

The text of this document is an accurate copy of what was filed by the initiative proponent with the Secretary of State for assignment of a serial number. The accuracy of code in amendatory sections has not been verified.

INITIATIVE 310

I, Sam Reed, Secretary of State of the State of Washington and custodian of its seal, hereby certify that, according to the records on file in my office, the attached copy of Initiative Measure No. 310 to the Legislature is a true and correct copy as it was received by this office.

AN ACT Relating to protecting human and environmental health from pesticide and fertilizer use in agriculture; amending RCW 82.04.050; adding a new section to chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; adding a new chapter to Title 70 RCW; and providing an effective date.

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

NEW SECTION. **Sec. 1.** The people make the following findings:

(1) Large quantities of pesticides, over thirty-seven million pounds each year, are used on cropland in Washington state.

(2) Children's developing systems are particularly vulnerable to the neurotoxic effects of pesticides; pesticides have been linked to child leukemia, brain cancer, and brain disorders.

(3) Of the twenty-six most widely used pesticides in the United States, twelve are classified as carcinogens by the environmental protection agency, and only a fraction of the over eight hundred pesticides in use have been tested against the environmental protection agency's 1997 standards for health impacts.

(4) Sixteen pesticides have been linked with breast cancer, including some of the most commonly used pesticides in the United States.

(5) Seventeen of the twenty-six most commonly used pesticides in the United States cause negative effects on reproduction in men and women. In men, they cause sperm abnormalities, reduce sperm production, disrupt male hormones, and damage reproductive organs, leading to prematurity, birth defects, and decreased fertility. In women, these pesticides can cause decreased pregnancy rates, miscarriages, increased rates of infant mortality, and low birth weights.

(6) For the past several decades, steel, paper, and other pollution-intensive industries have been incorporating toxic waste in fertilizer to avoid the cost of hazardous waste disposal. The result is that heavy metals, such as lead, cadmium, mercury, and other toxins, such as arsenic and dioxins, have been building up in our soil and waterways.

(7) Widespread pesticide and fertilizer contamination of the Pacific Northwest's lakes, rivers, and streams is a major threat to salmon. The effects of pesticides on the complex ecosystem required for healthy salmon are both direct and subtle: Pesticides affect salmon's ability to reproduce, reduce their food supply, and can kill them directly.

(8) Cancer, birth defects, and reduced fertility all occur in farmworkers more frequently than in the general population, because they are the people who are most closely and heavily exposed to pesticides and fertilizers.

(9) There is a societal benefit to reduce where possible introduction of pesticides into the environment and food.

(10) Society has acknowledged that family and commercial agriculture are important to the long-term health and viability of Washington state, and therefore worthy of public support. This support should come in the form of funding and programs to help farmers reduce their reliance on expensive, harmful agricultural chemicals, rather than subsidizing their continued and increased use of them.

Part I: Establishing a Pesticide Use Reporting System

NEW SECTION. **Sec. 2.** The department of ecology shall adopt rules for a pesticide use reporting system. The pesticide use reporting

rules shall include at least, but are not limited to, provisions for the following:

- (1) The reporting of pesticide use online;
- (2) Ready access by the public to the pesticide use reporting data, including access online;
- (3) Requirements that users report any use of pesticides within one month of use;
- (4) If no pesticides are used, an annual requirement that farmers declare they have not used pesticides; and
- (5) Compatibility, where possible, with use reporting standards and systems used by other states and federal agencies.

NEW SECTION. **Sec. 3.** The pesticide use reporting rules adopted by the department shall include requirements for reporting pesticide use on farms. The reporting requirements shall include, but are not limited to:

- (1) The user's name, address, and any identification number supplied by the department;
- (2) Product name and environmental protection agency registration number;
- (3) Date of use;
- (4) Amount applied, in weight or volume for each application;
- (5) If known, the identity of inert ingredients in each pesticide applied;
- (6) If known, the amount of inert ingredients applied, in weight or volume in each application;
- (7) Method of use, such as aerial or hand spraying;
- (8) Name of target pest;
- (9) Size of area treated and identity of area treated, such as a field or building;
- (10) Location of area treated and common street address, in township/range/section and tax lot;
- (11) The type of crop treated, such as corn or wheat, and the category of crop treated, such as organic or genetically modified;
- (12) Weather conditions during use; and
- (13) Planting date and estimated harvesting date of treated crops.

NEW SECTION. **Sec. 4.** The department shall collect and compile the data from the pesticide use reporting system so as to: (1) Fulfill the public's right to know about pesticide use on farms in the state of Washington; and (2) to provide researchers and farmers with information

that can help efforts to analyze, understand, and reduce pesticide use and the harms of pesticide use in the state of Washington. The department shall present reports biennially on pesticide and fertilizer use in the state of Washington.

**Part II: Establishing a Commission on Health Protection
and the Use of Pesticides and Fertilizers**

NEW SECTION. **Sec. 5.** A commission on health protection and the use of pesticides and fertilizer is established. The commission's purpose is to oversee and guide efforts to protect human and environmental health from pesticide and fertilizer use in the state of Washington. The commission shall also be responsible for approving the use of funds in the pesticide and fertilizer health protection account.

NEW SECTION. **Sec. 6.** The commission shall be composed of nine voting members appointed by the governor as follows: (1) A small-family farmer; (2) an organic farmer; (3) another farmer or representative of a farmers' advocacy group; (4) a farmworker or representative of a farmworker organization; (5) a representative of an organization that promotes sustainable agriculture; (6) a representative of an organization seeking to reduce agricultural chemical use; (7) a representative of an environmental organization; (8) a representative of a consumer organization such as a food co-op or a child and family advocacy group; and (9) a scientist specializing in environmental health issues. Whenever possible, members shall be nominated by an appropriate statewide, private association.

The following shall be ex officio, nonvoting members of the commission: The dean of the college of agriculture and home economics at Washington State University or the dean's designee; the director of the department of ecology or the director's designee; the director of the department of agriculture or the director's designee; the director of the department of labor and industries or the director's designee; and the secretary of the department of health or the secretary's designee.

NEW SECTION. **Sec. 7.** Nominations for the initial appointments to the commission under section 6 of this act shall be submitted to the governor by December 2, 2004. The governor shall make initial appointments to the commission by January 2, 2005.

NEW SECTION. **Sec. 8.** Each voting member of the commission shall serve a term of three years. However, the first appointments in the first year shall be made by the governor for one, two, and three-year terms so that, in subsequent years, one-third of the voting members shall be appointed each year. The governor shall assign the initial one, two, and three-year terms to members by lot. A vacancy shall be filled by appointment for the unexpired term in the same manner provided for an appointment to the full term. No member of the commission may be removed by the governor during his or her term of office unless for cause of incapacity, incompetence, neglect of duty, or malfeasance in office. Each member of the commission shall receive travel expenses in accordance with RCW 43.03.050 and 43.03.060 for attending meetings of the commission and for performing special duties, in the way of official commission business, specifically assigned to the person by the commission. The voting members of the commission serve without compensation from the state other than such travel expenses.

NEW SECTION. **Sec. 9.** Each calendar year, the commission shall elect a chair from among its voting members. After its original organizational meeting, the commission shall meet at the call of the chair. A majority of the voting members of the commission constitutes a quorum and an official action of the commission may be taken by a majority vote of the quorum.

Part III: Funding

NEW SECTION. **Sec. 10.** The pesticide and fertilizer health protection account is created in the custody of the state treasurer. All receipts from: (1) The imposition of the taxes under chapters 82.08, retail sales tax, and 82.12, use tax, RCW on the sale or use of pesticides and fertilizers used by farmers; (2) penalties collected or recovered under this chapter; (3) principal and interest from the repayment of any loans granted under this chapter; and (4) any other money appropriated to the account by the legislature; must be deposited into the account. Expenditures from the account may be used only for the purposes described in section 11 of this act. Only the commission through a majority vote may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

NEW SECTION. **Sec. 11.** Money in the pesticide and fertilizer health protection account shall only be used to protect human and environmental health from pesticide and fertilizer use in the state of Washington. Appropriate uses of the funds in the account include, but are not limited to: (1) Funding the pesticide use reporting system described in this chapter; (2) funding efforts to protect farmworkers and their families from pesticides and fertilizers; (3) funding efforts to establish buffer zones to protect lakes, streams, rivers, and drinking water supplies from pesticides and fertilizers; (4) promoting sustainable agriculture by refunding organic certification fees paid by organic farmers; (5) funding centers for sustainable agriculture at state universities; (6) providing loans to farmers seeking to adopt sustainable practices; (7) establishing a competitive grants program to fund participatory on-farm research and demonstration projects similar to the state of Missouri's sustainable agriculture grant program; (8) developing markets, both locally and internationally, for sustainable agriculture products; and (9) supporting the commission on health protection and the use of pesticides and fertilizers and its activities.

Part IV: Eliminating Tax Exemptions

Sec. 12. RCW 82.04.050 and 2003 c 168 s 104 are each amended to read as follows:

(1) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who presents a resale certificate under RCW 82.04.470 and who:

(a) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person, but a purchase for the purpose of resale by a regional transit authority under RCW 81.112.300 is not a sale for resale; or

(b) Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

(c) Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

(d) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

(e) Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), (d), or (e) of this subsection following such use. The term also means every sale of tangible personal property to persons engaged in any business which is taxable under RCW 82.04.280 (2) and (7) and 82.04.290.

(2) The term "sale at retail" or "retail sale" shall include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

(a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of coin-operated laundry facilities when such facilities are situated in an apartment house, rooming house, or mobile home park for the exclusive use of the tenants thereof, and also excluding sales of laundry service to nonprofit health care facilities, and excluding services rendered in respect to live animals, birds and insects;

(b) The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

(c) The charge for labor and services rendered in respect to constructing, repairing, or improving any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;

(d) The sale of or charge made for labor and services rendered in respect to the cleaning, fumigating, razing or moving of existing buildings or structures, but shall not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

(e) The sale of or charge made for labor and services rendered in respect to automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

(f) The sale of and charge made for the furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same. For the purposes of this subsection, it shall be presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a person is a rental or lease of real property and not a mere license to enjoy the same;

(g) The sale of or charge made for tangible personal property, labor and services to persons taxable under (a), (b), (c), (d), (e), and (f) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this

subsection shall be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section shall be construed to modify this subsection.

(3) The term "sale at retail" or "retail sale" shall include the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

(a) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others, when provided to consumers;

(b) Abstract, title insurance, and escrow services;

(c) Credit bureau services;

(d) Automobile parking and storage garage services;

(e) Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;

(f) Service charges associated with tickets to professional sporting events; and

(g) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services.

(4)(a) The term shall also include:

(i) The renting or leasing of tangible personal property to consumers; and

(ii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A consideration of this is that the operator is necessary for the equipment to perform as designed. For the purpose of this subsection (4)(a)(ii), an operator must do more than maintain, inspect, or set up the tangible personal property.

(b) The term shall not include the renting or leasing of tangible personal property where the lease or rental is for the purpose of sublease or subrent.

(5) The term shall also include the providing of telephone service, as defined in RCW 82.04.065, to consumers.

(6) The term shall also include the sale of prewritten computer software other than a sale to a person who presents a resale certificate under RCW 82.04.470, regardless of the method of delivery

to the end user, but shall not include custom software or the customization of prewritten computer software.

(7) The term shall not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.

(8) The term shall also not include sales of chemical sprays or washes to persons for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay, nor shall it include sales of feed, seed, seedlings, fertilizer approved for organic food production under RCW 15.86.060, pesticides approved for organic food production under RCW 15.86.060, agents for enhanced pollination including insects such as bees, and spray materials other than pesticides to: (a) Persons who participate in the federal conservation reserve program, the environmental quality incentives program, the wetlands reserve program, and the wildlife habitat incentives program, or their successors administered by the United States department of agriculture; (b) farmers for the purpose of producing for sale any agricultural product; and (c) farmers acting under cooperative habitat development or access contracts with an organization exempt from federal income tax under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of fish and wildlife to produce or improve wildlife habitat on land that the farmer owns or leases. But the term shall include sales of fertilizers and pesticides as defined in section 16 of this act not approved for organic food production under RCW 15.86.060 to these and other groups.

(9) The term shall not include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Nor shall the term include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any

instrumentality thereof, or a county or city housing authority. Nor shall the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development.

(10) Until July 1, 2003, the term shall not include the sale of or charge made for labor and services rendered for environmental remedial action as defined in RCW 82.04.2635(2).

NEW SECTION. **Sec. 13.** A new section is added to chapter 82.08 RCW to read as follows:

The tax levied by RCW 82.08.020 does not apply to sales of fertilizers and pesticides for use on a small family farm. The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

NEW SECTION. **Sec. 14.** A new section is added to chapter 82.12 RCW to read as follows:

The provisions of this chapter do not apply with respect to the use of fertilizers and pesticides on a small family farm.

Part V: Definitions and Miscellaneous

NEW SECTION. **Sec. 15.** The definitions in this section apply throughout this chapter and sections 12, 13, and 14 of this act unless the context clearly requires otherwise.

(1) "Commission" means the commission on health protection and the use of pesticides and fertilizers.

(2) "Department" means the department of ecology.

(3) "Fertilizer" means a substance containing one or more recognized plant nutrient and that is used for its plant nutrient content or that is designated for use or claimed to have value in promoting plant growth, and shall include limes, gypsum, and manipulated animal and vegetable manures.

(4) "Pest" means living organisms that occur where they are not wanted or that cause damage to crops or humans or other animals, including but not limited to, insects, mice or other animals, unwanted plants or weeds, and fungi and microorganisms such as bacteria and viruses.

(5) "Pesticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest. Pesticides include insecticides, herbicides, fungicides, and various other substances used to control pests.

(6) "Small family farm" means a farm: (1) With less than two hundred fifty thousand dollars in gross receipts annually; (2) on which day-to-day labor and management are provided by the farmer and/or farm family that owns the production or owns, or leases, the productive assets; and (3) that is not organized as a nonfamily corporation.

(7) "Sustainable agriculture" means a systematic approach to farming, ranching, and natural resource production that builds on and supports the physical, biological, and ecological resource base upon which agriculture depends. The goals of sustainable agriculture are to provide human food and fiber needs in an economically viable manner for the agriculture industry and in a manner which protects the environment and contributes to the overall safety and quality of life.

NEW SECTION. **Sec. 16.** Sections 1 through 11, 15, 17, and 18 of this act constitute a new chapter in Title 70 RCW.

NEW SECTION. **Sec. 17.** If any provision 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. 18.** Part headings used in this act are not any part of the law.

NEW SECTION. **Sec. 19.** Section 12 of this act takes effect July 1, 2004.