

---

SENATE BILL 6397

---

State of Washington

62nd Legislature

2012 Regular Session

By Senators Kohl-Welles, Chase, Rolfes, Conway, Keiser, Nelson, Kline, and Shin

Read first time 01/20/12. Referred to Committee on Labor, Commerce & Consumer Protection.

1 AN ACT Relating to protecting workers and other community members  
2 from pesticide drift; amending RCW 49.70.020, 49.70.110, and  
3 70.104.030; adding new sections to chapter 49.70 RCW; and prescribing  
4 penalties.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 49.70 RCW  
7 to read as follows:

8 The legislature finds that pesticide exposure results in lost wages  
9 and worker productivity, increased industrial insurance costs, and  
10 acute and chronic health problems for workers and other community  
11 members. Further, the legislature finds that drift from pesticide  
12 spray applications poses significant risks to workers and community  
13 members in the vicinity of the pesticide application. The legislature  
14 therefore declares that workers and other community members have a  
15 right to be protected from pesticide exposure and notified of certain  
16 pesticide applications to prevent unnecessary exposure. The  
17 legislature further declares its policy and purpose to protect workers  
18 from hazardous exposure to pesticides in accordance with the mandates  
19 of Article II section 35 of the state Constitution.

1       **Sec. 2.** RCW 49.70.020 and 1985 c 409 s 1 are each amended to read  
2 as follows:

3       Unless the context clearly requires otherwise, the definitions in  
4 this section apply throughout this chapter.

5       (1) "Department" means the department of labor and industries.

6       (2) "Employee" means an employee of an employer who is employed in  
7 the business of his or her employer whether by way of manual labor or  
8 otherwise and every person in this state who is engaged in the  
9 employment of or who is working under an independent contract the  
10 essence of which is personal labor for an employer under this chapter  
11 whether by way of manual labor or otherwise. However, for the purposes  
12 of this chapter, employee shall not mean immediate family members of  
13 the officers of any corporation, partnership, sole proprietorship or  
14 other business entity or officers of any closely held corporation  
15 engaged in agricultural production of crops or livestock.

16       (3) "Employer" means any person, firm, corporation, partnership,  
17 business trust, legal representative, or other business entity that  
18 engages in any business, industry, profession, or activity in this  
19 state and employs one or more employees or who contract with one or  
20 more persons, the essence of which is the personal labor of such person  
21 or persons and includes the state, counties, cities, and all municipal  
22 corporations, public corporations, political subdivisions of the state,  
23 and charitable organizations.

24       (4) "Buffer zone" means an area extending one-half mile in all  
25 directions from the boundaries of the intended pesticide application.

26       (5) "Person" includes any natural person, firm, partnership,  
27 association, or corporation.

28       (6) "Pesticide" means, but is not limited to:

29       (a) Any substance or mixture of substances intended to prevent,  
30 destroy, control, repel, or mitigate any insect, rodent, nematode,  
31 snail, slug, fungus, weed, and any other form of plant or animal life  
32 or virus, except virus on or in a living human being or other animal,  
33 which is normally considered to be a pest or which the director of  
34 agriculture may declare to be a pest; or

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

37       (c) Any spray adjuvant, such as a wetting agent, spreading agent,  
38 deposit builder, adhesive, emulsifying agent, deflocculating agent,

1 water modifier, or similar agent with or without toxic properties of  
2 its own intended to be used with any other pesticide as an aid to the  
3 application or effect thereof, and sold in a package or container  
4 separate from that of the pesticide with which it is to be used; or

5 (d) Any fungicide, rodenticide, herbicide, insecticide, and  
6 nematocide.

7 (7) "Pesticide drift" means the movement of pesticide through the  
8 air away from the intended target.

9 (8) "Restricted-entry interval" means the time after the end of a  
10 pesticide application during which entry into the treated area is  
11 restricted.

12 (9) "Willfully" means conducted in a way that is volitional and  
13 that is not the result of a good faith error.

14 NEW SECTION. Sec. 3. A new section is added to chapter 49.70 RCW  
15 to read as follows:

16 (1) A person may not apply any pesticide by airplane, air-blast  
17 sprayer, fumigation, or any other application method that poses a  
18 substantial risk of pesticide drift:

19 (a) Within the greater of:

20 (i) One-half mile of: (A) A child care facility, a residence, or  
21 school; or (B) any natural person who is outdoors, unless the person  
22 applying the pesticides has reasonably concluded that no natural  
23 persons are present outdoors at the time of the application; or

24 (ii) The distance necessary to avoid pesticide drift given  
25 conditions onto: (A) A child care facility, residence, or school; or  
26 (B) any natural person who is outdoors, unless the person applying the  
27 pesticides has reasonably concluded that no natural persons are present  
28 outdoors at the time of the application; or

29 (b) At a time not within reasonable proximity to the time listed on  
30 the notice under subsection (2) of this section.

31 (2) Any person applying pesticides by airplane, air-blast sprayer,  
32 fumigation, or any other application method that poses a substantial  
33 risk of pesticide drift, must provide written notice to child care  
34 facilities, schools, and residences within the buffer zone and to  
35 persons whom the applicator can reasonably determine will likely be  
36 outdoors within the buffer zone at any time during application. Notice

1 to the employer of persons satisfies this requirement if the persons  
2 are likely to be outdoors in the buffer zone because of employment.

3 (a) The applicator must provide the written notice a minimum of  
4 twenty-four hours before the application, but no sooner than forty-  
5 eight hours before the application.

6 (b) Notice of the intended pesticide application must be provided  
7 in person if feasible, or if in-person notice is not feasible, posted  
8 on the primary entrance of buildings within the buffer zone that may be  
9 occupied.

10 (c) Notice must be translated into an appropriate language when the  
11 applicator knows or a reasonable person would know that persons  
12 entitled to notice do not speak English as their primary language.

13 (3) The notice must include:

14 (a) Time, date, and location of the application;

15 (b) Name, telephone number, and address of the person applying the  
16 pesticide;

17 (c) Name, address, and telephone number of the person who contracts  
18 for the application;

19 (d) A list of the common and chemical names of all pesticides to be  
20 applied;

21 (e) Telephone number of the Washington state department of health  
22 pesticide program;

23 (f) Telephone number of the Washington poison control center;

24 (g) A statement that aerial, air-blast, and fumigation application  
25 of pesticides is not allowed within a distance of no less than one-half  
26 mile of child care facilities, schools, residences, and people who are  
27 outdoors;

28 (h) A list of the precautions related to drift that appear on the  
29 label of the pesticide to be applied; and

30 (i) The restricted-entry interval on the pesticide label and a  
31 statement that if the pesticide lands in an area, persons should stay  
32 out of that area for the restricted-entry interval. When two or more  
33 pesticides are applied at the same time, the restricted-entry interval  
34 used in the notice is the longest of the applicable intervals.

35 (4) Employers who are notified of pesticide application under this  
36 section shall provide their employees copies of the notice provided by  
37 the applicator. When employees entitled to notice under this  
38 subsection do not speak English as their primary language, the employer

1 must also provide each employee written notice in an appropriate  
2 language for the employee or give a full verbal translation of the  
3 notice to each employee. The employer must give the notice to the  
4 employees at least four hours before the time listed for pesticide  
5 application. Employers shall ensure that employees remain outside of  
6 the buffer zone or work in fully enclosed indoor work spaces during  
7 application of pesticides.

8 (5) Compliance with this section does not limit the liability of  
9 any person for pesticide exposure to other persons.

10 **Sec. 4.** RCW 49.70.110 and 1984 c 289 s 16 are each amended to read  
11 as follows:

12 No employer may discharge, cause to be discharged, or otherwise  
13 discipline, penalize, or discriminate against any employee because the  
14 employee or the employee's representative has exercised any right  
15 established in this chapter. The discrimination provisions of chapter  
16 49.17 RCW apply to this chapter, except as provided in section 5 of  
17 this act.

18 NEW SECTION. **Sec. 5.** A new section is added to chapter 49.70 RCW  
19 to read as follows:

20 (1) Any employer who discharges, causes to be discharged, or  
21 otherwise disciplines, penalizes, changes the terms or conditions of  
22 employment, intimidates or discriminates against an employee who has or  
23 whose representative has made or is planning to make any safety  
24 complaint, participated in an investigation, or has been part of a  
25 lawsuit, regarding any provision of section 3 of this act is liable in  
26 a civil action for actual damages or for statutory damages of five  
27 thousand dollars, whichever is greater, including costs of litigation  
28 and reasonable attorneys' fees.

29 (2) Any person who attempts to intimidate another person because  
30 that person or that person's representative has made or plans to make  
31 a safety complaint, participate in an investigation, or been part of a  
32 lawsuit, regarding any provision of section 3 of this act is liable in  
33 a civil action for actual damages or for statutory damages of five  
34 thousand dollars, whichever is greater, including costs of litigation  
35 and reasonable attorneys' fees.

1 (3)(a) The department may investigate and issue a citation upon  
2 notice to any person if the department reasonably believes that the  
3 person has violated section 3 of this act. A person who is found to  
4 have violated section 3 of this act is liable for a civil penalty of up  
5 to ten thousand dollars for each violation. Chapter 34.05 RCW applies  
6 to appeals of citations.

7 (b) The department of health may investigate and enforce violations  
8 of section 3 of this act as provided in RCW 70.104.030.

9 (c) The department and department of health shall share relevant  
10 information when investigating violations of section 3 of this act.  
11 The department and department of health may not issue duplicate  
12 citations to a person for the same violation of this chapter.

13 (4) Any person exposed to pesticides by a person willfully applying  
14 pesticides in violation of section 3 of this act may bring a civil  
15 action for twice the amount of damages suffered or statutory damages of  
16 five thousand dollars, whichever is greater.

17 (5) The remedies in this section are in addition to, and do not  
18 affect, any other remedy.

19 **Sec. 6.** RCW 70.104.030 and 2009 c 495 s 10 are each amended to  
20 read as follows:

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

28 In order to adequately investigate such cases, the department shall  
29 have the power to:

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

34 (b) Secure any and all such information as may be necessary to  
35 adequately determine the nature and causes of any case of pesticide  
36 poisoning.

1       (2) The department of health may investigate and issue a citation  
2 upon notice to any person if the department of health reasonably  
3 believes that the person has violated section 3 of this act with  
4 respect to a violation that does not involve potential or actual  
5 exposure of workers to pesticides. A person who is found to have  
6 violated section 3 of this act is liable for a civil penalty of up to  
7 ten thousand dollars for each violation. Chapter 34.05 RCW applies to  
8 appeals of citations.

9       (3) The department shall immediately notify the department of  
10 agriculture, the department of labor and industries, and other  
11 appropriate agencies of the results of its investigation for such  
12 action as the other departments or agencies deem appropriate. The  
13 notification of such investigations and their results may include  
14 recommendations for further action by the appropriate department or  
15 agency. The department must coordinate investigations and penalty  
16 assessments for any violations of section 3 of this act with the  
17 department of labor and industries. The department of health and the  
18 department of labor and industries may not issue duplicate citations to  
19 a person for the same violation of this chapter.

20       (4) By December 1, 2012, the department of health and the  
21 department of labor and industries shall jointly establish a formal  
22 agreement that identifies the roles of each of the two agencies in  
23 conducting investigations of activities under section 3 of this act.

24       NEW SECTION. Sec. 7. A new section is added to chapter 49.70 RCW  
25 to read as follows:

26       By December 1, 2012, the department and the department of health  
27 shall jointly establish a formal agreement that identifies the roles of  
28 each of the two agencies in conducting investigations of activities  
29 under section 3 of this act.

--- END ---