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SENATE BILL 6529

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State of Washington

65th Legislature

2018 Regular Session

By Senators Saldaña, Ranker, Cleveland, Rolfes, Van De Wege, Miloscia, Chase, Conway, McCoy, Hunt, and Keiser

1 AN ACT Relating to protecting agricultural workers and community  
2 members from pesticides; amending RCW 70.104.020, 70.104.030,  
3 17.21.100, and 49.70.119; adding new sections to chapter 70.104 RCW;  
4 adding a new section to chapter 49.70 RCW; creating a new section;  
5 prescribing penalties; and providing an effective date.

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

7 NEW SECTION. **Sec. 1.** (1) The legislature finds that pesticide  
8 exposure can result in acute and chronic health problems for  
9 agricultural workers. Further, the legislature finds that drift from  
10 pesticide spray applications is a consistent source of pesticide  
11 exposure and poses significant risks to community members in the  
12 vicinity of the pesticide application. Lack of communication is a  
13 major contributing factor to pesticide drift exposure incidents. The  
14 legislature therefore declares that agricultural workers and  
15 community members should be protected from pesticide exposure and  
16 notified of certain pesticide applications to prevent unnecessary  
17 exposure.

18 (2) The legislature further finds that the public has an interest  
19 in information about pesticide applications in order to advance  
20 knowledge related to public health and welfare, protect public  
21 health, and prevent pesticide-related illness.

1       **Sec. 2.** RCW 70.104.020 and 2009 c 549 s 1026 are each amended to  
2 read as follows:

3       ~~((For the purposes of this chapter))~~ The definitions in this  
4 section apply throughout this chapter unless the context clearly  
5 requires otherwise.

6       (1) "Adjacent property" means any property located within one-  
7 quarter mile distance from the intended pesticide application.

8       (2) "Department" means the department of health.

9       (3) "Person" means an individual, corporation, estate, trust,  
10 partnership, association, joint venture, governmental subdivision or  
11 agency, or any other legal or commercial entity.

12       (4) "Pesticide" means, but is not limited to:

13       ~~((1))~~ (a) Any substance or mixture of substances intended to  
14 prevent, destroy, control, repel, or mitigate any insect, rodent,  
15 nematode, snail, slug, fungus, weed and any other form of plant or  
16 animal life or virus, except virus on or in a living human being or  
17 other animal, which is normally considered to be a pest or which the  
18 director of agriculture may declare to be a pest; or

19       ~~((2))~~ (b) Any substance or mixture of substances intended to be  
20 used as a plant regulator, defoliant or desiccant; or

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

28       ~~((4))~~ (d) Any fungicide, rodenticide, herbicide, insecticide,  
29 and nematocide.

30       (5) "Pesticide drift" means the movement of pesticide through the  
31 air away from the intended target.

32       (6) "Pesticide user" means a person who applies pesticides by  
33 aerial application, air-blast sprayer, or fumigation, or who causes  
34 pesticides to be applied by these methods.

35       (7) "Restricted-entry interval" means the time after the end of a  
36 pesticide application during which entry into the treated area is  
37 restricted, as indicated on the pesticide label.

38       **Sec. 3.** RCW 70.104.030 and 2009 c 495 s 10 are each amended to  
39 read as follows:

1 (1) The department of health may investigate all suspected human  
2 cases of pesticide poisoning and such cases of suspected pesticide  
3 poisoning of animals that may relate to human illness. The department  
4 shall establish time periods by rule to determine investigation  
5 response time. Time periods shall range from immediate to forty-eight  
6 hours to initiate an investigation, depending on the severity of the  
7 case or suspected case of pesticide poisoning.

8 In order to adequately investigate such cases, the department  
9 shall have the power to:

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

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

17 (2) The department shall immediately notify the department of  
18 agriculture, the department of labor and industries, and other  
19 appropriate agencies of the results of its investigation for such  
20 action as the other departments or agencies deem appropriate. The  
21 notification of such investigations and their results may include  
22 recommendations for further action by the appropriate department or  
23 agency.

24 (3) The department may investigate and assess a civil fine in  
25 accordance with RCW 43.70.095 for violation of section 7 of this act.  
26 A civil fine issued under this section may not exceed seven thousand  
27 five hundred dollars.

28 **Sec. 4.** 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 pesticide poisoning;  
6 the department of health; and, in the case of an industrial insurance  
7 claim filed under Title 51 RCW with the department of labor and  
8 industries, the employee or the employee's designated representative.  
9 In addition, the director may require the submission of the records  
10 on a routine basis within thirty days of the application of any  
11 restricted use pesticide in prescribed areas controlling the use of  
12 the restricted use pesticide. When a request for records is made  
13 under this subsection by treating health care personnel and the  
14 record is required for determining treatment, copies of the record  
15 shall be provided immediately. For all other requests, copies of the  
16 record shall be provided within seventy-two hours.

17 (b) The pesticide records must be provided to the department of  
18 health on a monthly basis in accordance with section 7 of this act  
19 and any rules adopted by the department of health.

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

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

36 (6) The department shall include inspection of the records  
37 required under this section as part of any on-site inspection  
38 conducted under this chapter on agricultural lands. The inspection  
39 shall determine whether the records are readily transferable to a  
40 form adopted by the department and are readily accessible to

1 employees. However, no person subject to a department inspection may  
2 be inspected under this subsection (6) more than once in any calendar  
3 year, unless a previous inspection has found recordkeeping  
4 violations. If recordkeeping violations are found, the department may  
5 conduct reasonable multiple inspections, pursuant to rules adopted by  
6 the department. Nothing in this subsection (6) limits the  
7 department's inspection of records pertaining to pesticide-related  
8 injuries, illnesses, fatalities, accidents, or complaints.

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

12 **Sec. 5.** RCW 49.70.119 and 1992 c 173 s 3 are each amended to  
13 read as follows:

14 (1) An employer who applies pesticides in connection with the  
15 production of an agricultural crop, or who causes pesticides to be  
16 applied in connection with such production, shall keep records for  
17 each application, which shall include the following information:

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

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

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

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

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

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

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

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

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

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

38 (2) The records shall be updated on the same day that a pesticide  
39 is applied. If the employer has been provided a copy of a pesticide

1 application record under RCW 17.21.100(2)(b), the copy may be used as  
2 the record of the pesticide application required under this section.  
3 The employer shall maintain and preserve the pesticide application  
4 records for no less than seven years from the date of the application  
5 of the pesticide to which the records refer.

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

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

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

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

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

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

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

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

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

9 (6)(a) The records required under this section shall be readily  
10 accessible to the department for inspection. Copies of the records  
11 shall be provided, on request, to: An employee or the employee's  
12 designated representative in the case of an industrial insurance  
13 claim filed under Title 51 RCW with the department of labor and  
14 industries, treating health care personnel, (~~the pesticide incident~~  
15 ~~reporting and tracking review panel,~~) or department representative.  
16 The designated representative or treating health care personnel are  
17 not required to identify the employee represented or treated. The  
18 department shall keep the name of any affected employee confidential  
19 in accordance with RCW 49.17.080(1). When a request for records is  
20 made under this subsection by treating health care personnel and the  
21 record is required for determining treatment, copies of the record  
22 shall be provided immediately. For all other requests, copies of the  
23 records shall be provided within seventy-two hours.

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

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

34 (d) The records required under subsections (1) and (2) of this  
35 section must be provided to the department of health on a monthly  
36 basis in accordance with section 7 of this act and any rules adopted  
37 by the department of health.

38 (7) If a request for a copy of a record is made under this  
39 section and the employer refuses to provide a copy, the requester may  
40 notify the department of the request and the employer's refusal.



1 Within seven working days, the department shall request that the  
2 employer provide the department with all pertinent copies of the  
3 records, except that in a medical emergency the request shall be made  
4 within two working days. The employer shall provide copies of the  
5 records to the department within twenty-four hours after the  
6 department's request.

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

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

25 (10) The department of labor and industries and the department of  
26 agriculture shall jointly adopt, by rule, forms that satisfy the  
27 information requirements of this section and RCW 17.21.100.

28 NEW SECTION. **Sec. 6.** A new section is added to chapter 70.104  
29 RCW to read as follows:

30 (1) The department shall develop a list of individuals who apply  
31 to receive notification of pesticide applications on any adjacent  
32 property.

33 (2) An applicant for inclusion on the pesticide notification list  
34 may apply to the department at any time and shall provide the  
35 department, on the department's form, the applicant's name, street  
36 address, email address, and telephone number of the applicant.

37 (3) A person whose name has been included on the pesticide  
38 notification list shall notify the department of a need to update the  
39 list as soon as possible after a change of email address, street

1 address, or telephone number. An applicant shall receive verification  
2 that the applicant's name has been placed on the pesticide  
3 notification list. The pesticide notification list shall not expire;  
4 however, an applicant may request to be removed from the list at any  
5 time.

6 (4) A pesticide user shall provide notice to the department of an  
7 intended pesticide application in accordance with the requirements  
8 provided by the department in rule and containing the information  
9 described in subsection (5) of this section. The notice shall be  
10 provided at least four business days before the intended application.

11 (5) Upon receipt of the notice of intended pesticide application,  
12 the department shall notify all persons on the pesticide notification  
13 list whose street addresses are on adjacent properties to the  
14 property of the intended pesticide application, and all persons who  
15 own, manage, or control a school, as defined in RCW 17.21.415, or a  
16 child day care center, as defined in RCW 43.216.010, that are located  
17 on adjacent properties to the property of the intended pesticide  
18 application. The notification by the department shall be at least two  
19 hours prior to the scheduled application. Notification by the  
20 department may be by email, text message, or by telephone, and shall  
21 disclose the date and approximate time of the application and provide  
22 a link to a web page that contains at least the following:

- 23 (a) The time, date, and location of any intended applications;
- 24 (b) The name, address, and telephone number of the pesticide  
25 user;
- 26 (c) The name, address, and telephone number of any person who has  
27 contracted for the application;
- 28 (d) A list of all pesticides to be applied, including the product  
29 name, environmental protection agency registration number, and active  
30 ingredients;
- 31 (e) The telephone number of the department's pesticide program;
- 32 (f) The telephone number of the Washington poison control center;
- 33 (g) A statement containing the following: (i) Only protected  
34 pesticide handlers should be in a treated area during pesticide  
35 application; and (ii) the pesticide should not contact workers or  
36 other persons, directly or through drift;
- 37 (h) The restricted-entry interval on the pesticide label and a  
38 statement that if pesticide contacts an area, persons should avoid  
39 that area for the restricted-entry interval. When two or more  
40 pesticides are applied at the same time, the restricted-entry

1 interval provided in the notice must be the longest of the applicable  
2 restricted-entry intervals; and

3 (i) A statement in English and Spanish that the notice pertains  
4 to a pesticide application, that the pesticide user can provide  
5 further information, and that the pesticide user may be reached at  
6 the telephone number provided in the notice. The statement must be in  
7 bold-face type at the top of the notice.

8 NEW SECTION. **Sec. 7.** A new section is added to chapter 70.104  
9 RCW to read as follows:

10 (1) A person who is required by RCW 17.21.100 or 49.70.119 to  
11 keep records of pesticide applications shall submit to the department  
12 a monthly report containing the information required by RCW  
13 17.21.100(1) and 49.70.119(1), as well as any other information  
14 reasonably required by the department.

15 (2) The department shall collect the data from the monthly  
16 reports required by subsection (1) of this section and make the data  
17 accessible to the public on the department's internet web site in a  
18 searchable, aggregated form that does not identify the persons who  
19 submit the data.

20 (3) The department shall adopt rules necessary for the  
21 implementation of this section, including the date for submission of  
22 monthly reports, the form for submission of reports, and the means of  
23 public access to pesticide use data.

24 NEW SECTION. **Sec. 8.** A new section is added to chapter 49.70  
25 RCW to read as follows:

26 The department may investigate and assess a civil fine in  
27 accordance with administrative procedures under RCW 49.70.180 for  
28 violation of section 6 of this act. A civil fine issued under this  
29 section may not exceed seven thousand five hundred dollars.

30 NEW SECTION. **Sec. 9.** This act takes effect July 1, 2018.

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