

HOUSE BILL 1156

State of Washington

52nd Legislature

1991 Regular Session

By Representatives Winsley, Rayburn, Rasmussen, R. Johnson, Cole and Wilson.

Read first time January 21, 1991. Referred to Committee on Commerce & Labor. Referred 1/23/91 to Agriculture & Rural Development.

1 AN ACT Relating to structural pest control inspectors; and amending
2 RCW 15.58.030, 15.58.040, 15.58.150, and 15.58.210.

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

4 **Sec. 1.** RCW 15.58.030 and 1989 c 380 s 1 are each amended to read
5 as follows:

6 As used in this chapter the words and phrases defined in this
7 section shall have the meanings indicated unless the context clearly
8 requires otherwise.

9 (1) "Active ingredient" means any ingredient which will prevent,
10 destroy, repel, control, or mitigate pests, or which will act as a
11 plant regulator, defoliant, desiccant, or spray adjuvant.

12 (2) "Antidote" means the most practical immediate treatment in case
13 of poisoning and includes first aid treatment.

14 (3) "Arthropod" means any invertebrate animal that belongs to the
15 phylum arthropoda, which in addition to insects, includes allied

1 classes whose members are wingless and usually have more than six legs;
2 for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

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

6 (5) "Department" means the Washington state department of
7 agriculture.

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

10 (7) "Device" means any instrument or contrivance intended to trap,
11 destroy, control, repel, or mitigate pests, or to destroy, control,
12 repel or mitigate fungi, nematodes, or such other pests, as may be
13 designated by the director, but not including equipment used for the
14 application of pesticides when sold separately from the pesticides.

15 (8) "Director" means the director of the department or a duly
16 authorized representative.

17 (9) "Distribute" means to offer for sale, hold for sale, sell,
18 barter, or supply pesticides in this state.

19 (10) "EPA" means the United States environmental protection agency.

20 (11) "EPA restricted use pesticide" means any pesticide with
21 restricted uses as classified for restricted use by the administrator,
22 EPA.

23 (12) "FIFRA" means the federal insecticide, fungicide, and
24 rodenticide act as amended (61 Stat. 163, 7 U.S.C. Sec. 136 et seq.).

25 (13) "Fungi" means all nonchlorophyll-bearing thallophytes (all
26 nonchlorophyll-bearing plants of a lower order than mosses and
27 liverworts); for example, rusts, smuts, mildews, molds, yeasts, and
28 bacteria, except those on or in living persons or other animals.

29 (14) "Fungicide" means any substance or mixture of substances
30 intended to prevent, destroy, repel, or mitigate any fungi.

1 (15) "Herbicide" means any substance or mixture of substances
2 intended to prevent, destroy, repel, or mitigate any weed.

3 (16) "Inert ingredient" means an ingredient which is not an active
4 ingredient.

5 (17) "Ingredient statement" means a statement of the name and
6 percentage of each active ingredient together with the total percentage
7 of the inert ingredients in the pesticide, and when the pesticide
8 contains arsenic in any form, the ingredient statement shall also
9 include percentages of total and water soluble arsenic, each calculated
10 as elemental arsenic. In the case of a spray adjuvant the ingredient
11 statement need contain only the names of the principal functioning
12 agents and the total percentage of the constituents ineffective as
13 spray adjuvants. If more than three functioning agents are present,
14 only the three principal ones need by named.

15 (18) "Insect" means any of the numerous small invertebrate animals
16 whose bodies are more or less obviously segmented, and which for the
17 most part belong to the class insecta, comprising six-legged, usually
18 winged forms, for example, beetles, bugs, bees, flies, and to other
19 allied classes of arthropods whose members are wingless and usually
20 have more than six legs, for example, spiders, mites, ticks,
21 centipedes, and isopod crustaceans.

22 (19) "Insecticide" means any substance or mixture of substances
23 intended to prevent, destroy, repel, or mitigate any insects which may
24 be present in any environment whatsoever.

25 (20) "Label" means the written, printed, or graphic matter on, or
26 attached to, the pesticide, device, or immediate container, and the
27 outside container or wrapper of the retail package.

28 (21) "Labeling" means all labels and other written, printed, or
29 graphic matter:

1 (a) Upon the pesticide, device, or any of its containers or
2 wrappers;

3 (b) Accompanying the pesticide, or referring to it in any other
4 media used to disseminate information to the public; and

5 (c) To which reference is made on the label or in literature
6 accompanying or referring to the pesticide or device except when
7 accurate nonmisleading reference is made to current official
8 publications of the department, United States departments of
9 agriculture; interior; education; health and human services; state
10 agricultural colleges; and other similar federal or state institutions
11 or agencies authorized by law to conduct research in the field of
12 pesticides.

13 (22) "Land" means all land and water areas, including airspace and
14 all plants, animals, structures, buildings, devices and contrivances,
15 appurtenant thereto or situated thereon, fixed or mobile, including any
16 used for transportation.

17 (23) "Master license system" means the mechanism established by
18 chapter 19.02 RCW by which master licenses, endorsed for individual
19 state-issued licenses, are issued and renewed using a master
20 application and a master license expiration date common to each
21 renewable license endorsement.

22 (24) "Nematocide" means any substance or mixture of substances
23 intended to prevent, destroy, repel, or mitigate nematodes.

24 (25) "Nematode" means any invertebrate animal of the phylum
25 nemathelminthes and class nematoda, that is, unsegmented round worms
26 with elongated, fusiform, or saclike bodies covered with cuticle, and
27 inhabiting soil, water, plants or plant parts, may also be called nemas
28 or eelworms.

29 (26) "Person" means any individual, partnership, association,
30 corporation, or organized group of persons whether or not incorporated.

1 (27) "Pest" means, but is not limited to, any insect, rodent,
2 nematode, snail, slug, weed and any form of plant or animal life or
3 virus, except virus on or in a living person or other animal, which is
4 normally considered to be a pest or which the director may declare to
5 be a pest.

6 (28) "Pest control consultant" means any individual who acts as a
7 structural pest control inspector, who sells or offers for sale at
8 other than a licensed pesticide dealer outlet or location, or who
9 offers or supplies technical advice, supervision, or aid, or makes
10 recommendations to the user of:

11 (a) Highly toxic pesticides, as determined under RCW 15.58.040;

12 (b) EPA restricted use pesticides or restricted use pesticides
13 which are restricted by rule to distribution by licensed pesticide
14 dealers only; or

15 (c) Any other pesticide except those pesticides which are labeled
16 and intended for home and garden use only.

17 (29) "Pesticide" means, but is not limited to:

18 (a) Any substance or mixture of substances intended to prevent,
19 destroy, control, repel, or mitigate any insect, rodent, snail, slug,
20 fungus, weed, and any other form of plant or animal life or virus,
21 except virus on or in a living person or other animal which is normally
22 considered to be a pest or which the director may declare to be a pest;

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

25 (c) Any spray adjuvant.

26 (30) "Pesticide advisory board" means the pesticide advisory board
27 as provided for in the Washington pesticide application act.

28 (31) "Pesticide dealer" means any person who distributes any of the
29 following pesticides:

30 (a) Highly toxic pesticides, as determined under RCW 15.58.040;

1 (b) EPA restricted use pesticides or restricted use pesticides
2 which are restricted by rule to distribution by licensed pesticide
3 dealers only; or

4 (c) Any other pesticide except those pesticides which are labeled
5 and intended for home and garden use only.

6 (32) "Pesticide dealer manager" means the owner or other individual
7 supervising pesticide distribution at one outlet holding a pesticide
8 dealer license.

9 (33) "Plant regulator" means any substance or mixture of substances
10 intended through physiological action, to accelerate or retard the rate
11 of growth or maturation, or to otherwise alter the behavior of
12 ornamental or crop plants or their produce, but shall not include
13 substances insofar as they are intended to be used as plant nutrients,
14 trace elements, nutritional chemicals, plant inoculants, or soil
15 amendments.

16 (34) "Registrant" means the person registering any pesticide under
17 the provisions of this chapter.

18 (35) "Restricted use pesticide" means any pesticide or device
19 which, when used as directed or in accordance with a widespread and
20 commonly recognized practice, the director determines, subsequent to a
21 hearing, requires additional restrictions for that use to prevent
22 unreasonable adverse effects on the environment including people,
23 lands, beneficial insects, animals, crops, and wildlife, other than
24 pests.

25 (36) "Rodenticide" means any substance or mixture of substances
26 intended to prevent, destroy, repel, or mitigate rodents, or any other
27 vertebrate animal which the director may declare by rule to be a pest.

28 (37) "Spray adjuvant" means any wetting agent, spreading agent,
29 deposit builder, adhesive, emulsifying agent, deflocculating agent,
30 water modifier, or similar agent with or without toxic properties of

1 its own, intended to be used with any other pesticide as an aid to the
2 application or to the effect of the pesticide, and which is in a
3 package or container separate from that of the pesticide with which it
4 is to be used.

5 (38) "Special local needs registration" means a registration issued
6 by the director pursuant to provisions of section 24(c) of FIFRA.

7 (39) Structural pest control inspector" means any individual who
8 commercially performs the service of inspecting a building for the
9 presence of pests destructive to its structural components.

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

14 (~~(40)~~) (41) "Weed" means any plant which grows where not wanted.

15 **Sec. 2.** RCW 15.58.040 and 1989 c 380 s 2 are each amended to read
16 as follows:

17 (1) The director shall administer and enforce the provisions of
18 this chapter and rules adopted under this chapter. All the authority
19 and requirements provided for in chapter 34.05 RCW (Administrative
20 Procedure Act) and chapter 42.30 RCW shall apply to this chapter in the
21 adoption of rules including those requiring due notice and a hearing
22 for the adoption of permanent rules.

23 (2) The director is authorized to adopt appropriate rules for
24 carrying out the purpose and provisions of this chapter, including but
25 not limited to rules providing for:

26 (a) Declaring as a pest any form of plant or animal life or virus
27 which is injurious to plants, people, animals (domestic or otherwise),
28 land, articles, or substances;

1 (b) Determining that certain pesticides are highly toxic to people.
2 For the purpose of this chapter, highly toxic pesticide means any
3 pesticide that conforms to the criteria in 40 C.F.R. Sec. 162.10 for
4 toxicity category I due to oral inhalation or dermal toxicity. The
5 director shall publish a list of all pesticides, determined to be
6 highly toxic, by their common or generic name and their trade or brand
7 name if practical. Such list shall be kept current and shall, upon
8 request, be made available to any interested party;

9 (c) Determining standards for denaturing pesticides by color,
10 taste, odor, or form;

11 (d) The collection and examination of samples of pesticides or
12 devices;

13 (e) The safe handling, transportation, storage, display,
14 distribution, and disposal of pesticides and their containers;

15 (f) Restricting or prohibiting the use of certain types of
16 containers or packages for specific pesticides. These restrictions may
17 apply to type of construction, strength, and/or size to alleviate
18 danger of spillage, breakage, misuse, or any other hazard to the
19 public. The director shall be guided by federal regulations concerning
20 pesticide containers;

21 (g) Procedures in making of pesticide recommendations;

22 (h) Adopting a list of restricted use pesticides for the state or
23 for designated areas within the state if the director determines that
24 such pesticides may require rules restricting or prohibiting their
25 distribution or use. The director may include in the rule the time and
26 conditions of distribution or use of such restricted use pesticides and
27 may, if it is found necessary to carry out the purpose and provisions
28 of this chapter, require that any or all restricted use pesticides
29 shall be purchased, possessed, or used only under permit of the
30 director and under the director's direct supervision in certain areas

1 and/or under certain conditions or in certain quantities or
2 concentrations. The director may require all persons issued such
3 permits to maintain records as to the use of all the restricted use
4 pesticides;

5 (i) Label requirements of all pesticides required to be registered
6 under provisions of this chapter; (~~and~~)

7 (j) Regulating the labeling of devices; and

8 (k) The establishment of criteria governing the conduct of a
9 structural pest control inspection.

10 (3) For the purpose of uniformity and to avoid confusion
11 endangering the public health and welfare the director may adopt rules
12 in conformity with the primary pesticide standards, particularly as to
13 labeling, established by the United States environmental protection
14 agency or any other federal agency.

15 **Sec. 3.** RCW 15.58.150 and 1989 c 380 s 11 are each amended to read
16 as follows:

17 (1) It is unlawful for any person to distribute within the state or
18 deliver for transportation or transport in intrastate commerce or
19 between points within this state through any point outside this state
20 any of the following:

21 (a) Any pesticide which has not been registered pursuant to the
22 provisions of this chapter;

23 (b) Any pesticide if any of the claims made for it or any of the
24 directions for its use or other labeling differs from the
25 representations made in connection with its registration, or if the
26 composition of a pesticide differs from its composition as represented
27 in connection with its registration: PROVIDED, That at the discretion
28 of the director, a change in the labeling or formula of a pesticide may

1 be made within a registration period without requiring reregistration
2 of the product;

3 (c) Any pesticide unless it is in the registrant's or the
4 manufacturer's unbroken immediate container and there is affixed to
5 such container, and to the outside container or wrapper of the retail
6 package, if there is one through which the required information on the
7 immediate container cannot be clearly read, a label bearing the
8 information required in this chapter and the rules adopted under this
9 chapter;

10 (d) Any pesticide including arsenicals, fluorides, fluosilicates,
11 and/or any other white powdered pesticides unless they have been
12 distinctly denatured as to color, taste, odor, or form if so required
13 by rule;

14 (e) Any pesticide which is adulterated or misbranded, or any device
15 which is misbranded;

16 (f) Any pesticide in containers, violating rules adopted pursuant
17 to RCW 15.58.040(2)(f) or pesticides found in containers which are
18 unsafe due to damage.

19 (2) It shall be unlawful:

20 (a) To sell or deliver any pesticide to any person who is required
21 by law or rules promulgated under such law to be certified, licensed,
22 or have a permit to use or purchase the pesticide unless such person or
23 the person's agent, to whom sale or delivery is made, has a valid
24 certification, license, or permit to use or purchase the kind and
25 quantity of such pesticide sold or delivered: PROVIDED, That, subject
26 to conditions established by the director, such permit may be obtained
27 immediately prior to sale or delivery from any person designated by the
28 director;

29 (b) For any person to detach, alter, deface or destroy, wholly or
30 in part, any label or labeling provided for in this chapter or rules

1 adopted under this chapter, or to add any substance to, or take any
2 substance from, a pesticide in a manner that may defeat the purpose of
3 this chapter or the rules adopted thereunder;

4 (c) For any person to use or cause to be used any pesticide
5 contrary to label directions or to regulations of the director if those
6 regulations differ from or further restrict the label directions:
7 PROVIDED, The compliance to the term "contrary to label directions" is
8 enforced by the director consistent with the intent of this chapter;

9 (d) For any person to use for his or her own advantage or to
10 reveal, other than to the director or proper officials or employees of
11 the state, or to the courts of the state in response to a subpoena, or
12 to physicians, or in emergencies to pharmacists and other qualified
13 persons for use in the preparation of antidotes, any information
14 relative to formulas of products acquired by authority of RCW
15 15.58.060;

16 (e) For any person to make false, misleading, or erroneous
17 statements or reports concerning any pest during or after a
18 ~~((structural))~~ pest inspection or to fail to comply with criteria
19 established by rule for structural pest control inspections;

20 (f) For any person to make false, misleading, or erroneous
21 statements or reports in connection with any pesticide complaint or
22 investigation.

23 **Sec. 4.** RCW 15.58.210 and 1989 c 380 s 16 are each amended to read
24 as follows:

25 Except as provided in subsection (2) of this section, no individual
26 may perform services as a pest control consultant without obtaining
27 from the director an annual license, which license shall expire on the
28 final day of February of each year. No individual may act as a
29 structural pest control inspector without first obtaining from the

1 director a pest control consultant license in the special category of
2 structural pest control inspector. Application for a license shall be
3 on a form prescribed by the director and shall be accompanied by a fee
4 of thirty dollars.

5 (2) The following are exempt from the licensing requirements of
6 subsection (1) of this section when acting within the authorities of
7 their existing licenses: Licensed commercial pesticide applicators and
8 operators; licensed private-commercial applicators; and licensed
9 demonstration and research applicators(~~(+)~~). The following are also
10 exempt from the licensing requirements of subsection (1) of this
11 section: Employees of federal, state, county, or municipal agencies
12 when acting in their official governmental capacities; and pesticide
13 dealer managers and employees working under the direct supervision of
14 the pesticide dealer manager and only at a licensed pesticide dealer's
15 outlet(~~(, are exempt from this licensing provision)~~).