
HOUSE BILL 2751

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By Representatives Dent, Blake, Buys, Schmick, Klippert, McCabe, Dye, Griffey, and Haler

Read first time 01/20/16. Referred to Committee on Health Care & Wellness.

1 AN ACT Relating to investigations of pesticide exposure by the
2 Washington state department of agriculture and other agencies;
3 amending RCW 17.21.100, 70.104.030, and 70.104.055; adding a new
4 section to chapter 15.58 RCW; adding a new section to chapter 17.21
5 RCW; and prescribing penalties.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 15.58
8 RCW to read as follows:

9 (1)(a) An investigation of suspected human exposure to pesticide
10 should begin on the same day the department learns of the suspected
11 human exposure and must begin no later than forty-eight hours after
12 the department learns of the suspected human exposure.

13 (b) The department, the department of health, and the department
14 of labor and industries must agree to and designate one of the three
15 agencies as the lead agency for each investigation of an alleged
16 human exposure to pesticide so that people affected by the exposure
17 or an investigation know which agency to contact.

18 (c) A report produced by the agency following an investigation of
19 suspected human exposure to pesticide that contains information about
20 sampled human exposure must include, if possible, the sampled human
21 exposure expressed as a percentage of the median lethal dose,

1 commonly abbreviated as (LD50), for the type of pesticide sampled
2 based on the type of exposure and information on the pesticide's
3 material safety data sheet and the pesticide's product label. If an
4 agency determines that it is not possible to include in a report
5 produced by the agency following an investigation of suspected human
6 exposure to pesticide information about the sampled exposure
7 expressed as a percentage of the median lethal dose as provided in
8 this subsection (1)(c), then the agency must explain in its report
9 why it is not possible.

10 (2)(a) A person who has knowledge of a suspected human exposure
11 to pesticide must, once it is apparent that the responsible state
12 agency will not conduct sampling at the scene on the same day that
13 the suspected human exposure occurred, immediately take reasonable
14 steps, as appropriate, to limit the risk of contamination of
15 potential samples. By way of illustration and not limitation, in a
16 case of suspected human exposure to pesticide caused by pesticide
17 spray drift, reasonable steps could include the removal and isolation
18 of clothing worn by persons suspected of being exposed to a pesticide
19 so that the clothing may be tested without being contaminated
20 subsequent to the exposure event but prior to testing.

21 (b) Any steps taken to preserve samples must be documented in
22 writing and provided to the lead agency that is designated in
23 subsection (1)(b) of this section.

24 (3) In a case of suspected human exposure to pesticide caused by
25 pesticide spray drift, no civil penalty may be imposed on a person
26 without clear and convincing evidence that the human exposure to
27 pesticide did not come from some other source.

28 (4)(a) The lead agency must impose a civil penalty of at least
29 three hundred dollars on a person who reports an alleged human
30 exposure to pesticide caused by pesticide spray drift if, after an
31 investigation, the lead agency determines the person made a frivolous
32 report of human exposure to pesticide.

33 (b) Relevant considerations in making the determination in (a) of
34 this subsection include but are not limited to:

35 (i) Whether factual assertions that are made to the lead agency
36 by the person reporting the alleged human exposure to pesticide
37 caused by pesticide spray drift are verified during an investigation;

38 (ii) Whether samples taken at or near the site of the alleged
39 human exposure to pesticide support the person's allegation of a
40 human exposure to pesticide caused by pesticide spray drift; and

1 (iii) The existence of a possible motive of the person who made
2 the report of the alleged human exposure to pesticide to make a
3 frivolous report.

4 (c) Imposition of the civil penalty in this subsection is subject
5 to a hearing in conformance with chapter 34.05 RCW.

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

8 (1)(a) An investigation of suspected human exposure to pesticide
9 should begin on the same day the department learns of the suspected
10 human exposure and must begin no later than forty-eight hours after
11 the department learns of the suspected human exposure.

12 (b) The department, the department of health, and the department
13 of labor and industries must agree to and designate one of the three
14 agencies as the lead agency for each investigation of an alleged
15 human exposure to pesticide so that people affected by the exposure
16 or an investigation know which agency to contact.

17 (c) A report produced by the agency following an investigation of
18 suspected human exposure to pesticide that contains information about
19 sampled human exposure must include, if possible, the sampled human
20 exposure expressed as a percentage of the median lethal dose,
21 commonly abbreviated as (LD50), for the type of pesticide sampled
22 based on the type of exposure and information on the pesticide's
23 material safety data sheet and the pesticide's product label. If an
24 agency determines that it is not possible to include in a report
25 produced by the agency following an investigation of suspected human
26 exposure to pesticide information about the sampled exposure
27 expressed as a percentage of the median lethal dose as provided in
28 this subsection (1)(c), then the agency must explain in its report
29 why it is not possible.

30 (2)(a) A person who has knowledge of a suspected human exposure
31 to pesticide must, once it is apparent that the responsible state
32 agency will not conduct sampling at the scene on the same day that
33 the suspected human exposure occurred, immediately take reasonable
34 steps, as appropriate, to limit the risk of contamination of
35 potential samples. By way of illustration and not limitation, in a
36 case of suspected human exposure to pesticide caused by pesticide
37 spray drift, reasonable steps could include the removal and isolation
38 of clothing worn by persons suspected of being exposed to a pesticide

1 so that the clothing may be tested without being contaminated
2 subsequent to the exposure event but prior to testing.

3 (b) Any steps taken to preserve samples must be documented in
4 writing and provided to the lead agency that is designated in
5 subsection (1)(b) of this section.

6 (3) In a case of suspected human exposure to pesticide caused by
7 pesticide spray drift, no civil penalty may be imposed on a person
8 without clear and convincing evidence that the human exposure to
9 pesticide did not come from some other source.

10 (4)(a) The lead agency must impose a civil penalty of at least
11 three hundred dollars on a person who reports an alleged human
12 exposure to pesticide caused by pesticide spray drift if, after an
13 investigation, the lead agency determines the person made a frivolous
14 report of human exposure to pesticide.

15 (b) Relevant considerations in making the determination in (a) of
16 this subsection include but are not limited to:

17 (i) Whether factual assertions that are made to the lead agency
18 by the person reporting the alleged human exposure to pesticide
19 caused by pesticide spray drift are verified during an investigation;

20 (ii) Whether samples taken at or near the site of the alleged
21 human exposure to pesticide support the person's allegation of a
22 human exposure to pesticide caused by pesticide spray drift; and

23 (iii) The existence of a possible motive of the person who made
24 the report of the alleged human exposure to pesticide to make a
25 frivolous report.

26 (c) Imposition of the civil penalty in this subsection is subject
27 to a hearing in conformance with chapter 34.05 RCW.

28 **Sec. 3.** RCW 17.21.100 and 2011 c 103 s 37 are each amended to
29 read as follows:

30 (1) Certified applicators licensed under the provisions of this
31 chapter, persons required to be licensed under this chapter, all
32 persons applying pesticides to more than one acre of agricultural
33 land in a calendar year, including public entities engaged in
34 roadside spraying of pesticides, and all other persons making
35 landscape applications of pesticides to types of property listed in
36 RCW 17.21.410(1) (b), (c), (d), and (e), shall keep records for each
37 application which shall include the following information:

38 (a) The location of the land where the pesticide was applied;

1 (b) The year, month, day and beginning and ending time of the
2 application of the pesticide each day the pesticide was applied;

3 (c) The product name used on the registered label and the United
4 States environmental protection agency registration number, if
5 applicable, of the pesticide which was applied;

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

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

9 (f) The concentration of pesticide that was applied;

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

12 (h) The licensed applicator's name, address, and telephone number
13 and the name of the individual or individuals making the application
14 and their license number, if applicable;

15 (i) The direction and estimated velocity of the wind during the
16 time the pesticide was applied. This subsection (1)(i) shall not
17 apply to applications of baits in bait stations and pesticide
18 applications within structures; and

19 (j) Any other reasonable information required by the director in
20 rule.

21 (2)(a) The required information shall be recorded on the same day
22 that a pesticide is applied.

23 (b) A commercial pesticide applicator who applies a pesticide to
24 an agricultural crop or agricultural lands shall provide a copy of
25 the records required under subsection (1) of this section for the
26 application to the owner, or to the lessee if applied on behalf of
27 the lessee, of the lands to which the pesticide is applied. Records
28 provided by a commercial pesticide applicator to the owner or lessee
29 of agricultural lands under this subsection need not be provided on a
30 form adopted by the department.

31 (3) The records required under this section shall be maintained
32 and preserved by the licensed pesticide applicator or such other
33 person or entity applying the pesticides for no less than seven years
34 from the date of the application of the pesticide to which such
35 records refer. If the pesticide was applied by a commercial pesticide
36 applicator to the agricultural crop or agricultural lands of a person
37 who employs one or more employees, as "employee" is defined in RCW
38 49.70.020, the records shall also be kept by the employer for a
39 period of seven years from the date of the application of the
40 pesticide to which the records refer.

1 (4)(a) The pesticide records shall be readily accessible to the
2 department for inspection. Copies of the records shall be provided on
3 request to: The department; the department of labor and industries;
4 treating health care personnel initiating diagnostic testing or
5 therapy for a patient with a suspected case of human exposure to
6 pesticide (~~poisoning~~); the department of health; and, in the case
7 of an industrial insurance claim filed under Title 51 RCW with the
8 department of labor and industries, the employee or the employee's
9 designated representative. In addition, the director may require the
10 submission of the records on a routine basis within thirty days of
11 the application of any restricted use pesticide in prescribed areas
12 controlling the use of the restricted use pesticide. When a request
13 for records is made under this subsection by treating health care
14 personnel and the record is required for determining treatment,
15 copies of the record shall be provided immediately. For all other
16 requests, copies of the record shall be provided within seventy-two
17 hours.

18 (b) Copies of records provided to a person or entity under this
19 subsection (4) shall, if so requested, be provided on a form adopted
20 under subsection (7) of this section. Information for treating health
21 care personnel shall be made immediately available by telephone, if
22 requested, with a copy of the records provided within twenty-four
23 hours.

24 (5) If a request for a copy of the record is made under this
25 section from an applicator referred to in subsection (1) of this
26 section and the applicator refuses to provide a copy, the requester
27 may notify the department of the request and the applicator's
28 refusal. Within seven working days, the department shall request that
29 the applicator provide the department with all pertinent copies of
30 the records, except that in a medical emergency the request shall be
31 made within two working days. The applicator shall provide copies of
32 the records to the department within twenty-four hours after the
33 department's request.

34 (6) The department shall include inspection of the records
35 required under this section as part of any on-site inspection
36 conducted under this chapter on agricultural lands. The inspection
37 shall determine whether the records are readily transferable to a
38 form adopted by the department and are readily accessible to
39 employees. However, no person subject to a department inspection may
40 be inspected under this subsection (6) more than once in any calendar

1 year, unless a previous inspection has found recordkeeping
2 violations. If recordkeeping violations are found, the department may
3 conduct reasonable multiple inspections, pursuant to rules adopted by
4 the department. Nothing in this subsection (6) limits the
5 department's inspection of records pertaining to pesticide-related
6 injuries, illnesses, fatalities, accidents, or complaints.

7 (7) The department of agriculture and the department of labor and
8 industries shall jointly adopt, by rule, forms that satisfy the
9 information requirements of this section.

10 **Sec. 4.** RCW 70.104.030 and 2009 c 495 s 10 are each amended to
11 read as follows:

12 (1)(a) The department of health may investigate all cases of
13 suspected human ~~((eases of))~~ exposure to pesticide ~~((poisoning))~~ and
14 such cases of suspected ~~((pesticide poisoning of animals))~~ animal
15 exposure to pesticide that may relate to human illness. The
16 department shall establish time periods by rule to determine
17 investigation response time. Time periods ~~((shall))~~ must range from
18 immediate to forty-eight hours to initiate an investigation,
19 depending on the severity of the case or suspected case of exposure
20 to a pesticide ~~((poisoning))~~.

21 (b) In order to adequately investigate such cases, the department
22 shall have the power to:

23 ~~((a))~~ (i) Take all necessary samples and human or animal
24 tissue specimens for diagnostic purposes: PROVIDED, That tissue, if
25 taken from a living human, shall be taken from a living human only
26 with the consent of a person legally qualified to give such consent;
27 and

28 ~~((b))~~ (ii) Secure any and all such information as may be
29 necessary to adequately determine the nature and causes of any case
30 of exposure to a pesticide ~~((poisoning))~~.

31 (2) The department shall immediately notify the department of
32 agriculture, the department of labor and industries, and other
33 appropriate agencies of the results of its investigation for such
34 action as the other departments or agencies deem appropriate. The
35 notification of such investigations and their results may include
36 recommendations for further action by the appropriate department or
37 agency.

38 (3) The department shall include, if possible, in any report
39 following an investigation of suspected human exposure to pesticide

1 that contains information about sampled pesticide exposure, the
2 sampled pesticide exposure expressed as a percentage of the median
3 lethal dose, commonly abbreviated as (LD50), for the type of
4 pesticide sampled based on the type of exposure and information on
5 the pesticide's material safety data sheet and the pesticide's
6 product label.

7 **Sec. 5.** RCW 70.104.055 and 1992 c 173 s 4 are each amended to
8 read as follows:

9 (1) Any attending physician or other health care provider
10 recognized as primarily responsible for the diagnosis and treatment
11 of a patient or, in the absence of a primary health care provider,
12 the health care provider initiating diagnostic testing or therapy for
13 a patient shall report a case or suspected case of human exposure to
14 pesticide ((poisoning)) to the department of health in the manner
15 prescribed by, and within the reasonable time periods established by,
16 rules of the state board of health. Time periods established by the
17 board shall range from immediate reporting to reporting within seven
18 days depending on the severity of the case or suspected case of human
19 exposure to pesticide ((poisoning)). The reporting requirements shall
20 be patterned after other board rules establishing requirements for
21 reporting of diseases or conditions. Confidentiality requirements
22 shall be the same as the confidentiality requirements established for
23 other reportable diseases or conditions. The information to be
24 reported may include information from relevant pesticide application
25 records and shall include information required under board rules.
26 Reports shall be made on forms provided to health care providers by
27 the department of health. For purposes of any oral reporting, the
28 department of health shall make available a toll-free telephone
29 number.

30 (2) Within a reasonable time period as established by board
31 rules, the department of health shall investigate the report of a
32 case or suspected case of human exposure to pesticide ((poisoning))
33 to document the incident. The department shall report the results of
34 the investigation to the health care provider submitting the original
35 report.

36 ~~(3) ((Cases or suspected cases of pesticide poisoning shall be~~
37 ~~reported by the department of health to the pesticide reporting and~~
38 ~~tracking review panel within the time periods established by state~~
39 ~~board of health rules.~~

1 ~~(4)~~) Upon request of the primary health care provider, pesticide
2 applicators or employers shall provide a copy of records of pesticide
3 applications which may have affected the health of the provider's
4 patient. This information is to be used only for the purposes of
5 providing health care services to the patient.

6 ~~((5))~~ (4) Any failure of the primary health care provider to
7 make the reports required under this section may be cause for the
8 department of health to submit information about such nonreporting to
9 the applicable disciplining authority for the provider under RCW
10 18.130.040.

11 ~~((6))~~ (5) No cause of action shall arise as the result of: (a)
12 The failure to report under this section; or (b) any report submitted
13 to the department of health under this section.

14 ~~((7))~~ (6) For the purposes of this section, a suspected case of
15 human exposure to pesticide (~~(poisoning)~~) is a case in which the
16 diagnosis is thought more likely than not to be a human exposure to
17 pesticide (~~(poisoning)~~).

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