

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5533

Chapter 333, Laws of 2001

(partial veto)

57th Legislature
2001 Regular Session

SCHOOL PESTICIDE USE--PARENTAL NOTIFICATION

EFFECTIVE DATE: 7/1/02

Passed by the Senate April 21, 2001
YEAS 43 NAYS 3

BRAD OWEN
President of the Senate

Passed by the House April 20, 2001
YEAS 88 NAYS 4

FRANK CHOPP
**Speaker of the
House of Representatives**

CLYDE BALLARD
**Speaker of the
House of Representatives**

Approved May 15, 2001, with the
exception of section 7, which is
vetoed.

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Tony M. Cook, Secretary of the
Senate of the State of Washington, do
hereby certify that the attached is
SUBSTITUTE SENATE BILL 5533 as passed
by the Senate and the House of
Representatives on the dates hereon
set forth.

TONY M. COOK
Secretary

FILED

May 15, 2001 - 3:25 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5533

AS AMENDED BY THE HOUSE

Passed Legislature - 2001 Regular Session

State of Washington

57th Legislature

2001 Regular Session

By Senate Committee on Education (originally sponsored by Senators Eide, Rasmussen, Swecker, Patterson, Fairley, Zarelli, Roach, Jacobsen, Kohl-Welles, Costa, McAuliffe, Spanel, Franklin, Shin, B. Sheldon, Constantine, Hargrove, Kastama, Prentice, Kline, Stevens and Gardner; by request of Department of Agriculture)

READ FIRST TIME 02/13/01.

1 AN ACT Relating to posting and notification of pesticide
2 applications at schools; amending RCW 17.21.020 and 17.21.410; adding
3 a new section to chapter 17.21 RCW; adding a new section to chapter
4 28A.320 RCW; adding a new section to chapter 74.15 RCW; creating a new
5 section; and providing an effective date.

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

7 **Sec. 1.** RCW 17.21.020 and 1994 c 283 s 1 are each amended to read
8 as follows:

9 Unless the context clearly requires otherwise, the definitions in
10 this section apply throughout this chapter.

11 (1) "Agricultural commodity" means any plant or part of a plant, or
12 animal, or animal product, produced by a person (including farmers,
13 ranchers, vineyardists, plant propagators, Christmas tree growers,
14 aquaculturists, floriculturists, orchardists, foresters, or other
15 comparable persons) primarily for sale, consumption, propagation, or
16 other use by people or animals.

17 (2) "Agricultural land" means land on which an agricultural
18 commodity is produced or land that is in a government-recognized
19 conservation reserve program. This definition does not apply to

1 private gardens where agricultural commodities are produced for
2 personal consumption.

3 (3) "Antimicrobial pesticide" means a pesticide that is used for
4 the control of microbial pests, including but not limited to viruses,
5 bacteria, algae, and protozoa, and is intended for use as a
6 disinfectant or sanitizer.

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

17 ((+4)) (5) "Arthropod" means any invertebrate animal that belongs
18 to the phylum arthropoda, which in addition to insects, includes allied
19 classes whose members are wingless and usually have more than six legs;
20 for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

21 ((+5)) (6) "Certified applicator" means any individual who is
22 licensed as a commercial pesticide applicator, commercial pesticide
23 operator, public operator, private-commercial applicator, demonstration
24 and research applicator, or certified private applicator, or any other
25 individual who is certified by the director to use or supervise the use
26 of any pesticide which is classified by the EPA or the director as a
27 restricted use pesticide.

28 ((+6)) (7) "Commercial pesticide applicator" means any person who
29 engages in the business of applying pesticides to the land of another.

30 ((+7)) (8) "Commercial pesticide operator" means any employee of
31 a commercial pesticide applicator who uses or supervises the use of any
32 pesticide and who is required to be licensed under provisions of this
33 chapter.

34 ((+8)) (9) "Defoliant" means any substance or mixture of
35 substances intended to cause the leaves or foliage to drop from a plant
36 with or without causing abscission.

37 ((+9)) (10) "Department" means the Washington state department of
38 agriculture.

1 (~~(+10)~~) (11) "Desiccant" means any substance or mixture of
2 substances intended to artificially accelerate the drying of plant
3 tissues.

4 (~~(+11)~~) (12) "Device" means any instrument or contrivance intended
5 to trap, destroy, control, repel, or mitigate pests, but not including
6 equipment used for the application of pesticides when sold separately
7 from the pesticides.

8 (~~(+12)~~) (13) "Direct supervision" by certified private applicators
9 shall mean that the designated restricted use pesticide shall be
10 applied for purposes of producing any agricultural commodity on land
11 owned or rented by the applicator or the applicator's employer, by a
12 competent person acting under the instructions and control of a
13 certified private applicator who is available if and when needed, even
14 though such certified private applicator is not physically present at
15 the time and place the pesticide is applied. The certified private
16 applicator shall have direct management responsibility and familiarity
17 of the pesticide, manner of application, pest, and land to which the
18 pesticide is being applied. Direct supervision by all other certified
19 applicators means direct on-the-job supervision and shall require that
20 the certified applicator be physically present at the application site
21 and that the person making the application be in voice and visual
22 contact with the certified applicator at all times during the
23 application. Direct supervision of an aerial apparatus means the pilot
24 of the aircraft must be appropriately certified.

25 (~~(+13)~~) (14) "Director" means the director of the department or a
26 duly authorized representative.

27 (~~(+14)~~) (15) "Engage in business" means any application of
28 pesticides by any person upon lands or crops of another.

29 (~~(+15)~~) (16) "EPA" means the United States environmental
30 protection agency.

31 (~~(+16)~~) (17) "EPA restricted use pesticide" means any pesticide
32 classified for restricted use by the administrator, EPA.

33 (~~(+17)~~) (18) "FIFRA" means the federal insecticide, fungicide and
34 rodenticide act as amended (61 Stat. 163, 7 U.S.C. Sec. 136 et seq.).

35 (~~(+18)~~) (19) "Fumigant" means any pesticide product or combination
36 of products that is a vapor or gas or forms a vapor or gas on
37 application and whose method of pesticidal action is through the
38 gaseous state.

1 ~~((+19))~~ (20) "Fungi" means all nonchlorophyll-bearing thallophytes
2 (all nonchlorophyll-bearing plants of lower order than mosses and
3 liverworts); for example, rusts, smuts, mildews, molds, and yeasts,
4 except those on or in a living person or other animals.

5 ~~((+20))~~ (21) "Fungicide" means any substance or mixture of
6 substances intended to prevent, destroy, repel, or mitigate any fungi.

7 ~~((+21))~~ (22) "Herbicide" means any substance or mixture of
8 substances intended to prevent, destroy, repel, or mitigate any weed or
9 other higher plant.

10 ~~((+22))~~ (23) "Immediate service call" means a landscape
11 application to satisfy an emergency customer request for service, or a
12 treatment to control a pest to landscape plants.

13 ~~((+23))~~ (24) "Insect" means any small invertebrate animal, in any
14 life stage, whose adult form is segmented and which generally belongs
15 to the class insecta, comprised of six-legged, usually winged forms,
16 as, for example, beetles, bugs, bees, and flies. The term insect shall
17 also apply to other allied classes of arthropods whose members are
18 wingless and usually have more than six legs, for example, spiders,
19 mites, ticks, centipedes, and isopod crustaceans.

20 ~~((+24))~~ (25) "Insecticide" means any substance or mixture of
21 substances intended to prevent, destroy, repel, or mitigate any insect.

22 ~~((+25))~~ (26) "Land" means all land and water areas, including
23 airspace and all plants, animals, structures, buildings, devices, and
24 contrivances, appurtenant to or situated on, fixed or mobile, including
25 any used for transportation.

26 ~~((+26))~~ (27) "Landscape application" means an application (~~by a~~
27 ~~certified applicator~~) of any EPA registered pesticide to any exterior
28 landscape (~~plants found~~) area around residential property, commercial
29 properties such as apartments or shopping centers, parks, golf courses,
30 schools including nursery schools and licensed day cares, or cemeteries
31 or similar areas. This definition shall not apply to: (a)
32 Applications made by certified private applicators; (b) mosquito
33 abatement, gypsy moth eradication, or similar wide-area pest control
34 programs sponsored by governmental entities; and (c) commercial
35 pesticide applicators making structural applications.

36 ~~((+27))~~ (28) "Nematocide" means any substance or mixture of
37 substances intended to prevent, destroy, repel, or mitigate nematodes.

38 ~~((+28))~~ (29) "Nematode" means any invertebrate animal of the
39 phylum nemathelminthes and class nematoda, that is, unsegmented round

1 worms with elongated, fusiform, or saclike bodies covered with cuticle,
2 and inhabiting soil, water, plants or plant parts. Nematodes may also
3 be called nemas or eelworms.

4 ~~((+29))~~ (30) "Person" means any individual, partnership,
5 association, corporation, or organized group of persons whether or not
6 incorporated.

7 ~~((+30))~~ (31) "Pest" means, but is not limited to, any insect,
8 rodent, nematode, snail, slug, weed, and any form of plant or animal
9 life or virus, except virus, bacteria, or other microorganisms on or in
10 a living person or other animal or in or on processed food or beverages
11 or pharmaceuticals, which is normally considered to be a pest, or which
12 the director may declare to be a pest.

13 ~~((+31))~~ (32) "Pesticide" means, but is not limited to:

14 (a) Any substance or mixture of substances intended to prevent,
15 destroy, control, repel, or mitigate any pest;

16 (b) Any substance or mixture of substances intended to be used as
17 a plant regulator, defoliant or desiccant; and

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

24 ~~((+32))~~ (33) "Pesticide advisory board" means the pesticide
25 advisory board as provided for in this chapter.

26 ~~((+33))~~ (34) "Plant regulator" means any substance or mixture of
27 substances intended through physiological action, to accelerate or
28 retard the rate of growth or maturation, or to otherwise alter the
29 behavior of ornamental or crop plants or their produce, but shall not
30 include substances insofar as they are intended to be used as plant
31 nutrients, trace elements, nutritional chemicals, plant inoculants, or
32 soil amendments.

33 ~~((+34))~~ (35) "Private applicator" means a certified applicator who
34 uses or is in direct supervision of the use of any pesticide classified
35 by the EPA or the director as a restricted use pesticide, for the
36 purposes of producing any agricultural commodity and for any associated
37 noncrop application on land owned or rented by the applicator or the
38 applicator's employer or if applied without compensation other than

1 trading of personal services between producers of agricultural
2 commodities on the land of another person.

3 ~~((+35))~~ (36) "Private-commercial applicator" means a certified
4 applicator who uses or supervises the use of any pesticide classified
5 by the EPA or the director as a restricted use pesticide for purposes
6 other than the production of any agricultural commodity on lands owned
7 or rented by the applicator or the applicator's employer.

8 ~~((+36))~~ (37) "Residential property" includes property less than
9 one acre in size zoned as residential by a city, town, or county, but
10 does not include property zoned as agricultural or agricultural
11 homesites.

12 ~~((+37))~~ (38) "Restricted use pesticide" means any pesticide or
13 device which, when used as directed or in accordance with a widespread
14 and commonly recognized practice, the director determines, subsequent
15 to a hearing, requires additional restrictions for that use to prevent
16 unreasonable adverse effects on the environment including people,
17 lands, beneficial insects, animals, crops, and wildlife, other than
18 pests.

19 ~~((+38))~~ (39) "Rodenticide" means any substance or mixture of
20 substances intended to prevent, destroy, repel, or mitigate rodents, or
21 any other vertebrate animal which the director may declare by rule to
22 be a pest.

23 ~~((+39))~~ (40) "School facility" means any facility used for
24 licensed day care center purposes or for the purposes of a public
25 kindergarten or public elementary or secondary school. School facility
26 includes the buildings or structures, playgrounds, landscape areas,
27 athletic fields, school vehicles, or any other area of school property.

28 (41) "Snails or slugs" include all harmful mollusks.

29 ~~((+40))~~ (42) "Unreasonable adverse effects on the environment"
30 means any unreasonable risk to people or the environment taking into
31 account the economic, social, and environmental costs and benefits of
32 the use of any pesticide, or as otherwise determined by the director.

33 ~~((+41))~~ (43) "Weed" means any plant which grows where it is not
34 wanted.

35 **Sec. 2.** RCW 17.21.410 and 1994 c 283 s 33 are each amended to read
36 as follows:

37 (1) A certified applicator making a landscape application to:

1 (a) Residential property shall at the time of the application place
2 a marker at the usual point of entry to the property. If the
3 application is made to an isolated spot that is not a substantial
4 portion of the property, the applicator shall only be required to place
5 a marker at the application site. If the application is in a fenced or
6 otherwise isolated backyard, no marker is required.

7 (b) Commercial properties such as apartments or shopping centers
8 shall at the time of application place a marker in a conspicuous
9 location at or near each site being treated.

10 (c) A golf course shall at the time of the application place a
11 marker at the first tee and tenth tee or post the information in a
12 conspicuous location such as on a central message board.

13 (d) A school, nursery school, or licensed day care shall at the
14 time of the application place a marker at each primary point of entry
15 to the school grounds. A school employee making an application to a
16 school facility shall comply with the posting requirements in section
17 3 of this act.

18 (e) A park, cemetery, rest stop, or similar property as may be
19 defined in rule shall at the time of the application place a marker at
20 each primary point of entry.

21 (2) An individual making a landscape application to a school
22 grounds, nursery school, or licensed day care, and not otherwise
23 covered by subsection (1) of this section, shall ~~((be required to~~
24 ~~comply with the posting requirements in subsection (1)(d) of this~~
25 ~~section))~~ at the time of the application place a marker at each primary
26 point of entry to the school grounds.

27 (3) The marker shall be a minimum of four inches by five inches.
28 It shall have the words: "THIS LANDSCAPE HAS BEEN TREATED BY" as the
29 headline and "FOR MORE INFORMATION PLEASE CALL" as the footer. Larger
30 size requirements for markers may be established in rule for specific
31 applications. The company name and service mark ~~((with the~~
32 ~~applicator's telephone number where information can be obtained))~~ shall
33 be included between the headline and the footer on ~~((the marker. The~~
34 ~~letters and service marks))~~ a marker placed by a commercial applicator.
35 The applicator's telephone number where information can be obtained
36 about the application shall be included in the footer of the marker.
37 Markers shall be printed in colors contrasting to the background.

38 (4) The property owner or tenant shall remove the marker according
39 to the schedule established in rule. A ~~((commercial))~~ certified

1 applicator or individual who complies with this section is not liable
2 for the removal of markers by unauthorized persons or removal outside
3 the designated removal time.

4 (5) A certified applicator or individual who complies with this
5 section cannot be held liable for personal property damage or bodily
6 injury resulting from markers that are placed as required.

7 NEW SECTION. **Sec. 3.** A new section is added to chapter 17.21 RCW
8 to read as follows:

9 (1) As used in this section, "school" means a licensed day care
10 center or a public kindergarten or a public elementary or secondary
11 school.

12 (2) A school shall provide written notification annually or upon
13 enrollment to parents or guardians of students and employees describing
14 the school's pest control policies and methods, including the posting
15 and notification requirements of this section.

16 (3) A school shall establish a notification system that, as a
17 minimum, notifies interested parents or guardians of students and
18 employees at least forty-eight hours before a pesticide application to
19 a school facility. The notification system shall include posting of
20 the notification in a prominent place in the main office of the school.

21 (4) All notifications to parents, guardians, and employees shall
22 include the heading "Notice: Pesticide Application" and, at a minimum,
23 shall state:

24 (a) The product name of the pesticide to be applied;

25 (b) The intended date and time of application;

26 (c) The location to which the pesticide is to be applied;

27 (d) The pest to be controlled; and

28 (e) The name and phone number of a contact person at the school.

29 (5) A school facility application must be made within forty-eight
30 hours following the intended date and time stated in the notification
31 or the notification process shall be repeated.

32 (6) A school shall, at the time of application, post notification
33 signs for all pesticide applications made to school facilities unless
34 the application is otherwise required to be posted by a certified
35 applicator under the provisions of RCW 17.21.410(1)(d).

36 (a) Notification signs for applications made to school grounds by
37 school employees shall be placed at the location of the application and
38 at each primary point of entry to the school grounds. The signs shall

1 be a minimum of four inches by five inches and shall include the words:
2 "THIS LANDSCAPE HAS BEEN RECENTLY SPRAYED OR TREATED WITH PESTICIDES BY
3 YOUR SCHOOL" as the headline and "FOR MORE INFORMATION PLEASE CALL" as
4 the footer. The footer shall provide the name and telephone number of
5 a contact person at the school.

6 (b) Notification signs for applications made to school facilities
7 other than school grounds shall be posted at the location of the
8 application. The signs shall be a minimum of eight and one-half by
9 eleven inches and shall include the heading "Notice: Pesticide
10 Application" and, at a minimum, shall state:

11 (i) The product name of the pesticide applied;

12 (ii) The date and time of application;

13 (iii) The location to which the pesticide was applied;

14 (iv) The pest to be controlled; and

15 (v) The name and phone number of a contact person at the school.

16 (c) Notification signs shall be printed in colors contrasting to
17 the background.

18 (d) Notification signs shall remain in place for at least
19 twenty-four hours from the time the application is completed. In the
20 event the pesticide label requires a restricted entry interval greater
21 than twenty-four hours, the notification sign shall remain in place
22 consistent with the restricted entry interval time as required by the
23 label.

24 (7) A school facility application does not include the application
25 of antimicrobial pesticides or the placement of insect or rodent baits
26 that are not accessible to children.

27 (8) The prenotification requirements of this section do not apply
28 if the school facility application is made when the school is not
29 occupied by students for at least two consecutive days after the
30 application.

31 (9) The prenotification requirements of this section do not apply
32 to any emergency school facility application for control of any pest
33 that poses an immediate human health or safety threat, such as an
34 application to control stinging insects. When an emergency school
35 facility application is made, notification consistent with the school's
36 notification system shall occur as soon as possible after the
37 application. The notification shall include information consistent
38 with subsection (6) (b) of this section.

1 (10) A school shall make the records of all pesticide applications
2 to school facilities required under this chapter, including an annual
3 summary of the records, readily accessible to interested persons.

4 (11) A school is not liable for the removal of signs by
5 unauthorized persons. A school that complies with this section may not
6 be held liable for personal property damage or bodily injury resulting
7 from signs that are placed as required.

8 NEW SECTION. **Sec. 4.** A new section is added to chapter 28A.320
9 RCW to read as follows:

10 Schools as defined in section 3 of this act shall provide notice of
11 pesticide use to parents or guardians of students and employees
12 pursuant to chapter 17.21 RCW.

13 NEW SECTION. **Sec. 5.** A new section is added to chapter 74.15 RCW
14 to read as follows:

15 Licensed day care centers shall provide notice of pesticide use to
16 parents or guardians of students and employees pursuant to chapter
17 17.21 RCW.

18 NEW SECTION. **Sec. 6.** Except for section 7 of this act, this act
19 takes effect July 1, 2002.

20 ****NEW SECTION. Sec. 7. If specific funding for the purposes of***
21 ***this act, referencing this act by bill or chapter number, is not***
22 ***provided by June 30, 2001, in the omnibus appropriations act, this act***
23 ***is null and void.***

24 ****Sec. 7 was vetoed. See message at end of chapter.***

Passed the Senate April 21, 2001.

Passed the House April 20, 2001.

Approved by the Governor May 15, 2001, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State May 15, 2001.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to section 7,
3 Substitute Senate Bill No. 5533 entitled:

4 "AN ACT Relating to posting and notification of pesticide
5 applications at schools;"

6 Substitute Senate Bill No. 5533 clarifies and improves the laws
7 governing the application of pesticides near schools, and provides for
8 advance notification of parents and school employees.

1 Section 7 of this bill would have stopped these important
2 improvements from going into effect unless funding were provided in the
3 2001-2003 budget. While there may have been significant budget
4 implications in the original draft of this bill, the affected entities
5 concluded in their final fiscal analysis that there will be no material
6 costs associated with compliance. Therefore, no funding is needed in
7 the budget for implementation of this act. I have vetoed section 7 to
8 ensure that this important measure for improving parental awareness of
9 pesticide uses in schools and day care facilities will go into effect.

10 For these reasons, I have vetoed section 7 of Substitute Senate
11 Bill No. 5533.

12 With the exception of section 7, Substitute Senate Bill No. 5533 is
13 approved."