
SUBSTITUTE HOUSE BILL 2413

State of Washington

62nd Legislature

2012 Regular Session

By House Labor & Workforce Development (originally sponsored by Representatives Reykdal, Sells, Appleton, Ladenburg, Ormsby, Hunt, Moscoso, Ryu, Roberts, Wylie, Green, Hasegawa, McCoy, Kenney, Hudgins, Cody, Moeller, Fitzgibbon, Pollet, and Jinkins)

READ FIRST TIME 01/31/12.

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

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

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

7 The legislature finds that pesticide exposure in agricultural
8 communities results in lost wages and worker productivity, increased
9 industrial insurance costs, and acute and chronic health problems for
10 workers and other community members. Further, the legislature finds
11 that drift from pesticide spray applications poses significant risks to
12 workers and community members in the vicinity of the pesticide
13 application. The legislature therefore declares that workers and other
14 community members in agricultural communities have a right to be
15 protected from pesticide exposure and notified of certain pesticide
16 applications to prevent exposure. The legislature further declares its
17 policy and purpose to protect workers from hazardous exposure to
18 pesticides in accordance with the mandates of Article II, section 35 of
19 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) "Farm" means any operation engaged in the outdoor production of
25 plants destined in whole or in part for human or animal ingestion or
26 direct application to the body, seed crops for such plants, and cover
27 crops used in the production of such plants.

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

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

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

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

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

7 (d) Any fungicide, rodenticide, herbicide, insecticide, and
8 nematocide.

9 (7) "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 (8) "Temporary worker housing" means a place, area, or piece of
13 land where sleeping places or housing sites are provided by an employer
14 for his or her employees or by another person, including a temporary
15 worker housing operator, who is providing such accommodations for
16 employees, for temporary, seasonal occupancy, and includes labor camps.

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

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

21 (1) Except as provided in subsection (5) of this section, a person
22 shall not apply any pesticide on a farm by aircraft or air-blast
23 sprayer:

24 (a) Within one-quarter mile of a child care facility; school;
25 residence, including occupied temporary worker housing; or natural
26 person who the applicator knows or should know is outdoors at the time
27 of application; or

28 (b) At a time other than the time listed on the notice under
29 subsection (2) of this section, unless the applicator has made a
30 reasonable effort to contact employers under subsection (2) of this
31 section and the application is within five days of the latest time
32 specified on the notice.

33 (2) Except as provided in subsection (5) of this section, any
34 person applying any pesticide on a farm by aircraft or air-blast
35 sprayer must provide written notice to employers who employ persons who
36 work outdoors on a farm or nursery within one-quarter mile of the
37 intended pesticide application area. For purposes of this subsection,

1 "nursery" means any operation engaged in the outdoor production of
2 plants to produce cut flowers or ferns or plants that will be used in
3 their entirety in another location.

4 (a) The applicator must provide the written notice a minimum of
5 twenty-four hours before the earliest time of application listed on the
6 notice, but no sooner than forty-eight hours before the earliest time
7 of application listed on the notice. If the applicator is unable to
8 apply the pesticide within the time specified on the notice because of
9 conditions, the applicator must make a reasonable effort to contact
10 employers entitled to notice and provide updated information on the
11 time of intended application. Five days after the latest time
12 specified on the written notice, the notice expires and the applicator
13 must provide new written notice.

14 (b) Notice of the intended pesticide application must be provided
15 in person if feasible, and if in-person notice is not feasible, posted
16 on the primary entrance of workplace buildings. If neither of these
17 notice methods is feasible, the applicator must make reasonable efforts
18 to notify persons entitled to notice by other means.

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

22 (3) The notice must include:

23 (a) Date and location of the application;

24 (b) The time of application, which may be stated as a range of no
25 greater than twenty-four hours;

26 (c) Name, telephone number, and address of the person applying the
27 pesticide;

28 (d) Name, address, and telephone number of the person who contracts
29 for the application;

30 (e) A list of the common names and active ingredients of all
31 pesticides to be applied;

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

33 (g) A statement that aircraft and air-blast application of
34 pesticides is not allowed within one-quarter mile of people outdoors,
35 schools, child care facilities, or residences;

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

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

6 (4) Employers who are notified of pesticide application under this
7 section shall provide their employees copies of the notice provided by
8 the applicator. When employees entitled to notice under this
9 subsection do not speak English as their primary language, the employer
10 must also provide each employee written notice in an appropriate
11 language for the employee or give a full verbal translation of the
12 notice to each employee. The employer must give the notice to the
13 employees at least four hours before the earliest time listed on the
14 notice for pesticide application and must also give notice to employees
15 of any updated time of application provided by the applicator.
16 Employers shall ensure that employees remain at least one-quarter mile
17 from the intended areas of pesticide application or work in fully
18 enclosed indoor work spaces during application of pesticides.

19 (5) A state or local government or its contractor applying
20 pesticide in compliance with a state-issued permit is exempt from
21 subsection (1) of this section and is also exempt from subsections (2)
22 and (3) of this section if other notice to the public is required by
23 law or permitting processes.

24 (6) Compliance with this section does not limit the liability of
25 any person for pesticide exposure to other persons.

26 (7) RCW 49.70.180 does not apply to this section.

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

29 No employer may discharge, cause to be discharged, or otherwise
30 discipline, penalize, or discriminate against any employee because the
31 employee or the employee's representative has exercised any right
32 established in this chapter. The discrimination provisions of chapter
33 49.17 RCW apply to this chapter, except as provided in section 5 of
34 this act.

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

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

10 (2) Any person who attempts to intimidate another person because
11 that person or that person's representative has made or plans to make
12 a complaint, participate in an investigation, or has been part of a
13 lawsuit regarding any provision of section 3 of this act is liable in
14 a civil action for actual damages or for statutory damages of five
15 thousand dollars, whichever is greater, including costs of litigation
16 and reasonable attorneys' fees.

17 (3) Subject to Title 51 RCW, any person exposed to pesticides by a
18 person willfully applying pesticides in violation of section 3 of this
19 act may bring a civil action for twice the amount of damages suffered
20 or statutory damages of five thousand dollars, whichever is greater.

21 (4) Any employee entitled to the protections of section 3(4) of
22 this act may bring a civil action against an employer who acts
23 willfully in violation of section 3(4) of this act for statutory
24 damages of five hundred dollars.

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

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