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**SUBSTITUTE SENATE BILL 5209**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senate Agriculture, Water & Rural Economic Development (originally sponsored by Senators Warnick, Hatfield, Padden, Schoesler, Hobbs, and Hewitt)

AN ACT Relating to a hazardous substance tax exemption for certain hazardous substances defined under RCW 82.21.020(1)(c) that are used as agricultural crop protection products and warehoused but not otherwise used, manufactured, packaged, or sold in this state; amending RCW 82.21.040; adding a new section to chapter 82.21 RCW; providing an effective date; and declaring an emergency.

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

NEW SECTION. **Sec.**  A new section is added to chapter 82.21 RCW to read as follows:

(1) The legislature categorizes this tax preference as one intended to improve industry competitiveness, as indicated in RCW 82.32.808(2)(b).

(2) The legislature's specific public policy objective is to clarify an existing exemption from the hazardous substance tax for agricultural crop protection products to incentivize storing products in Washington state as they are engaged in interstate commerce. The legislature finds that the agricultural industry is a vital component of Washington's economy, providing thousands of jobs throughout the state. The legislature further finds that Washington state is the ideal location for distribution centers for agricultural crop protection products because Washington is an efficient transportation hub for Pacific Northwest farmers, and encourages crop protection products to be managed in the most protective facilities, and transported using the most sound environmental means. However, products being warehoused in the state are diminishing because agricultural crop protection products are being redirected to out-of-state distribution centers as a direct result of Washington's tax burden. Relocation of this economic activity is detrimental to Washington's economy through the direct loss of jobs and hazardous substance tax revenue, thereby negatively impacting the supply chain for Washington farmers, thereby causing increased transportation usage and risk of spillage, thereby failing to encourage the most environmentally protective measures. Therefore, it is the intent of the legislature to encourage the regional competitiveness of agricultural distribution by clarifying an exemption from the hazardous substance tax for agricultural crop protection products that are manufactured out-of-state, warehoused or transported into the state, but ultimately shipped and sold out of Washington state.

(3) If a review finds an average increase in revenue of the hazardous substance tax, then the legislature intends to extend the expiration date of the tax preference.

(4) In order to obtain the data necessary to perform the review in subsection (3) of this section, the joint legislative audit and review committee may refer to data available from the department of revenue.

**Sec.**  RCW 82.21.040 and 1989 c 2 s 11 are each amended to read as follows:

The following are exempt from the tax imposed in this chapter:

(1) Any successive possession of a previously taxed hazardous substance. If tax due under this chapter has not been paid with respect to a hazardous substance, the department may collect the tax from any person who has had possession of the hazardous substance. If the tax is paid by any person other than the first person having taxable possession of a hazardous substance, the amount of tax paid shall constitute a debt owed by the first person having taxable possession to the person who paid the tax.

(2) Any possession of a hazardous substance by a natural person under circumstances where the substance is used, or is to be used, for a personal or domestic purpose (and not for any business purpose) by that person or a relative of, or person residing in the same dwelling as, that person.

(3) Any possession of a hazardous substance amount which is determined as minimal by the department of ecology and which is possessed by a retailer for the purpose of making sales to ultimate consumers. This exemption does not apply to pesticide or petroleum products.

(4) Any possession of alumina or natural gas.

(5)(a) Any possession of a hazardous substance as defined in RCW 82.21.020(1)(c) that is solely for use by a farmer or certified applicator as an agricultural crop protection product and warehoused in this state or transported to or from this state, provided that the person possessing the substance does not otherwise use, manufacture, package for sale, or sell the substance in this state.

(b) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(i) "Agricultural crop protection product" means a chemical regulated under the federal insecticide, fungicide, and rodenticide act, 7 U.S.C. Sec. 136 as amended as of the effective date of this section, when used to prevent, destroy, repel, mitigate, or control predators, diseases, weeds, or other pests.

(ii) "Certified applicator" has the same meaning as provided in RCW 17.21.020.

(iii) "Farmer" has the same meaning as in RCW 82.04.213.

(iv) "Manufacturing" includes mixing or combining agricultural crop protection products with other chemicals or other agricultural crop protection products.

(v) "Package for sale" includes transferring agricultural crop protection products from one container to another, including the transfer of fumigants and other liquid or gaseous chemicals from one tank to another.

(vi) "Use" has the same meaning as in RCW 82.12.010.

(6) Persons or activities which the state is prohibited from taxing under the United States Constitution.

((~~(6) Any persons possessing a hazardous substance where such possession first occurred before March 1, 1989.~~))

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2015.

**--- END ---**