

Chapter 49.70 RCW
WORKER AND COMMUNITY RIGHT TO KNOW ACT

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RCW 49.70.010 Legislative findings. The legislature finds and declares that the proliferation of hazardous substances in the environment poses a growing threat to the public health, safety, and welfare; that the constantly increasing number and variety of hazardous substances, and the many routes of exposure to them make it difficult and expensive to monitor adequately and detect any adverse health effects attributable thereto; that individuals themselves are often able to detect and thus minimize effects of exposure to hazardous substances if they are aware of the identity of the substances and the early symptoms of unsafe exposure; and that individuals have an inherent right to know the full range of the risks they face so that they can make reasoned decisions and take informed action concerning their employment and their living conditions.

The legislature further declares that local health, fire, police, safety, and other government officials require detailed information about the identity, characteristics, and quantities of hazardous substances used and stored in communities within their jurisdictions, in order to plan adequately for, and respond to, emergencies, enforce compliance with applicable laws and regulations concerning these substances, and to compile records of exposures to hazardous substances over a period of time that will facilitate the diagnosis, treatment, and prevention of disease.

The legislature further declares that the extent of the toxic contamination of the air, water, and land in this state has caused a high degree of concern among its residents and that much of this concern is needlessly aggravated by the unfamiliarity of these substances to residents.

The legislature therefore determines that while these substances have contributed to the high quality of life we enjoy in our state, it is in the public interest to establish a comprehensive program for the disclosure of information about hazardous substances in the workplace and the community, and to provide a procedure whereby residents of this state may gain access to this information. [1984 c 289 s 2.]

RCW 49.70.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

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

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

(3) "Employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity that engages in any business, industry, profession, or activity in this state and employs one or more employees or who contract with one or more persons, the essence of which is the personal labor of such person or persons and includes the state, counties, cities, and all municipal corporations, public corporations, political subdivisions of the state, and charitable organizations. [1985 c 409 s 1.]

RCW 49.70.100 Employee may request workplace survey or material safety data sheet. An employee or employee representative may request, in writing, from the employer, a copy of a workplace survey or a material safety data sheet, filed pursuant to this chapter for the employee's work area. The employer shall supply this material within three working days of the request. This section shall not apply to employees of vessels while the employees are on the water. [1989 c 11 s 22; 1984 c 289 s 15.]

Severability—1989 c 11: See note following RCW 9A.56.220.

RCW 49.70.105 Foreign language translation of written materials.

(1) The department shall prepare and make available to employers or the public, upon request, a translation in any of the five most common foreign languages used in the workplace, of a written hazard communication program, a material safety data sheet, or written materials prepared by the department to inform employees of their

rights relating to hazard communication standards under this chapter and chapter 49.17 RCW.

(2) An employer employing employees who have trouble communicating in English shall make reasonable efforts to post any notices in the employees' native languages as provided by the department. [1985 c 409 s 2.]

RCW 49.70.110 Discharge or discipline of employee prohibited—Application of discrimination statutes. No employer may discharge, cause to be discharged, or otherwise discipline, penalize, or discriminate against any employee because the employee or the employee's representative has exercised any right established in this chapter. The discrimination provisions of chapter 49.17 RCW apply to this chapter. [1984 c 289 s 16.]

RCW 49.70.115 Agricultural employees—Information and training on hazardous chemicals. (1) An employer shall provide employees engaged in agricultural production of crops or livestock or agricultural services with information and training on hazardous chemicals in their workplace at the time of their initial assignment, and whenever a new hazard is introduced into their work area, such instruction shall be tailored to the types of hazards to which the employees will be exposed. Seasonal and temporary employees who are not exposed to hazardous chemicals in their work area need not be trained.

(2) Employers shall maintain any material safety data sheets that are received with incoming shipments of hazardous chemicals, and ensure that they are accessible to agricultural employees upon request.

(3) Employers shall ensure that labels on incoming containers of hazardous chemicals are not removed or defaced. [1985 c 409 s 3.]

RCW 49.70.119 Agricultural employees—Pesticides—Records. (1) An employer who applies pesticides in connection with the production of an agricultural crop, or who causes pesticides to be applied in connection with such production, shall keep records for each application, which shall include the following information:

(a) The location of the land where the pesticide was applied or site where the pesticide was stored;

(b) The year, month, day, and time the pesticide was applied;

(c) The product name used on the registered label and the United States environmental protection agency registration number, if applicable, of the pesticide that was applied or stored;

(d) The crop or site to which the pesticide was applied;

(e) The amount of pesticide applied per acre, or other appropriate measure;

(f) The concentration of pesticide that was applied;

(g) The number of acres, or other appropriate measure, to which pesticide was applied;

(h) If applicable, the licensed applicator's name, address, and telephone number and the name of the individual or individuals making the application;

(i) The direction and estimated velocity of the wind at the time the pesticide was applied: PROVIDED, That this subsection (i) shall not apply to applications of baits in bait stations and pesticide applications within structures; and

(j) Any other reasonable information required by the director.

(2) The records shall be updated on the same day that a pesticide is applied. If the employer has been provided a copy of a pesticide application record under RCW 17.21.100(2)(b), the copy may be used as the record of the pesticide application required under this section. The employer shall maintain and preserve the pesticide application records for no less than seven years from the date of the application of the pesticide to which the records refer.

(3) The pesticide application records shall be readily accessible to the employer's employees and their designated representatives in a central location in the workplace beginning on the day the application is made and for at least thirty days following the application. The employee or representative shall be entitled to view the pesticide application records and make his or her own record from the information contained in the application records. New or newly assigned employees shall be made aware of the accessibility of the application records before working with pesticides or in a work area containing pesticides.

(4)(a) An employer subject to this section who stores pesticides shall at least once in each calendar year perform an inventory of the pesticides stored in any work area. The pesticide inventory records shall include the following information:

(i) The location of the site where the pesticide is stored;

(ii) The year, month, day, and time the pesticide was first stored;

(iii) The product name used on the registered label and the United States environmental protection agency registration number, if applicable, of the pesticide that is stored; and

(iv) The amount of pesticide in storage at the time of the inventory.

The inventory records shall be maintained and preserved for no less than seven years.

(b) In addition to performing the annual pesticide inventory required under this subsection, an employer shall maintain a record of pesticide purchases made between the annual inventory dates. In lieu of this purchase record, an employer may obtain from distributors from whom pesticides are purchased a statement obligating the distributor to maintain the purchase records on behalf of the employer and in satisfaction of the employer's obligations under this subsection. The director may require the submission of all purchase records from employers or distributors, covering the purchases during a specified period of time or in a specified geographical area.

(5) If activities for which the records are maintained cease, the records shall be filed with the department. If an employer subject to this section is succeeded or replaced in that function by another person, the person who succeeds or replaces the employer shall retain the records as required by this section but is not liable for violations committed by the former employer under this chapter or rules adopted under this chapter, including violations relating to the retention and preservation of records.

(6)(a) The records required under this section shall be readily accessible to the department for inspection. Copies of the records shall be provided, on request, to: An employee or the employee's

designated representative in the case of an industrial insurance claim filed under Title 51 RCW with the department of labor and industries, treating health care personnel, the *pesticide incident reporting and tracking review panel, or department representative. The designated representative or treating health care personnel are not required to identify the employee represented or treated. The department shall keep the name of any affected employee confidential in accordance with RCW 49.17.080(1). When a request for records is made under this subsection by treating health care personnel and the record is required for determining treatment, copies of the record shall be provided immediately. For all other requests, copies of the records shall be provided within seventy-two hours.

(b) Copies of records provided to any person or entity under this subsection (6) shall, if so requested, be provided or made available on a form adopted under subsection (10) of this section. Information for treating health care personnel shall be made immediately available by telephone, if requested, with a copy of the records provided within twenty-four hours.

(c) If an employer has reason to suspect that an employee is ill or injured because of an exposure to one or more pesticides, the employer shall immediately provide the employee a copy of the relevant pesticide application records.

(7) If a request for a copy of a record is made under this section and the employer refuses to provide a copy, the requester may notify the department of the request and the employer's refusal. Within seven working days, the department shall request that the employer provide the department with all pertinent copies of the records, except that in a medical emergency the request shall be made within two working days. The employer shall provide copies of the records to the department within twenty-four hours after the department's request.

(8) The department shall include inspection of the records required under this section as part of any on-site inspection of a workplace conducted under this chapter or chapter 49.17 RCW. The inspection shall determine whether the records are readily transferable to a form adopted by the department, and readily accessible to employees. However, no employer subject to a department inspection may be inspected under this subsection (8) more than once in any calendar year, unless a previous inspection has found recordkeeping violations. If recordkeeping violations are found, the department may conduct reasonable multiple inspections, pursuant to rules adopted by the department. Nothing in this subsection (8) limits the department's inspection of records pertaining to pesticide-related injuries, illnesses, fatalities, accidents, or complaints.

(9) If an employer has failed to maintain and preserve the records or provide access to or copies of the records as required under this section, the employer shall be subject to penalties authorized under RCW 49.17.180.

(10) The department of labor and industries and the department of agriculture shall jointly adopt, by rule, forms that satisfy the information requirements of this section and RCW 17.21.100. [1992 c 173 s 3; 1989 c 380 s 77.]

***Reviser's note:** The "pesticide incident reporting and tracking review panel" was eliminated pursuant to 2010 1st sp.s. c 7 s 132.

Effective dates—1992 c 173: See note following RCW 17.21.100.

RCW 49.70.140 Educational brochures and public service announcements. The department shall produce educational brochures and public service announcements detailing information available to citizens under this chapter. These educational materials shall be sent to each county health department. As necessary, the department shall provide information needed to update these educational materials. [1984 c 289 s 20.]

RCW 49.70.150 Civil action authorized. A person may bring a civil action on his or her own behalf against a manufacturer, supplier, employer, or user to compel compliance with the provisions of this chapter or any rule promulgated under this chapter subject to the provisions of Title 51 RCW. The superior court shall have jurisdiction over these actions. The court may award costs of litigation to the prevailing party, including reasonable attorney and expert witness fees. [1984 c 289 s 21.]

RCW 49.70.160 Request for additional information—Confidentiality. The department may request from an employer submitting surveys to it further information concerning the surveys, and the employer shall provide the additional information upon the request. The employer may require the department to provide reasons why further information is needed and to sign an agreement protecting the confidentiality of any additional information provided under this section. [1984 c 289 s 23.]

RCW 49.70.165 Trade secret exemptions. (1) The department shall adopt rules in accordance with chapter 34.05 RCW establishing criteria for evaluating the validity of trade secret claims and procedures for issuing a trade secret exemption. Manufacturers or importers that make a trade secret claim to the department must notify direct purchasers if a trade secret claim has been made on a product being offered for sale.

(2) If a trade secret claim exists, a manufacturer, importer, or employer may require a written statement of need or confidentiality agreement before the specific chemical identity of a hazardous substance is released. However, if a treating physician or nurse determines that a medical emergency exists and the specific chemical identity of a hazardous substance is necessary for emergency or first aid treatment, the manufacturer, importer, or employer shall immediately disclose the specific chemical identity to that treating physician or nurse, regardless of the existence of a written statement of need or a confidentiality agreement. The chemical manufacturer, importer, or employer may require a written statement of need and confidentiality agreement, as defined by rule, as soon as circumstances permit.

(3) Any challenge to the denial of a trade secret claim shall be heard by an administrative law judge in accordance with chapter 34.05 RCW. [1985 c 409 s 4.]

RCW 49.70.170 Worker and community right to know fund—Employer assessments—Audits—Appeal of assessment. (1) The worker and

community right to know fund is hereby established in the custody of the state treasurer. The department shall deposit all moneys received under this chapter in the fund. Moneys in the fund may be spent only for the purposes of this chapter following legislative appropriation. Disbursements from the fund shall be on authorization of the director or the director's designee. The fund is subject to the allotment procedure provided under chapter 43.88 RCW.

(2) The department shall assess each employer who reported ten thousand four hundred or more worker hours in the prior calendar year an annual fee to provide for the implementation of this chapter. The department shall adopt rules establishing a fee schedule for all employers who reported ten thousand four hundred or more worker hours in the prior calendar year and are engaged in business operations in the following industries, as classified by the current industry classification system used by the bureau of labor statistics: Agriculture and forestry industries; mining, quarrying, and oil and gas extraction; construction industries; manufacturing industries; transportation, pipeline, communications, electric, gas, and sanitary services; automotive repair, services, and garages; miscellaneous repair services; health services; and educational services. The department shall establish the annual fee for each employer who reported ten thousand four hundred or more worker hours in the prior calendar year in industries identified by this section, provided that fees assessed shall not be more than two dollars and fifty cents per full time equivalent employee. The annual fee shall not exceed fifty thousand dollars. The fees shall be collected solely from employers whose industries have been identified by rule under this chapter. The department shall adopt rules allowing employers who do not have hazardous substances at their workplace to request an exemption from the assessment and shall establish penalties for fraudulent exemption requests. All fees collected by the department pursuant to this section shall be collected in a cost-efficient manner and shall be deposited in the fund.

(3) Records required by this chapter shall at all times be open to the inspection of the director, or his or her designee including, the traveling auditors, agents, or assistants of the department provided for in RCW 51.16.070 and 51.48.040. The information obtained from employer records under the provisions of this section shall be subject to the same confidentiality requirements as set forth in RCW 51.16.070.

(4) An employer may appeal the assessment of the fee or penalties pursuant to the procedures set forth in Title 51 RCW and accompanying rules except that the employer shall not have the right of appeal to superior court as provided in Title 51 RCW. The employer from whom the fee or penalty is demanded or enforced, may however, within thirty days of the board of industrial insurance appeal's final order, pay the fee or penalty under written protest setting forth all the grounds upon which such fee or penalty is claimed to be unlawful, excessive, or otherwise improper and thereafter bring an action in superior court against the department to recover such fee or penalty or any portion of the fee or penalty which was paid under protest.

(5) Repayment shall be made to the general fund of any moneys appropriated by law in order to implement this chapter. [2016 c 168 s 1; 2010 c 8 s 12068; 2004 c 276 s 911; 2001 2nd sp.s. c 7 s 913; 1999 c 309 s 917; 1986 c 310 s 1; 1984 c 289 s 24.]

Severability—Effective date—2004 c 276: See notes following RCW 43.330.167.

Severability—Effective date—2001 2nd sp.s. c 7: See notes following RCW 43.320.110.

Severability—Effective date—1999 c 309: See notes following RCW 41.06.152.

RCW 49.70.175 Worker and community right to know fund—Expenditure—Disbursements. Funds in the worker and community right to know fund established under RCW 49.70.170 may be spent by the department of ecology to implement RCW 70A.415.020 (1) through (3) following legislative appropriation. Disbursements from the fund shall be on authorization of the director of the department of ecology. [2021 c 65 s 57; 1985 c 410 s 5.]

Explanatory statement—2021 c 65: See note following RCW 53.54.030.

RCW 49.70.177 Penalties for late payment of fees—Collection of fees and penalties. If payment of any fee assessed under RCW 49.70.170 is not received by the department by the due date, there shall be assessed a penalty of five percent of the amount of the fee. If the fee is not received within thirty days after the due date, there shall be assessed a total penalty of ten percent of the amount of the fee. If the fee is not received within sixty days after the due date, there shall be assessed a total penalty of twenty percent of the amount of the fee. No penalty added may be less than ten dollars. If a warrant is issued by the department for the collection of fees, penalties, and interest, there shall be an additional penalty of five percent of the amount of the fee, but not less than five dollars nor more than one hundred dollars. Warrants shall earn interest at the rate of one percent per month, or fraction thereof, from and after the date of entry of the warrant. The department may utilize the procedures for collection of fees, penalties, and interest set forth in Title 51 RCW. [1986 c 310 s 2.]

RCW 49.70.180 Application of enforcement and administrative procedures of Washington industrial safety and health act. Unless reference is specifically made to another chapter, this chapter shall be implemented and enforced including penalties, violations, citations, and other administrative procedures pursuant to chapter 49.17 RCW. [1984 c 289 s 25.]

RCW 49.70.190 Compliance with chapter—Notice—Fines—Injunctive relief. If a manufacturer, supplier, employer, or user refuses or fails to provide the department with any data sheets, workplace surveys, or other papers, documents, or information required by this chapter, the department may give written notice to the manufacturer, supplier, employer, or user demanding immediate compliance. If the manufacturer, supplier, employer, or user fails to begin to comply

with the terms of the notice within fourteen days of receipt, the department may levy a fine of up to fifty dollars per affected employee per day, not to exceed five thousand dollars per day from the final date for compliance allowed by this section or by the department. In any case where the noncompliance continues for more than fifteen days or where the department determines the failure to comply creates a potential health or safety hazard to employees or hinders the department's performance of its duties under this chapter, the department may, in lieu of levying a fine or further fines, petition the superior court of Thurston county or the county where the manufacturer, supplier, employer, or user is located for an order enjoining the manufacturer, employer, supplier, or user from further noncompliance and granting any other remedies that may be appropriate. The court may award the department costs of litigation, including attorney's fees, if the department is the prevailing party. [1984 c 289 s 26.]

RCW 49.70.200 Adoption of rules. Except as otherwise provided in this chapter, the department, after consultation with the department of agriculture, shall adopt any rules necessary to carry out its responsibilities under this chapter. [1984 c 289 s 27.]

RCW 49.70.210 Application of chapter to consumer products. (1) It is the intent of the legislature that this chapter shall not apply to products that are generally made available to the noncommercial consumer: PROVIDED, That such "consumer" products used by employees in the workplace are used in substantially the same manner, form, and concentration as they are used by noncommercial consumers, and that the product exposure is not substantially greater to the employee than to the noncommercial consumer during normal and accepted use of that product.

(2) The department shall adopt rules in accordance with chapter 34.05 RCW to implement this section. This section shall not affect the department's authority to implement and enforce the Washington industrial safety and health act, chapter 49.17 RCW, at least as effectively as the federal occupational safety and health act. [1987 c 365 s 1.]

RCW 49.70.900 Short title. This chapter shall be known and may be cited as the "worker and community right to know act." [1984 c 289 s 1.]