

(30) Section 3, chapter 39, Laws of 1965, section 24, chapter 18, Laws of 1970 ex. sess., and RCW 74.36.020;

(31) Section 4, chapter 39, Laws of 1965, section 25, chapter 18, Laws of 1970 ex. sess., and RCW 74.36.030; and

(32) Section 5, chapter 39, Laws of 1965, section 26, chapter 18, Laws of 1970 ex. sess., and RCW 74.36.040.

Passed the House May 10, 1971.

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CHAPTER 190

[Engrossed House Bill No. 540]

WASHINGTON PESTICIDE CONTROL ACT

AN ACT Relating to pesticides; authorizing the control and regulation thereof by the department of agriculture; providing for the registration of pesticides; providing for the licensing of pest control consultants and pesticide dealers; establishing a control board; adding new sections to Title 15 RCW; repealing section 1, chapter 244, Laws of 1961 and RCW 15.57.010; repealing section 2, chapter 244, Laws of 1961 and RCW 15.57.020; repealing section 3, chapter 244, Laws of 1961 and RCW 15.57.030; repealing section 4, chapter 244, Laws of 1961 and RCW 15.57.040; repealing section 5, chapter 244, Laws of 1961 and RCW 15.57.050; repealing section 6, chapter 244, Laws of 1961 and RCW 15.57.060; repealing section 7, chapter 244, Laws of 1961 and RCW 15.57.070; repealing section 8, chapter 244, Laws of 1961 and RCW 15.57.080; repealing section 9, chapter 244, Laws of 1961 and RCW 15.57.090; repealing section 10, chapter 244, Laws of 1961 and RCW 15.57.100; repealing section 11, chapter 244, Laws of 1961 and RCW 15.57.110; repealing section 12, chapter 244, Laws of 1961 and RCW 15.57.120; repealing section 13, chapter 244, Laws of 1961 and RCW 15.57.130; repealing section 14, chapter 244, Laws of 1961 and RCW 15.57.140; repealing section 15, chapter 244, Laws of 1961 and RCW 15.57.150; repealing section 16, chapter 244, Laws of 1961 and RCW 15.57.160; repealing section 17, chapter 244, Laws of 1961 and RCW 15.57.170; repealing section 18, chapter 244, Laws of 1961 and RCW 15.57.180; repealing section 19, chapter 244, Laws of 1961 and RCW 15.57.190; repealing section 20, chapter 244, Laws of 1961 and RCW 15.57.200; repealing section 21, chapter 244, Laws of 1961 and RCW

15.57.210; repealing section 22, chapter 244, Laws of 1961 and RCW 15.57.220; repealing section 23, chapter 244, Laws of 1961 and RCW 15.57.230; repealing section 24, chapter 244, Laws of 1961 and RCW 15.57.240; repealing section 25, chapter 244, Laws of 1961 and RCW 15.57.250; repealing section 26, chapter 244, Laws of 1961 and RCW 15.57.260; repealing section 27, chapter 244, Laws of 1961 and RCW 15.57.270; repealing section 28, chapter 244, Laws of 1961 and RCW 15.57.280; repealing section 29, chapter 244, Laws of 1961 and RCW 15.57.290; repealing section 30, chapter 244, Laws of 1961 and RCW 15.57.300; repealing section 31, chapter 244, Laws of 1961 and RCW 15.57.310; repealing section 32, chapter 244, Laws of 1961 and RCW 15.57.320; repealing section 33, chapter 244, Laws of 1961 and RCW 15.57.330; repealing section 34, chapter 244, Laws of 1961 and RCW 15.57.340; repealing section 35, chapter 244, Laws of 1961 and RCW 15.57.350; repealing section 36, chapter 244, Laws of 1961 and RCW 15.57.360; repealing section 37, chapter 244, Laws of 1961 and RCW 15.57.370; repealing section 38, chapter 244, Laws of 1961 and RCW 15.57.900; repealing section 39, chapter 244, Laws of 1961 and RCW 15.57.910; repealing section 40, chapter 244, Laws of 1961 and RCW 15.57.920; repealing section 41, chapter 244, Laws of 1961 and RCW 15.57.930; and providing penalties.

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

NEW SECTION. Section 1. This act may be known and cited as the Washington Pesticide Control Act.

NEW SECTION. Sec. 2. The formulation, distribution, storage, transportation, and disposal of any pesticide and the dissemination of accurate scientific information as to the proper use, or nonuse, of any pesticide, is important and vital to the maintenance of a high level of public health and welfare both immediate and future, and is hereby declared to be a business affected with the public interest. The provisions of this act are enacted in the exercise of the police powers of the state for the purpose of protecting the immediate and future health and welfare of the people of the state.

NEW SECTION. Sec. 3. As used in this act the following words and phrases shall have the following meaning unless the context clearly requires otherwise:

(1) "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, mollusk, 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; (b) any substance or mixture of substances intended to be used

as a plant regulator, defoliant or desiccant; (c) any substance or mixture of substances intended to be used as a spray adjuvant; and (d) any other substances intended for such use as may be named by the director by regulation.

(2) "Device" means any instrument or contrivance intended to trap, destroy, control, repel, or mitigate pests including devices used in conjunction with pesticides such as lindane vaporizers.

(3) "Insecticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insect, other arthropod, or mollusk pest.

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

(5) "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 by regulation to be a pest.

(6) "Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any weed, including algae and other aquatic weeds.

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

(8) "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 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.

(9) "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.

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

(11) "Spray adjuvant" means any 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 to the effect thereof, and which is in a package or container separate from that of the pesticide with which it is to be used.

(12) "Pest" means, but is not limited to, any insect, other arthropod, fungus, rodent, nematode, mollusk, 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 by regulation to be a pest.

(13) "Nematode" means any invertebrate animal of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants or plant parts; may also be called nemas or eelworms.

(14) "Arthropod" means any invertebrate animal that belongs to the phylum arthropoda, which in addition to insects, includes allied classes whose members are wingless and usually have more than six legs; for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

(15) "Insects" means any of the numerous small invertebrate animals whose bodies, in the adult stage, are more or less obviously segmented with six legs and usually with two pairs of wings, belonging to the class insecta; for example, aphids, beetles, bugs, bees, and flies.

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

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

(18) "Mollusk" means any invertebrate animal characterized by a soft unsegmented body usually partially or wholly enclosed in a calcareous shell, having a foot and mantel; for example, slugs and snails.

(19) "Restricted use pesticide" means any pesticide or device which the director has found and determined subsequent to hearing under the provisions of chapter 17.21 RCW Washington pesticide application act or this act as enacted or hereafter amended, to be so injurious to persons, pollinating insects, bees, animals, crops, wildlife, or lands other than the pests it is intended to prevent, destroy, control, or mitigate that additional restrictions are required.

(20) "Distribute" means to offer for sale, hold for sale, sell, barter, or supply pesticides in this state.

(21) "Pesticide dealer" means any person who distributes any of the following pesticides:

(a) "Highly toxic" pesticides and/or

(b) "Restricted use pesticides" which by regulation are restricted to distribution by licensed pesticide dealers only and/or

(c) Any other pesticide except those pesticides in consumer-sized packages no larger than one gallon liquid measure or five pounds dry weight and which are labeled and intended for home and garden use only; and except fertilizer-pesticide mixes when distributed in packages of fifty pounds or less for home and garden

use only.

(22) "Pesticide dealer manager" means the owner or other individual supervising pesticide distribution at one outlet holding a pesticide dealer license.

(23) "Pest control consultant" means any individual who offers or supplies technical advice, supervision or aid or makes recommendations to the user of:

(a) "Highly toxic pesticides" and/or

(b) "Restricted use pesticides" which are restricted by regulation to distribution by licensed pesticide dealers only, and/or

(c) Any other pesticides except those pesticides in consumer-sized packages no larger than one gallon liquid measure or five pounds dry weight and which are labeled and intended for home and garden use only and except fertilizer-pesticide mixes when distributed in packages of fifty pounds or less for home and garden use only.

(24) "Ingredient statement" means a statement of the name and percentage of each active ingredient together with the total percentage of the inert ingredients in the pesticide, and when the pesticide contains arsenic in any form, the ingredient statement shall also include percentages of total and water soluble arsenic, each calculated as elemental arsenic: PROVIDED, That in the case of a spray adjuvant the ingredient statement need contain only the names of the principal functioning agents and the total percentage of the constituents ineffective as spray adjuvants. If more than three functioning agents are present, only the three principal ones need be named.

(25) "Active ingredient" means any ingredient which will prevent, destroy, repel, control, or mitigate pests, or which will act as a plant regulator, defoliant, desiccant, or spray adjuvant.

(26) "Inert ingredient" means an ingredient which is not an active ingredient.

(27) "Antidote" means the most practical immediate treatment in case of poisoning and includes first aid treatment.

(28) "Person" means any individual, partnership, association, corporation, or organized group of persons whether or not incorporated.

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

(30) "Director" means the director of the department or his duly authorized representative.

(31) "Registrant" means the person registering any pesticide pursuant to the provisions of this act.

(32) "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or the immediate container

thereof, and the outside container or wrapper of the retail package.

(33) "Labeling" means all labels and other written, printed or graphic matter:

(a) Upon the pesticide or device or any of its containers or wrappers;

(b) Accompanying the pesticide, or referring to it in any other media used to disseminate information to the public; and

(c) To which reference is made on the label or in literature accompanying or referring to the pesticide or device except when accurate nonmisleading reference is made to current official publications of the department, United States department of agriculture; interior; health, education and welfare; state agricultural colleges; and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

(34) "Highly toxic" means any highly toxic pesticide as determined by the director under new section 4 of this act.

(35) "Pesticide advisory board" means the pesticide advisory board as provided for in the Washington pesticide application act as enacted or hereafter amended.

(36) "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.

(37) "Regulation" means rule or regulation.

NEW SECTION. Sec. 4. (1) The director shall administer and enforce the provisions of this act and regulations adopted hereunder. All the authority and requirements provided for in chapter 34.04 RCW (Administrative Procedure Act) and chapter 42.32 RCW shall apply to this act in the adoption of regulations including those requiring due notice and a hearing for the adoption of permanent regulations.

(2) The director is authorized to adopt appropriate regulations for carrying out the purpose and provisions of this act, including but not limited to regulations providing for:

(a) Declaring as a pest any form of plant or animal life or virus which is injurious to plants, men, animals (domestic or otherwise), land, articles, or substances;

(b) Determining that certain pesticides are highly toxic to man. The director shall, in making this determination, be guided by the federal definition of highly toxic, as defined in Title 7, code of federal regulations 362.8 as issued or hereafter amended. The director shall publish a list of all pesticides, determined to be highly toxic, by their common or generic name and their trade or brand name if practical. Such list shall be kept current and shall, upon request, be made available to any interested party;

(c) Determining standards for denaturing pesticides by color, taste, odor, or form;

(d) The collection and examination of samples of pesticides or devices;

(e) The safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers;

(f) Restricting or prohibiting the use of certain types of containers or packages for specific pesticides. These restrictions may apply to type of construction, strength, and/or size to alleviate danger of spillage, breakage, misuse, or any other hazard to the public. The director shall be guided by federal regulations concerning pesticide containers;

(g) Procedures in making of pesticide recommendations;

(h) Adopting a list of restricted use pesticides for the state or for designated areas within the state if the director determines that such pesticides may require regulations restricting or prohibiting their distribution or use. The director may include in the regulation the time and conditions of distribution or use of such restricted use pesticides and may, if he deems it necessary to carry out the purpose and provisions of this act, require 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 or concentrations: PROVIDED, That the director may require all persons issued such permits to maintain records as to the use of all the restricted use pesticides.

(i) Label requirements of all pesticides required to be registered under provisions of this act; and

(j) Regulating the labeling of devices.

(3) For the purpose of uniformity and to avoid confusion endangering the public health and welfare the director may adopt regulations in conformity with the primary pesticide standards, particularly as to labeling, established by the United States department of agriculture or any other federal agency.

NEW SECTION. Sec. 5. Every pesticide which is distributed within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall be registered with the director subject to the provisions of this act. Such registration shall be renewed annually prior to January 1: PROVIDED, That registration is not required if a pesticide is shipped from one plant or warehouse to another plant or warehouse operated by the same person and used solely at such plant or warehouse as a constituent part to make a pesticide which is registered under the provisions of this act; if the pesticide is not sold and if the container thereof is plainly and

conspicuously marked "For Experimental Use Only - Not To Be Sold", together with the manufacturer's name and address; or if a written permit has been obtained from the director to sell the specific pesticide for experimental purposes subject to restrictions and conditions set forth in the permit.

NEW SECTION. Sec. 6. (1) The applicant for registration shall file a statement with the department which shall include:

(a) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant's;

(b) The name of the pesticide;

(c) Other necessary information required for completion of the department's application for registration form;

(d) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it, including the directions and precautions for use.

(2) The director, when he deems it necessary in the administration of this act, may require the submission of the complete formula of any pesticide including the active and inert ingredients.

(3) The director may require a full description of the tests made and the results thereof upon which the claims are based.

(4) The director may prescribe other necessary information by regulation.

NEW SECTION. Sec. 7. (1) Any person desiring to register a pesticide with the department shall pay to the director an annual registration fee of ten dollars for each pesticide registered by the department for such person. All such registrations shall expire on December 31 of any one year.

(2) Any registration approved by the director and in effect on the 31st day of December for which a renewal application has been made and the proper fee paid, shall continue in full force and effect until such time as the director notifies the applicant that the registration has been renewed, or otherwise denied in accord with the provision of section 11 of this act.

NEW SECTION. Sec. 8. If the renewal of a pesticide registration is not filed prior to January 1 of any one year an additional fee of five dollars shall be assessed and added to the original fee and shall be paid by the applicant before the registration renewal for that pesticide shall be issued: PROVIDED, That such additional fee shall not apply if the applicant furnishes an affidavit certifying that he did not distribute such unregistered pesticide during the period of nonregistration. The payment of such additional fee is not a bar to any prosecution for doing business without proper registry.



NEW SECTION. Sec. 9. All federal, state, and county agencies shall register without fee all pesticides sold by them and they shall not be subject to the license provisions of new section 18 of this act.

NEW SECTION. Sec. 10. If it appears to the director that the composition of the pesticide is such as to warrant the proposed claims for it and if the pesticide and its labeling and other material required to be submitted comply with the requirements of this act he shall register the pesticide.

NEW SECTION. Sec. 11. (1) If it does not appear to the director that the pesticide is such as to warrant the proposed claims for it or if the pesticide and its labeling and other material required to be submitted do not comply with the provisions of this act or regulations adopted thereunder he shall notify the registrant of the manner in which the pesticide, labeling, or other material required to be submitted fails to comply with the provisions of this act so as to afford the applicant an opportunity to make the necessary corrections. If, upon receipt of such notice, the applicant does not make the corrections the director shall refuse to register the pesticide. The applicant may request a hearing as provided for in chapter 34.04 RCW.

(2) The director may, when he determines that a pesticide or its labeling does not comply with the provisions of the act or the regulations adopted thereunder, cancel the registration of a pesticide after a hearing in accordance with the provisions of chapter 34.04 RCW.

NEW SECTION. Sec. 12. The director may, when he determines that there is or may be an imminent hazard to the public health and welfare, suspend on his own motion, the registration of a pesticide in conformance with the provisions of chapter 34.04 RCW.

NEW SECTION. Sec. 13. The term "misbranded" shall apply:

(1) To any pesticide or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

(2) To any pesticide:

(a) If it is an imitation of or is offered for sale under the name of another pesticide;

(b) If its labeling bears any reference to registration under the provisions of this act unless such reference be required by regulations under the act;

(c) If any word, statement, or other information, required by this act or regulations adopted thereunder to appear on the label or labeling, is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling), and in such terms as to render it likely to be read

and understood by the ordinary individual under customary conditions of purchase and use;

(d) If the label does not bear:

(i) The name and address of the manufacturer, registrant or person for whom manufactured;

(ii) Name, brand or trademark under which the pesticide is sold;

(iii) An ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase: PROVIDED, That the director may permit the ingredient statement to appear prominently on some other part of the container, if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase;

(iv) Directions for use and a warning or caution statement which are necessary and which if complied with would be adequate to protect the public and to prevent injury to the public, including living man, useful vertebrate animals, useful vegetation, useful invertebrate animals, wildlife, and land; and

(v) The weight or measure of the content, subject to the provisions of chapter 19.94 RCW (state weights and measures act) as enacted or hereafter amended.

(e) If that pesticide contains any substance or substances in quantities highly toxic to man, determined as provided by new section 4 of this act, unless the label bears, in addition to any other matter required by this act:

(i) The skull and crossbones;

(ii) The word "POISON" in red prominently displayed on a background of distinctly contrasting color; and

(iii) A statement of an antidote for the pesticide.

(f) If the pesticide container does not bear a label or if the label does not contain all the information required by this act or the regulations adopted under this act.

(3) To a spray adjuvant when the label fails to state the type or function of the principal functioning agents.

NEW SECTION. Sec. 14. The term "adulterated" shall apply to any pesticide if its strength or purity deviates from the professed standard or quality as expressed on its labeling or under which it is sold, or if any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent of the pesticide has been wholly or in part abstracted, or if any contaminant is present in an amount which is determined by the director to be a hazard.

NEW SECTION. Sec. 15. (1) It is unlawful for any person to distribute within the state or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any of the following:

(a) Any pesticide which has not been registered pursuant to the provisions of this act;

(b) Any pesticide if any of the claims made for it or any of the directions for its use or other labeling differs from the representations made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration: PROVIDED, That at the discretion of the director, a change in the labeling or formula of a pesticide may be made within a registration period without requiring reregistration of the product;

(c) Any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to such container, and to the outside container or wrapper of the retail package, if there is one through which the required information on the immediate container cannot be clearly read, a label bearing the information required in this act and the regulations adopted under this act;

(d) Any pesticide including arsenicals, fluorides, fluosilicates, and/or any other white powdered pesticides unless they have been distinctly denatured as to color, taste, odor, or form if so required by regulation;

(e) Any pesticide which is adulterated or misbranded, or any device which is misbranded;

(f) Any pesticide in containers, violating regulations adopted pursuant to section 4 (2) (f) of this act or pesticides found in containers which are unsafe due to damage.

(2) It shall be unlawful:

(a) To sell or deliver any restricted use pesticide to any person who is required by law or regulations promulgated under such law to have a permit to use or purchase such restricted use pesticides unless such person or his agent, to whom sale or delivery is made, has a valid permit to use or purchase the kind and quantity of such restricted use pesticide sold or delivered: PROVIDED, That, subject to conditions established by the director, such permit may be obtained immediately prior to sale or delivery from any person designated by the director;

(b) For any person to detach, alter, deface or destroy, wholly or in part, any label or labeling provided for in this act or regulations adopted under this act, or to add any substance to, or take any substance from, a pesticide in a manner that may defeat the purpose of this act or the regulations adopted thereunder;

(c) For any person to use or cause to be used any restricted use pesticide contrary to label directions or to regulations of the director if those regulations differ from or further restrict the label directions;

(d) For any person to use for his own advantage or to reveal, other than to the director or proper officials or employees of the state, or to the courts of the state in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of new section 6 of this act.

NEW SECTION. Sec. 16. When the director has reasonable cause to believe a pesticide or device is being distributed, stored, or transported in violation of any of the provisions of this act, or of any of the prescribed regulations under this act, he may issue and serve a written "stop sale, use or removal" order upon the owner or custodian of any such pesticide or device. If the owner or custodian is not available for service of the order upon him, the director may attach the order to the pesticide or device. The pesticide or device shall not be sold, used or removed until the provisions of this act have been complied with and the pesticide or device has been released in writing under conditions specified by the director, or the violation has been otherwise disposed of as provided in this act by a court of competent jurisdiction.

NEW SECTION. Sec. 17. (1) After service of a "stop sale, use or removal" order is made upon any person, either that person or the director may file an action in a court of competent jurisdiction in the county in which a violation of this act or regulations adopted thereunder is alleged to have occurred for an adjudication of the alleged violation. The court in such action may issue temporary or permanent injunctions mandatory or restraining, and such intermediate orders as it deems necessary or advisable. The court may order condemnation of any pesticide or device which does not meet the requirements of this act or regulations adopted thereunder: PROVIDED, That no authority is granted hereunder to affect the sale or use of products on which legally approved pesticides have been legally used.

(2) If the pesticide or device is condemned, it shall, after entry of decree, be disposed of by destruction or sale as the court directs, and the proceeds, if such pesticide or device is sold, less cost including legal costs, shall be paid to the state treasury as provided in new section 40 of this act: PROVIDED, That the pesticide or device shall not be sold contrary to the provisions of this act or regulations adopted thereunder. Upon payment of costs and execution and delivery of a good and sufficient bond conditioned that the

pesticide or device shall not be disposed of unlawfully, the court may direct that the pesticide or device be delivered to the owner thereof for relabeling or reprocessing as the case may be.

(3) When a decree of condemnation is entered against the pesticide, court costs, fees, and storage and other proper expenses shall be awarded against the person, if any, appearing as claimant of the pesticide.

NEW SECTION. Sec. 18. (1) It shall be unlawful for any person to act in the capacity of a pesticide dealer, or advertise as, or assume to act as a pesticide dealer at any time without first having obtained an annual license from the director which shall expire on the final day of February. A license shall be required for each location or outlet located within this state from which such pesticides are distributed: PROVIDED, That any manufacturer, registrant, or distributor who has no pesticide dealer outlet licensed within this state and who distributes such pesticides directly into this state shall obtain a pesticide dealer license for his principal out-of-state location or outlet: PROVIDED FURTHER, That such licensed out-of-state pesticide dealer shall be exempt from the pesticide dealer manager requirements.

(2) Application for a license shall be accompanied by a ten dollar annual license fee and shall be on a form prescribed by the director and shall include the full name of the person applying for such license and the name of the individual within the state designated as the pesticide dealer manager. If such applicant is a partnership, association, corporation, or organized group of persons, the full name of each member of the firm or partnership or the names of the officers of the association or corporation shall be given on the application. Such application shall further state the principal business address of the applicant in the state and elsewhere, the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant, and any other necessary information prescribed by the director.

(3) It shall be unlawful for any licensed dealer outlet to operate without a pesticide dealer manager who has a license of qualification. The department shall be notified forthwith of any change in the pesticide dealer manager designee during the licensing period.

(4) Provisions of this section shall not apply to a licensed pesticide applicator who sells pesticides only as an integral part of his pesticide application service when such pesticides are dispensed only through apparatuses used for such pesticide application; or any federal, state, county, or municipal agency which provides pesticides only for its own programs.

NEW SECTION. Sec. 19. If an application for renewal of a pesticide dealer license is not filed on or prior to March 1 of any one year an additional fee of ten dollars shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: PROVIDED, That such additional fee shall not apply if the applicant furnishes an affidavit that he has not operated as a pesticide dealer subsequent to the expiration of his prior license.

NEW SECTION. Sec. 20. The director shall require each pesticide dealer manager to demonstrate to the director his knowledge of pesticide laws and regulations; pesticide hazards; and the safe distribution, use and application, and disposal of pesticides by satisfactorily passing a written examination after which the director shall issue a license of qualification. The director shall charge a five dollar examination fee for each examination administered on a regularly scheduled examination date.

NEW SECTION. Sec. 21. No individual shall perform services as a pest control consultant after February 28, 1973, without first obtaining from the director an annual license which shall expire on the final day of February of each year. Application for a license shall be on a form prescribed by the director and shall be accompanied by a fee of ten dollars: PROVIDED, That licensed pesticide applicators and operators; employees of federal, state, county, or municipal agencies when acting in their official capacities; and pesticide dealer managers and employees working under the direct supervision of the pesticide dealer manager and only at a licensed pesticide dealer's outlet, shall be exempt from this licensing provision.

NEW SECTION. Sec. 22. For the purpose of this section public pest control consultant means any individual who is employed by a governmental agency or unit to act as a pest control consultant as defined in section 3, (23) of this act. No person shall act as a public pest control consultant on or after February 28, 1973 without first obtaining an annual nonfee license from the director which shall expire on the final day of February of each year. Application for a license shall be on a form prescribed by the director: PROVIDED, That federal and state employees whose principal responsibilities are in pesticide research, the jurisdictional health officer or his duly authorized representative, and public operators licensed under RCW 17.21.220 shall be exempt from this licensing provision.

NEW SECTION. Sec. 23. The director shall require each applicant for a pest control consultant's license or a public pest control consultant's license to demonstrate to the director the applicant's knowledge of pesticide laws and regulations; pesticide

hazards; and the safe distribution, use and application, and disposal of pesticides by satisfactorily passing a written examination for the classifications for which he has applied prior to issuing his license. An examination fee of five dollars shall be charged when an examination is requested at other than a regularly scheduled examination date.

NEW SECTION. Sec. 24. The director may classify licenses to be issued under the provisions of this act. Such classifications may include but not be limited to agricultural crops, ornamentals, or noncrop land herbicides. If the licensee has a classified license he shall be limited to practicing within these classifications. Each such classification shall be subject to separate testing procedures and requirements: PROVIDED, That no person shall be required to pay an additional license fee if such person desires to be licensed in one or all of the license classifications provided for by the director under the authority of this section. The director may renew any applicant's license under the classification for which the applicant is licensed, subject to reexamination when deemed necessary because new knowledge or new classifications are required to carry out the responsibilities of the licensee.

NEW SECTION. Sec. 25. Any person issued a license or permit under the provisions of this act may be required by the director to keep accurate records on a form prescribed by him which may contain the following information:

- (1) The delivery, movement or holding of any pesticide or device, including the quantity;
- (2) The date of shipment and receipt;
- (3) The name of consignor and consignee; and
- (4) Any other information, necessary for the enforcement of this act, as prescribed by the director.

The director shall have access to such records at any reasonable time to copy or make copies of such records for the purpose of carrying out the provisions of this act.

NEW SECTION. Sec. 26. The director is authorized to deny, suspend, or revoke any license, registration or permit provided for in this act subject to a hearing and in conformance with the provisions of chapter 34.04 RCW (Administrative Procedure Act) in any case in which he finds there has been a failure or refusal to comply with the provisions of this act or regulations adopted hereunder.

NEW SECTION. Sec. 27. The director may issue subpoenas to compel the attendance of witnesses and/or production of books, documents and records in the county in which the person licensed under this act resides in any hearing affecting the authority or privilege granted by a license, registration or permit issued under the provisions of this act. Witnesses shall be entitled to fees for

attendance and travel, as provided for in chapter 2.40 RCW as enacted or hereafter amended.

NEW SECTION. Sec. 28. The sampling and examination of pesticides or devices shall be made under the direction of the director for the purpose of determining whether or not they comply with the requirements of this act. The director is authorized, upon presentation of proper identification, to enter any distributor's premises, including any vehicle of transport, at all reasonable times in order to have access to pesticides or devices. If it appears from such examination that a pesticide or device fails to comply with the provisions of this act or regulations adopted thereunder, and the director contemplates instituting criminal proceedings against any person, the director shall cause notice to be given to such person. Any person so notified shall be given an opportunity to present his views, either orally or in writing, with regard to the contemplated proceedings. If thereafter in the opinion of the director it appears that the provisions of the act or regulations adopted thereunder have been violated by such person, the director shall refer a copy of the results of the analysis or the examination of such pesticide or device to the prosecuting attorney for the county in which the violation occurred.

NEW SECTION. Sec. 29. Nothing in this act shall be construed as requiring the director to report for prosecution or for the institution of condemnation proceedings minor violations of this act when he believes that the public interest will be best served by a suitable notice of warning in writing.

NEW SECTION. Sec. 30. The penalties provided for violations of section 15 (1) (a), (b), (c), (d), and (e) of this act shall not apply to:

(1) Any carrier while lawfully engaged in transporting a pesticide within the state, if such carrier, upon request, permits the director to copy all records showing the transaction in and movement of the articles.

(2) Public officials of the state and the federal government engaged in the performance of their official duties.

(3) The manufacturer or shipper of a pesticide for experimental use only by or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of pesticides.

NEW SECTION. Sec. 31. No pesticides shall be deemed in violation of this act when intended solely for export to a foreign country, and when prepared or packed according to the specifications or directions of the purchaser. If not so exported, all the provisions of this act shall apply.

NEW SECTION. Sec. 32. The license provisions of this act



shall not apply to any pharmacist who is licensed pursuant to chapter 18.64 RCW and does not distribute any pesticide required to be registered under the provisions of this act.

NEW SECTION. Sec. 33. Any person violating any provisions of this act or regulations adopted thereunder is guilty of a misdemeanor.

NEW SECTION. Sec. 34. The director may bring an action to enjoin the violation or threatened violation of any provision of this act or any regulation made pursuant to this act in a court of competent jurisdiction of the county in which such violation occurs or is about to occur.

NEW SECTION. Sec. 35. No person charged with the enforcement of any provision of this act shall be directly or indirectly interested in the sale, manufacture or distribution of any pesticide or device.

NEW SECTION. Sec. 36. No state court shall allow the recovery of damages from administrative action taken or for "stop sale, use or removal" if the court finds that there was probable cause for such action.

NEW SECTION. Sec. 37. The department shall publish at least annually and in such form as it may deem proper, results of analyses based on official samples as compared with the analyses guaranteed and information concerning the distribution of pesticides: PROVIDED, That individual distribution information shall not be a public record.

NEW SECTION. Sec. 38. The pesticide advisory board shall advise the director on any or all problems relating to the formulation, distribution, storage, transportation, disposal, and use of pesticides in the state.

NEW SECTION. Sec. 39. (1) There is hereby created a pesticide control board consisting of the dean of the college of agriculture at Washington State University; the secretary, of the department of social and health services or his designee; the director of the department of ecology; and the director of the department of agriculture. This board is created to assure the continuation of this state's basic policy of protecting and improving its environmental quality which is a matter of the utmost public concern.

(2) The pesticide control board shall, at least once each year prior to November 1, make a determination of what persistent pesticides shall be limited to essential uses, list what the essential uses shall be for pesticides so classified, and establish a time schedule for compliance. This annual determination shall include a review of existing essential uses for such pesticides. In determining what pesticides are classified as persistent (pesticides

which, following application, degrade or dissipate slowly in the environment), the board shall take into consideration but shall not be limited by determinations made by federal agencies, including the federal environment protection agency. The classification of persistent pesticides shall include but not necessarily be limited to DDT, aldrin, dieldrin, endrin, heptachlor, chlordane, benzene hexachloride, lindane, toxaphene and compounds containing arsenic, lead, or mercury. The findings of the board in regard to persistent pesticides and essential uses shall be implemented by department regulations.

(3) In making its determination of essential uses of any pesticide, the pesticide control board shall consider the need for control of the target pest, whether effective alternate materials are available, whether the use of such alternate materials is practical, and whether the use of such alternate materials is less hazardous to the environment and/or public health and welfare.

(4) The determinations made by the pesticide control board under the provisions of this act shall be applicable and controlling to the administration and enforcement of chapter 17.21 RCW.

NEW SECTION. Sec. 40. The director is authorized to cooperate with and enter into agreements with any other agency of the state, the United States, and any other state or agency thereof for the purpose of carrying out the provisions of this act and securing uniformity of regulation.

NEW SECTION. Sec. 41. All moneys received by the director under the provisions of this act shall be paid into the state treasury.

NEW SECTION. Sec. 42. The effective date of this act is July 1, 1971: PROVIDED, That the effective date of sections 21, 22 and 23 is March 1, 1973.

NEW SECTION. Sec. 43. The repeal of RCW 15.57.010 through 15.57.930 and the enactment of this act shall not be deemed to have repealed any regulations adopted under the provisions of RCW 15.57.010 through 15.57.930 in effect immediately prior to such repeal and not inconsistent with the provisions of this act. All such regulations shall be considered to have been adopted under the provisions of this act.

NEW SECTION. Sec. 44. The enactment of this act shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which shall already be in existence on the date this act becomes effective.

NEW SECTION. Sec. 45. Any registration, license, or permit issued under the provisions of chapter 15.57 RCW and in effect on the effective date of this act shall continue in full force and effect until its expiration date, as if it has been issued under the

provisions of this act, unless revoked prior thereto for cause by the director.

NEW SECTION. Sec. 46. If any provisions of this 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. 47. The following acts or parts of acts are each repealed:

- (1) Section 1, chapter 244, Laws of 1961 and RCW 15.57.010;
- (2) Section 2, chapter 244, Laws of 1961 and RCW 15.57.020;
- (3) Section 3, chapter 244, Laws of 1961 and RCW 15.57.030;
- (4) Section 4, chapter 244, Laws of 1961 and RCW 15.57.040;
- (5) Section 5, chapter 244, Laws of 1961 and RCW 15.57.050;
- (6) Section 6, chapter 244, Laws of 1961 and RCW 15.57.060;
- (7) Section 7, chapter 244, Laws of 1961 and RCW 15.57.070;
- (8) Section 8, chapter 244, Laws of 1961 and RCW 15.57.080;
- (9) Section 9, chapter 244, Laws of 1961 and RCW 15.57.090;
- (10) Section 10, chapter 244, Laws of 1961 and RCW 15.57.100;
- (11) Section 11, chapter 244, Laws of 1961 and RCW 15.57.110;
- (12) Section 12, chapter 244, Laws of 1961 and RCW 15.57.120;
- (13) Section 13, chapter 244, Laws of 1961 and RCW 15.57.130;
- (14) Section 14, chapter 244, Laws of 1961 and RCW 15.57.140;
- (15) Section 15, chapter 244, Laws of 1961 and RCW 15.57.150;
- (16) Section 16, chapter 244, Laws of 1961 and RCW 15.57.160;
- (17) Section 17, chapter 244, Laws of 1961 and RCW 15.57.170;
- (18) Section 18, chapter 244, Laws of 1961 and RCW 15.57.180;
- (19) Section 19, chapter 244, Laws of 1961 and RCW 15.57.190;
- (20) Section 20, chapter 244, Laws of 1961 and RCW 15.57.200;
- (21) Section 21, chapter 244, Laws of 1961 and RCW 15.57.210;
- (22) Section 22, chapter 244, Laws of 1961 and RCW 15.57.220;
- (23) Section 23, chapter 244, Laws of 1961 and RCW 15.57.230;
- (24) Section 24, chapter 244, Laws of 1961 and RCW 15.57.240;
- (25) Section 25, chapter 244, Laws of 1961 and RCW 15.57.250;
- (26) Section 26, chapter 244, Laws of 1961 and RCW 15.57.260;
- (27) Section 27, chapter 244, Laws of 1961 and RCW 15.57.270;
- (28) Section 28, chapter 244, Laws of 1961 and RCW 15.57.280;
- (29) Section 29, chapter 244, Laws of 1961 and RCW 15.57.290;
- (30) Section 30, chapter 244, Laws of 1961 and RCW 15.57.300;
- (31) Section 31, chapter 244, Laws of 1961 and RCW 15.57.310;
- (32) Section 32, chapter 244, Laws of 1961 and RCW 15.57.320;
- (33) Section 33, chapter 244, Laws of 1961 and RCW 15.57.330;
- (34) Section 34, chapter 244, Laws of 1961 and RCW 15.57.340;
- (35) Section 35, chapter 244, Laws of 1961 and RCW 15.57.350;
- (36) Section 36, chapter 244, Laws of 1961 and rcw 15.57.360;
- (37) Section 37, chapter 244, Laws of 1961 and RCW 15.57.370;

- (38) Section 38, chapter 244, Laws of 1961 and RCW 15.57.900;
- (39) Section 39, chapter 244, Laws of 1961 and RCW 15.57.910;
- (40) Section 40, chapter 244, Laws of 1961 and RCW 15.57.920

and

- (41) Section 41, chapter 244, Laws of 1961 and RCW 15.57.930.

NEW SECTION. Sec. 48. New sections 1 through 47 of this act are added to Title 15 RCW.

Passed the House May 10, 1971.

Passed the Senate May 10, 1971.

Approved by the Governor May 20, 1971.

Filed in Office of Secretary of State May 21, 1971.

CHAPTER 191

[Engrossed House Bill No. 636]

REGULATION OF PESTICIDES

AN ACT Relating to pesticides; amending section 2, chapter 249, Laws of 1961 as amended by section 2, chapter 177, Laws of 1967 and RCW 17.21.020; amending section 9, chapter 249, Laws of 1961 as amended by section 5, chapter 177, Laws of 1967 and RCW 17.21.090; amending section 10, chapter 249, Laws of 1961 and RCW 17.21.100; amending section 15, chapter 249, Laws of 1961 as amended by section 8, chapter 177, Laws of 1967 and RCW 17.21.150; amending section 20, chapter 249, Laws of 1961 as amended by section 12, chapter 177, Laws of 1967 and RCW 17.21.200; amending section 18, chapter 177, Laws of 1967 and RCW 17.21.205; amending section 22, chapter 249, Laws of 1961 as amended by section 13, chapter 177, Laws of 1967 and RCW 17.21.220; amending section 23, chapter 249, Laws of 1961 as amended by section 14, chapter 177, Laws of 1967 and RCW 17.21.230; adding new sections to chapter 249, Laws of 1961 and chapter 17.21 RCW; and repealing section 21, chapter 249, Laws of 1961 and RCW 17.21.210.

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

Section 1. Section 2, chapter 249, Laws of 1961 as amended by section 2, chapter 177, Laws of 1967 and RCW 17.21.020 are each amended to read as follows:

For the purpose of 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,