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ENGROSSED SENATE BILL 6093

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State of Washington                      52nd Legislature                      1992 Regular Session

By Senators Barr, Murray, Anderson and Bauer

Read first time 01/15/92. Referred to Committee on Agriculture & Water Resources.

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; (b) state and local health departments  
8 and mosquito control districts when conducting mosquito control  
9 operations; and (c) commercial pesticide applicators making structural  
10 applications.

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

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

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

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

26 ~~((27))~~ (29) "Pesticide" means, but is not limited to:

27 (a) Any substance or mixture of substances intended to prevent,  
28 destroy, control, repel, or mitigate any insect, rodent, snail, slug,  
29 fungus, weed, and any other form of plant or animal life or virus

1 except virus on or in a living person or other animal which is normally  
2 considered to be a pest or which the director may declare to be a pest;

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

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

11 (~~(28)~~) (30) "Pesticide advisory board" means the pesticide  
12 advisory board as provided for in this chapter.

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

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

29 (~~(31)~~) (33) "Private-commercial applicator" means a certified  
30 applicator who uses or supervises the use of (a) any EPA restricted use

1 pesticide or (b) any restricted use pesticide restricted to use only by  
2 certified applicators for purposes other than the production of any  
3 agricultural commodity on lands owned or rented by the applicator or  
4 the applicator's employer.

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

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

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

20 ~~((+34+))~~ (37) "Snails or slugs" include all harmful mollusks.

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

25 ~~((+36+))~~ (39) "Weed" means any plant which grows where not wanted.

26 NEW SECTION. Sec. 2. A new section is added to chapter 17.21 RCW  
27 to read as follows:

28 (1)(a) A certified applicator making a landscape application shall  
29 display the name and telephone number of the applicator or the

1 applicator's employer on any power application apparatus. The  
2 applicator shall also carry the material safety data sheet for each  
3 pesticide being applied.

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

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

15 (3) The director shall adopt rules establishing the size and  
16 lettering requirements of the apparatus display signs required under  
17 this section.

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

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

25 (2) An applicant for inclusion on the pesticide-sensitive list may  
26 apply to the department at any time and shall provide the department,  
27 on the department's form, the name, street address, and telephone  
28 number of the applicant and of each property owner with property  
29 abutting the applicant's principal place of residence. The pesticide



1 sensitivity of an individual shall be certified by a physician who  
2 holds a valid license to practice medicine in this state. The lands  
3 listed on an application for inclusion on the pesticide-sensitive list  
4 shall constitute the pesticide notification area for that applicant.

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

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

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

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

27 (1) A certified applicator making a landscape application or a  
28 right of way application to the pesticide notification area, as defined  
29 in section 3(2) of this act, of a person on the pesticide-sensitive

1 list shall notify the listed pesticide-sensitive individual of the  
2 application. Notification shall be made at least two hours prior to  
3 the scheduled application, or in the case of an immediate service call,  
4 the applicator shall provide notification at the time of the  
5 application.

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

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

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

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

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

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

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

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

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

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