
HOUSE BILL 2872

State of Washington

52nd Legislature

1992 Regular Session

By Representatives Rayburn, Haugen and Miller

Read first time 01/31/92. Referred to Committee on Agriculture & Rural Development.

1 AN ACT Relating to providing pesticide-sensitive individuals
2 notification of urban pesticide applications; amending RCW 17.21.020;
3 and adding new sections to chapter 17.21 RCW.

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

5 **Sec. 1.** RCW 17.21.020 and 1989 c 380 s 33 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.

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

11 (3) "Arthropod" means any invertebrate animal that belongs to the
12 phylum arthropoda, which in addition to insects, includes allied
13 classes whose members are wingless and usually have more than six legs;
14 for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

15 (4) "Certified applicator" means any individual who is licensed as
16 a commercial pesticide applicator, commercial pesticide operator,
17 public operator, private-commercial applicator, demonstration and
18 research applicator, or certified private applicator, or any other
19 individual who is certified by the director to use or supervise the use
20 of any pesticide which is classified by the EPA as a restricted use
21 pesticide or by the state as restricted to use by certified applicators
22 only.

23 (5) "Commercial pesticide applicator" means any person who engages
24 in the business of applying pesticides to the land of another.

25 (6) "Commercial pesticide operator" means any employee of a
26 commercial pesticide applicator who uses or supervises the use of any
27 pesticide and who is required to be licensed under provisions of this
28 chapter.

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

4 (8) "Department" means the Washington state department of
5 agriculture.

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

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

13 (11) "Direct supervision" by certified private applicators shall
14 mean that the designated restricted use pesticide shall be applied for
15 purposes of producing any agricultural commodity on land owned or
16 rented by the applicator or the applicator's employer, by a competent
17 person acting under the instructions and control of a certified private
18 applicator who is available if and when needed, even though such
19 certified private applicator is not physically present at the time and
20 place the pesticide is applied. The certified private applicator shall
21 have direct management responsibility and familiarity of the pesticide,
22 manner of application, pest, and land to which the pesticide is being
23 applied. Direct supervision by all other certified applicators means
24 direct on-the-job supervision. Direct supervision of an aerial
25 apparatus means the pilot of the aircraft must be appropriately
26 certified.

27 (12) "Director" means the director of the department or a duly
28 authorized representative.

29 (13) "Engage in business" means any application of pesticides by
30 any person upon lands or crops of another.

1 (14) "EPA" means the United States environmental protection agency.

2 (15) "EPA restricted use pesticide" means any pesticide with
3 restricted uses as classified for restricted use by the administrator,
4 EPA.

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

7 (17) "Fungi" means all nonchlorophyll-bearing thallophytes (all
8 nonchlorophyll-bearing plants of lower order than mosses and
9 liverworts); for example, rusts, smuts, mildews, molds, yeasts, and
10 bacteria, except those on or in a living person or other animals.

11 (18) "Fungicide" means any substance or mixture of substances
12 intended to prevent, destroy, repel, or mitigate any fungi.

13 (19) "Herbicide" means any substance or mixture of substances
14 intended to prevent, destroy, repel, or mitigate any weed.

15 (20) "Immediate service call" means a landscape application to
16 satisfy an emergency customer request for service, or a treatment to
17 control a pest to landscape plants.

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

25 (~~(21)~~) (22) "Insecticide" means any substance or mixture of
26 substances intended to prevent, destroy, repel, or mitigate any insects
27 which may be present in any environment whatsoever.

28 (~~(22)~~) (23) "Land" means all land and water areas, including
29 airspace and all plants, animals, structures, buildings, devices, and

1 contrivances, appurtenant to or situated on, fixed or mobile, including
2 any used for transportation.

3 ~~((23))~~ (24) "Landscape application" means an application by a
4 certified applicator of any EPA registered pesticide to any exterior
5 landscape plants found around residential property, parks, golf
6 courses, or schools. This definition shall not apply to: (a)
7 certified private applicators; and (b) commercial pesticide applicators
8 making structural applications.

9 (25) "Nematocide" means any substance or mixture of substances
10 intended to prevent, destroy, repel, or mitigate nematodes.

11 ~~((24))~~ (26) "Nematode" means any invertebrate animal of the
12 phylum nemathelminthes and class nematoda, that is, unsegmented round
13 worms with elongated, fusiform, or saclike bodies covered with cuticle,
14 and inhabiting soil, water, plants or plant parts, may also be called
15 nemas or eelworms.

16 ~~((25))~~ (27) "Person" means any individual, partnership,
17 association, corporation, or organized group of persons whether or not
18 incorporated.

19 ~~((26))~~ (28) "Pest" means, but is not limited to, any insect,
20 rodent, nematode, snail, slug, weed, and any form of plant or animal
21 life or virus, except virus on or in a living person or other animal,
22 which is normally considered to be a pest, or which the director may
23 declare to be a pest.

24 ~~((27))~~ (29) "Pesticide" means, but is not limited to:

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

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

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

9 ~~((28))~~ (30) "Pesticide advisory board" means the pesticide
10 advisory board as provided for in this chapter.

11 ~~((29))~~ (31) "Plant regulator" means any substance or mixture of
12 substances intended through physiological action, to accelerate or
13 retard the rate of growth or maturation, or to otherwise alter the
14 behavior of ornamental or crop plants or their produce, but shall not
15 include substances insofar as they are intended to be used as plant
16 nutrients, trace elements, nutritional chemicals, plant inoculants, or
17 soil amendments.

18 ~~((30))~~ (32) "Private applicator" means a certified applicator who
19 uses or is in direct supervision of the use of (a) any EPA restricted
20 use pesticide; or (b) any restricted use pesticide restricted to use
21 only by certified applicators by the director, for the purposes of
22 producing any agricultural commodity and for any associated noncrop
23 application on land owned or rented by the applicator or the
24 applicator's employer or if applied without compensation other than
25 trading of personal services between producers of agricultural
26 commodities on the land of another person.

27 ~~((31))~~ (33) "Private-commercial applicator" means a certified
28 applicator who uses or supervises the use of (a) any EPA restricted use
29 pesticide or (b) any restricted use pesticide restricted to use only by
30 certified applicators for purposes other than the production of any

1 agricultural commodity on lands owned or rented by the applicator or
2 the applicator's employer.

3 ~~((+32+))~~ (34) "Residential property" includes property less than
4 one acre in size zoned as residential by a city, town, or county, but
5 does not include property zoned as agricultural or agricultural
6 homesites.

7 (35) "Restricted use pesticide" means any pesticide or device
8 which, when used as directed or in accordance with a widespread and
9 commonly recognized practice, the director determines, subsequent to a
10 hearing, requires additional restrictions for that use to prevent
11 unreasonable adverse effects on the environment including people,
12 lands, beneficial insects, animals, crops, and wildlife, other than
13 pests.

14 ~~((+33+))~~ (36) "Rodenticide" means any substance or mixture of
15 substances intended to prevent, destroy, repel, or mitigate rodents, or
16 any other vertebrate animal which the director may declare by rule to
17 be a pest.

18 ~~((+34+))~~ (37) "Snails or slugs" include all harmful mollusks.

19 ~~((+35+))~~ (38) "Unreasonable adverse effects on the environment"
20 means any unreasonable risk to people or the environment taking into
21 account the economic, social, and environmental costs and benefits of
22 the use of any pesticide, or as otherwise determined by the director.

23 ~~((+36+))~~ (39) "Weed" means any plant which grows where not wanted.

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

26 (1)(a) A certified applicator making a landscape application shall
27 display the name and telephone number of the applicator or the
28 applicator's employer on any power application apparatus. The

1 applicator shall also carry the material safety data sheet for each
2 pesticide being applied.

3 (b) A certified applicator making a right of way application shall
4 display the name and telephone number of the applicator or the
5 applicator's employer and the words "VEGETATION MANAGEMENT APPLICATION"
6 on any power application apparatus. The applicator shall also carry
7 the material safety data sheet for each pesticide being applied.

8 (2) If a certified applicator receives a written request for
9 information on a spray application, the applicator shall provide the
10 requestor with the name or names of each pesticide applied and (a) a
11 copy of the material safety data sheet for each pesticide; or (b) a
12 pesticide fact sheet for each pesticide as developed or approved by the
13 department.

14 (3) State and local health departments and mosquito control
15 districts when conducting mosquito control operations are exempt from
16 the requirements of this section.

17 (4) The director shall adopt rules establishing the size and
18 lettering requirements of the apparatus display signs required under
19 this section.

20 NEW SECTION. **Sec. 3.** A new section is added to chapter 17.21 RCW
21 to read as follows:

22 (1) The department shall develop a list of pesticide-sensitive
23 individuals. The list shall include any person with a documented
24 pesticide sensitivity who submits information to the department on an
25 application form developed by the department indicating the person's
26 pesticide sensitivity.

27 (2) An applicant for inclusion on the pesticide-sensitive list may
28 apply to the department at any time and shall provide the department,
29 on the department's form, the name, street address, and telephone

1 number of the applicant and of each property owner with property
2 abutting the applicant's principal place of residence. The pesticide
3 sensitivity of an individual shall be certified by a physician who
4 holds a valid license to practice medicine in this state. The lands
5 listed on an application for inclusion on the pesticide-sensitive list
6 shall constitute the pesticide notification area for that applicant.

7 (3) A person whose name has been included on the pesticide-
8 sensitive list shall notify the department of a need to update the list
9 as soon as possible after: (a) A change of address or telephone
10 number; (b) a change in ownership of property abutting a pesticide-
11 sensitive individual; (c) a change in the applicant's condition; or (d)
12 the sensitivity is deemed to no longer exist.

13 (4) The pesticide-sensitive list shall expire on December 31 of
14 each year and persons desiring to be placed on or remain on the list
15 shall submit a new application each year.

16 (5) The department shall distribute the list by February 15 and
17 June 15 of each year to all certified applicators likely to make
18 landscape applications. The list shall provide multiple methods of
19 accessing the information so that certified applicators making
20 landscape applications or right of way applications are able to easily
21 determine what properties and individuals require notification for a
22 specific application. An updated list shall be distributed whenever
23 deemed necessary by the department. Certified applicators may request
24 a list of newly registered individuals that have been added to the list
25 since the last distribution. Registered individuals shall receive
26 verification that their name has been placed on the list.

27 NEW SECTION. **Sec. 4.** A new section is added to chapter 17.21 RCW
28 to read as follows:

1 (1) A certified applicator making a landscape application or a
2 right of way application to the pesticide notification area, as defined
3 in section 3(2) of this act, of a person on the pesticide-sensitive
4 list shall notify the listed pesticide-sensitive individual of the
5 application. Notification shall be made at least two hours prior to
6 the scheduled application, or in the case of an immediate service call,
7 the applicator shall provide notification at the time of the
8 application.

9 (2) Notification under this section shall be made in writing, in
10 person, or by telephone, and shall disclose the date and approximate
11 time of the application. In the event a certified applicator is unable
12 to provide prior notification because of the absence or inaccessibility
13 of the individual, the applicator shall leave a written notice at the
14 residence of the individual listed on the pesticide-sensitive list at
15 the time of the application. If a person on the pesticide-sensitive
16 list lives in a multifamily dwelling such as an apartment or
17 condominium, the applicator shall notify the person on the list or
18 shall advise the manager or other property owner's representative to
19 notify the person on the list of the application.

20 NEW SECTION. **Sec. 5.** A new section is added to chapter 17.21 RCW
21 to read as follows:

22 (1) A certified applicator making a landscape application to:

23 (a) Residential property shall at the time of the application place
24 a marker at the usual point of entry to the property. If the
25 application is made to an isolated spot that is not a substantial
26 portion of the property, the applicator shall only be required to place
27 a marker at the application site. If the application is in a fenced or
28 otherwise isolated backyard, no marker is required.

1 (b) A golf course shall at the time of the application place a
2 marker at the first tee and tenth tee or post the information in a
3 conspicuous location such as on a central message board.

4 (c) A school shall at the time of the application place a marker at
5 each primary point of entry to the school grounds.

6 (d) A park shall at the time of the application place a marker at
7 each primary point of entry.

8 (2) The marker shall be a minimum of four inches by five inches.
9 It shall have the words: "THIS LANDSCAPE HAS BEEN TREATED BY" as the
10 headline and "FOR MORE INFORMATION PLEASE CALL" as the footer. The
11 company name and service mark with the applicator's telephone number
12 where information can be obtained shall be included between the
13 headline and the footer on the marker. The letters and service marks
14 shall be printed in colors contrasting to the background.

15 (3) The property owner or tenant shall remove the marker the day
16 following the application. A commercial applicator is not liable for
17 the removal of markers by unauthorized persons or removal outside the
18 designated removal time.

19 (4) A certified applicator who complies with this section cannot be
20 held liable for personal property or bodily injury resulting from
21 markers that are placed as required.