department, the department of health, and the department of labor and industries must agree to and designate one of the three agencies as the lead agency for each investigation of an alleged human exposure to pesticide so that people affected by the exposure or an investigation know which agency to contact.

(c) A report produced by the agency following an investigation of suspected human exposure to pesticide that contains information about sampled human exposure must include, if possible, the sampled human exposure expressed as a percentage of the median lethal dose, commonly abbreviated as (LD50), for the type of pesticide sampled based on the type of exposure and information on the pesticide's material safety data sheet and the pesticide's product label. If an agency determines that it is not possible to include in a report produced by the agency following an investigation of suspected human exposure to pesticide information about the sampled exposure expressed as a percentage of the median lethal dose as provided in this subsection (1)(c), then the agency must explain in its report why it is not possible.

(2)(a) A person who has knowledge of a suspected human exposure to pesticide must, once it is apparent that the responsible state agency will not conduct sampling at the scene on the same day that the suspected human exposure occurred, immediately take reasonable steps, as appropriate, to limit the risk of contamination of potential samples. By way of illustration and not limitation, in a case of suspected human exposure to pesticide caused by pesticide spray drift, reasonable steps could include the removal and isolation of clothing worn by persons suspected of being exposed to a pesticide so that the clothing may be tested without being contaminated subsequent to the exposure event but prior to testing.

(b) Any steps taken to preserve samples must be documented in writing and provided to the lead agency that is designated in subsection (1)(b) of this section.

(3) In a case of suspected human exposure to pesticide caused by pesticide spray drift, no civil penalty may be imposed on a person without clear and convincing evidence that the human exposure to pesticide did not come from some other source.

(4)(a) The lead agency must impose a civil penalty of at least three hundred dollars on a person who reports an alleged human exposure to pesticide caused by pesticide spray drift if, after an investigation, the lead agency determines the person made a frivolous report of human exposure to pesticide.

(b) Relevant considerations in making the determination in (a) of this subsection include but are not limited to:

(i) Whether factual assertions that are made to the lead agency by the person reporting the alleged human exposure to pesticide caused by pesticide spray drift are verified during an investigation;

(ii) Whether samples taken at or near the site of the alleged human exposure to pesticide support the person's allegation of a human exposure to pesticide caused by pesticide spray drift; and

(iii) The existence of a possible motive of the person who made the report of the alleged human exposure to pesticide to make a frivolous report.

(c) Imposition of the civil penalty in this subsection is subject to a hearing in conformance with chapter 34.05 RCW.

**Sec.**  RCW 17.21.100 and 2011 c 103 s 37 are each amended to read as follows:

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

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

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

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

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

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

(f) The concentration of pesticide that was applied;

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

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

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

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

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

(b) A commercial pesticide applicator who applies a pesticide to an agricultural crop or agricultural lands shall provide a copy of the records required under subsection (1) of this section for the application to the owner, or to the lessee if applied on behalf of the lessee, of the lands to which the pesticide is applied. Records provided by a commercial pesticide applicator to the owner or lessee of agricultural lands under this subsection need not be provided on a form adopted by the department.

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

(4)(a) The pesticide records shall be readily accessible to the department for inspection. Copies of the records shall be provided on request to: The department; the department of labor and industries; treating health care personnel initiating diagnostic testing or therapy for a patient with a suspected case of human exposure to pesticide ((~~poisoning~~)); the department of health; and, in the case of an industrial insurance claim filed under Title 51 RCW with the department of labor and industries, the employee or the employee's designated representative. In addition, the director may require the submission of the records on a routine basis within thirty days of the application of any restricted use pesticide in prescribed areas controlling the use of the restricted use pesticide. When a request for records is made under this subsection by treating health care personnel and the record is required for determining treatment, copies of the record shall be provided immediately. For all other requests, copies of the record shall be provided within seventy-two hours.

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

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

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

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

**Sec.**  RCW 70.104.030 and 2009 c 495 s 10 are each amended to read as follows:

(1)(a) The department of health may investigate all cases of suspected human ((~~cases of~~)) exposure to pesticide ((~~poisoning~~)) and such cases of suspected ((~~pesticide poisoning of animals~~)) animal exposure to pesticide that may relate to human illness. The department shall establish time periods by rule to determine investigation response time. Time periods ((~~shall~~)) must range from immediate to forty-eight hours to initiate an investigation, depending on the severity of the case or suspected case of exposure to a pesticide ((~~poisoning~~)).

(b) In order to adequately investigate such cases, the department shall have the power to:

((~~(a)~~)) (ii) Take all necessary samples and human or animal tissue specimens for diagnostic purposes: PROVIDED, That tissue, if taken from a living human, shall be taken from a living human only with the consent of a person legally qualified to give such consent; and

((~~(b)~~)) (ii) Secure any and all such information as may be necessary to adequately determine the nature and causes of any case of exposure to a pesticide ((~~poisoning~~)).

(2) The department shall immediately notify the department of agriculture, the department of labor and industries, and other appropriate agencies of the results of its investigation for such action as the other departments or agencies deem appropriate. The notification of such investigations and their results may include recommendations for further action by the appropriate department or agency.

(3) The department shall include, if possible, in any report following an investigation of suspected human exposure to pesticide that contains information about sampled pesticide exposure, the sampled pesticide exposure expressed as a percentage of the median lethal dose, commonly abbreviated as (LD50), for the type of pesticide sampled based on the type of exposure and information on the pesticide's material safety data sheet and the pesticide's product label.

**Sec.**  RCW 70.104.055 and 1992 c 173 s 4 are each amended to read as follows:

(1) Any attending physician or other health care provider recognized as primarily responsible for the diagnosis and treatment of a patient or, in the absence of a primary health care provider, the health care provider initiating diagnostic testing or therapy for a patient shall report a case or suspected case of human exposure to pesticide ((~~poisoning~~)) to the department of health in the manner prescribed by, and within the reasonable time periods established by, rules of the state board of health. Time periods established by the board shall range from immediate reporting to reporting within seven days depending on the severity of the case or suspected case of human exposure to pesticide ((~~poisoning~~)). The reporting requirements shall be patterned after other board rules establishing requirements for reporting of diseases or conditions. Confidentiality requirements shall be the same as the confidentiality requirements established for other reportable diseases or conditions. The information to be reported may include information from relevant pesticide application records and shall include information required under board rules. Reports shall be made on forms provided to health care providers by the department of health. For purposes of any oral reporting, the department of health shall make available a toll-free telephone number.

(2) Within a reasonable time period as established by board rules, the department of health shall investigate the report of a case or suspected case of human exposure to pesticide ((~~poisoning~~)) to document the incident. The department shall report the results of the investigation to the health care provider submitting the original report.

(3) ((~~Cases or suspected cases of pesticide poisoning shall be reported by the department of health to the pesticide reporting and tracking review panel within the time periods established by state board of health rules.~~

~~(4)~~)) Upon request of the primary health care provider, pesticide applicators or employers shall provide a copy of records of pesticide applications which may have affected the health of the provider's patient. This information is to be used only for the purposes of providing health care services to the patient.

((~~(5)~~)) (4) Any failure of the primary health care provider to make the reports required under this section may be cause for the department of health to submit information about such nonreporting to the applicable disciplining authority for the provider under RCW 18.130.040.

((~~(6)~~)) (5) No cause of action shall arise as the result of: (a) The failure to report under this section; or (b) any report submitted to the department of health under this section.

((~~(7)~~)) (6) For the purposes of this section, a suspected case of human exposure to pesticide ((~~poisoning~~)) is a case in which the diagnosis is thought more likely than not to be a human exposure to pesticide ((~~poisoning~~)).

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