

person distributing within the state less than (~~ifty~~) one hundred tons (~~per quarter~~) for each six-month period during any year, and upon filing such statement such person shall pay the inspection fee at the rate stated in subsection (1) of this section.

(5) Each distributor shall keep such reasonable and practical records as may be necessary or required by the department to indicate accurately the tonnage of commercial feed distributed in this state, and the department shall have the right to examine such records to verify statements of tonnage. Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided herein shall constitute a violation of this chapter.

(6) Inspection fees which are due and owing and have not been remitted to the department within thirty days following the due date shall have a collection fee of (~~twenty-five~~) ten percent, but not less than five dollars, added to the amount due when payment is finally made. The assessment of this collection fee shall not prevent the department from taking other actions as provided for in this chapter.

(7) The report required by subsection (4) of this section shall not be a public record, and it shall be a misdemeanor for any person to divulge any information given in such report which would reveal the business operation of the person making the report: PROVIDED, That nothing contained in this subsection shall be construed to prevent or make unlawful the use of information concerning the business operation of a person if any action, suit, or proceeding instituted under the authority of this chapter, including any civil action for collection of unpaid inspection fees, which action is hereby authorized and which shall be as an action at law in the name of the director of the department.

(8) Any commercial feed purchased by a consumer or contract feeder outside the jurisdiction of this state and brought into this state for use shall be subject to all the provisions of this chapter, including inspection fees.

NEW SECTION. Sec. 2. This act shall take effect on January 1, 1980.

Passed the Senate March 6, 1979.

Passed the House March 1, 1979.

Approved by the Governor March 23, 1979.

Filed in Office of Secretary of State March 23, 1979.

CHAPTER 92

[Substitute Senate Bill No. 2265]

PESTICIDE APPLICATORS—LICENSURE

AN ACT Relating to pesticide application; amending section 2, chapter 249, Laws of 1961 as last amended by section 1, chapter 191, Laws of 1971 ex. sess. and RCW 17.21.020; amending section 3, chapter 249, Laws of 1961 and RCW 17.21.030; amending section 20, chapter 249, Laws of 1961 as last amended by section 5, chapter 191, Laws of 1971 ex. sess. and RCW 17.21.200; amending section 9, chapter 191, Laws of 1971 ex. sess. and RCW 17.21.203; amending section 18, chapter 177, Laws of 1967 as amended by

section 6, chapter 191, Laws of 1971 ex. sess. and RCW 17.21.205; and adding new sections to chapter 17.21 RCW.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section 2, chapter 249, Laws of 1961 as last amended by section 1, chapter 191, Laws of 1971 ex. sess. and RCW 17.21.020 are each amended to read as follows:

~~((For the purpose of this chapter:))~~ Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his duly appointed representative.

(3) "Person" means a natural person, individual, firm, partnership, corporation, company, society, association, or any organized group of persons whether incorporated or not, and every officer, agent or employee thereof. This term shall import either the singular or plural as the case may be.

(4) "Pest" means, but is not limited to, any insect, rodent, nematode, snail, slug, weed and any form of plant or animal life or virus, except virus on or in living man or other animal, which is normally considered to be a pest or which the director may declare to be a pest.

(5) "Pesticide" means, but is not limited to, (a) any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, nematode, snail, slug, fungus, weed and any other form of plant or animal life or virus, except virus on or in living man or other animal, which is normally considered to be a pest or which the director may declare to be a pest, and (b) any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant, and (c) any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to the application or effect thereof, and sold in a package or container separate from that of the pesticide with which it is to be used.

(6) "Device" means any instrument or contrivance intended to trap, destroy, control, repel, or mitigate pests or to destroy, control, repel or mitigate fungi, nematodes or such other pests, as may be designated by the director, but not including equipment used for the application of pesticides when sold separately therefrom.

(7) "Fungicide" means any substance or mixture of substances intended to prevent, destroy, repel or mitigate any fungi.

(8) "Rodenticide" means any substance or mixture of substances intended to prevent, destroy, repel or mitigate rodents or any other vertebrate animal which the director may declare to be a pest.

(9) "Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel or mitigate any weed.

(10) "Insecticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insects which may be present in any environment whatsoever.

(11) "Nematocide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate nematodes.

(12) "Plant regulator" means any substance or mixture of substances intended through physiological action, to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of ornamental or crop plants or the produce thereof, but shall not include substances insofar as they are intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculants or soil amendments.

(13) "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant with or without causing abscission.

(14) "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissues.

(15) "Weed" means any plant which grows where not wanted.

(16) "Insect" means any of the numerous small invertebrate animals whose bodies are more or less obviously segmented, and which for the most part belong to the class insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

(17) "Fungi" means all nonchlorophyll-bearing thallophytes (that is, all nonchlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeasts and bacteria, except those on or in living man or other animals.

(18) "Snails or slugs" include all harmful mollusks.

(19) "Nematode" means any of the nonsegmented roundworms harmful to plants.

(20) "Apparatus" means any type of ground, water or aerial equipment, device, or contrivance using motorized, mechanical or pressurized power and used to apply any pesticide on land and anything that may be growing, habitating or stored on or in such land, but shall not include any pressurized handsized household device used to apply any pesticide or any equipment, device or contrivance of which the person who is applying the pesticide is the source of power or energy in making such pesticide application, or any other small equipment, device, or contrivance that is transported in a piece of equipment licensed under this chapter as an apparatus.

(21) "Restricted use pesticide" means any pesticide(~~(, including any highly toxic pesticide, which the director has found and determined, subsequent to a hearing, to be injurious to persons, pollinating insects, bees, animals, crops or lands other than the pests it is intended to prevent, destroy, control, or mitigate))~~ use which, when used as directed or in accordance with a widespread and commonly recognized practice, the director determines, subsequent to a hearing, requires additional restrictions for that use to prevent unreasonable adverse effects on the environment including man, lands, beneficial insects, animals, crops, and wildlife, other than pests.

(22) "Engage in business" means any application of pesticides by any person upon lands or crops of another.

(23) "Agricultural crop" means a food intended for human consumption, or a food for livestock the products of which are intended for human consumption, which food shall require cultural treatment of the land for its production.

(24) "Board" means the pesticide advisory board.

(25) "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, devices and contrivances, appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

(26) "Agricultural commodity" means any plant, or part thereof, or animal, or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation, or other use by man or animals.

(27) "Certified applicator" means any individual who is licensed as a pesticide applicator, pesticide operator, public operator, private-commercial applicator, or certified private applicator, or any other individual who is certified by the director to use or supervise the use of any pesticide which is classified by the EPA as a restricted use pesticide or by the state as restricted to use by certified applicators, only.

(28) "Direct supervision" by certified private applicators shall mean that the designated restricted use pesticide shall be applied for purposes of producing any agricultural commodity on land owned or rented by him or his employer, by a competent person acting under the instructions and control of a certified private applicator who is available if and when needed, even though such certified private applicator is not physically present at the time and place the pesticide is applied. The certified private applicator shall have direct management responsibility and familiarity of the pesticide, manner of application, pest, and land to which the pesticide is being applied. Direct supervision by all other certified applicators means direct on-the-job supervision.

(29) "EPA" means the United States environmental protection agency.

(30) "EPA restricted use pesticide" means any pesticide with restricted uses as classified for restricted use by the administrator, EPA.

(31) "FIFRA" means the federal insecticide, fungicide and rodenticide act, as amended (61 Stat. 163, 7 U.S.C. Sec. 135).

(32) "Private applicator" means a certified applicator who uses or is in direct supervision of the use of (a) any EPA restricted use pesticide; or (b) any restricted use pesticide restricted to use only by certified applicators by the director, for the purposes of producing any agricultural commodity and for any associated noncrop application on land owned or rented by him or his employer or if applied without compensation other than trading of personal services between producers of agricultural commodities on the land of another person.

(33) "Private-commercial applicator" means a certified applicator who uses or supervises the use of (a) any EPA restricted use pesticide or (b) any restricted use pesticide restricted to use only by certified applicators for purposes other than the production of any agricultural commodity on lands owned or rented by him or his employer.

(34) "Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment taking into account the economic, social and environmental costs and benefits of the use of any pesticide, or as otherwise determined by the director.

Sec. 2. Section 3, chapter 249, Laws of 1961 and RCW 17.21.030 are each amended to read as follows:

The director shall administer and enforce the provisions of this chapter and rules adopted hereunder.

(1) The director shall adopt rules:

(a) Governing the application and use, or prohibiting the use, or possession for use, of any pesticide (~~(which the director finds and determines to be injurious)~~);

(b) Governing the time when, and the conditions under which restricted use pesticides shall or shall not be used in different areas, which areas may be prescribed by him, in the state;

(c) Providing that any or all restricted use pesticides shall be purchased, possessed or used only under permit of the director and under his direct supervision in certain areas and/or under certain conditions or in certain quantities of concentrations; however, any person licensed to sell such pesticides may purchase and possess such pesticides without a permit; and

(d) Providing that all permittees shall keep records as required of licensees under RCW 17.21.100.

(2) The director may adopt any other rules necessary to carry out the purpose and provisions of this chapter.

Sec. 3. Section 20, chapter 249, Laws of 1961 as last amended by section 5, chapter 191, Laws of 1971 ex. sess. and RCW 17.21.200 are each amended to read as follows:

The provisions of this chapter relating to pesticide applicator licenses and requirements for their issuance shall not apply to any forest landowner, or his employees, applying pesticides with ground apparatus or manually, on his own lands or any lands or rights of way under his control or to any farmer owner of ground apparatus applying pesticides for himself or other farmers on an occasional basis not amounting to a principal or regular occupation: PROVIDED, That such owner shall not publicly hold himself out as a pesticide applicator.

Sec. 4. Section 9, chapter 191, Laws of 1971 ex. sess. and RCW 17.21-.203 are each amended to read as follows:

(1) The licensing provisions of this chapter shall not apply to research personnel of federal, state, county, or municipal agencies when performing pesticide research in their official capacities(~~(; and)~~): PROVIDED, That when such persons are applying pesticides restricted to use by certified applicators, they shall be licensed as public operators.

(2) The licensing provisions of this chapter shall not apply to any other person((s)) when applying pesticides to small experimental plots for research ((~~projects conducted in cooperation with governmental research agencies~~)) purposes when no charge is made for the pesticide and its application: PROVIDED, That if such persons are not provided for in subsection (1) of this section and are applying pesticides restricted to use by certified applicators, they shall be required to be licensed as pesticide applicators but shall be exempt from the requirements of RCW 17.21.160, 17.21.170, and 17.21.180.

Sec. 5. Section 18, chapter 177, Laws of 1967 as amended by section 6, chapter 191, Laws of 1971 ex. sess. and RCW 17.21.205 are each amended to read as follows:

The licensing provisions of chapter 17.21 RCW shall not apply to any person using hand-powered equipment, devices, or contrivances to apply pesticides which are not restricted to use by certified applicators to lawns, or to ornamental shrubs and trees not in excess of twelve feet high, as an incidental part of his business of taking care of household lawns and yards for remuneration: PROVIDED, That such person shall not publicly hold himself out as being in the business of applying pesticides.

NEW SECTION. Sec. 6. It shall be unlawful for any person to act as a private-commercial applicator without having obtained a private-commercial applicator's license from the director. Any person applying for such private-commercial applicator's license shall file an application on a form prescribed by the director. Such application shall state the classifications the applicant is applying for and the method in which these pesticides are to be applied. Application for a license to apply pesticides shall be accompanied

by a license fee of twenty dollars before a license may be issued. The private-commercial applicator license issued by the director shall be valid until revoked or until the director determines that recertification is necessary.

NEW SECTION. Sec. 7. The director shall not issue a private-commercial applicator's license before such applicant has passed an examination to demonstrate to the director (1) his ability to apply pesticides in the classifications he has applied for, (2) his knowledge of the nature and effect of pesticides applied under such classifications, and (3) any other matter the director, by regulation, determines to be a necessary subject for examination.

NEW SECTION. Sec. 8. It shall be unlawful for any person to act as a private applicator without first complying with the certification requirements determined by the director as necessary to prevent unreasonable adverse effects on the environment, including injury to the applicator or other persons, for that specific pesticide use. Certification standards to determine the individual's competency with respect to the use and handling of the pesticide or class of pesticides the private applicator is to be certified to use shall be relative to hazards according to RCW 17.21.030 as now or hereafter amended. In determining these standards the director shall take into consideration standards of the EPA and is authorized to adopt by regulation these standards. A private applicator certification issued by the director shall be valid until revoked or the director determines that a recertification is necessary. If the director does not qualify the private applicator under this section, he shall inform the applicant in writing.

NEW SECTION. Sec. 9. The director may renew any private applicator's certification or private-commercial applicator's license under the classification for which such applicant is licensed or certificated subject to demonstration of competency regarding new knowledge that may be required to apply pesticides manually or with apparatuses the applicant has been licensed to operate.

NEW SECTION. Sec. 10. If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 11. Sections 6 through 10 of this 1979 act shall be added to chapter 17.21 RCW.

Passed the Senate February 20, 1979.

Passed the House March 2, 1979.

Approved by the Governor March 23, 1979.

Filed in Office of Secretary of State March 23, 1979.