

Exemptions Criteria Worksheet

1. **Exemption:** RCW 17.24.061

2. **Session Law:** 1991, chapter 257

3. **Category:** agriculture

4. **Cross-ref.:**

5. **Date Enacted:** 1991

6. **(Text of exemption)** (1) In submitting data required by this chapter, the applicant may: (a) Mark clearly portions of data which in his or her opinion are trade secrets or commercial or financial information; and (b) submit the marked material separately from other material required to be submitted under this chapter.

(2) Notwithstanding any other provision of this chapter or other law, the director shall not make information submitted by an applicant or registrant under this chapter available to the public if, in the judgment of the director, the information is privileged or confidential because it contains or relates to trade secrets or commercial or financial information. Where necessary to carry out the provisions of this chapter, information relating to unpublished formulas of products acquired by authorization of this chapter may be revealed to any state or federal agency consulted and may be revealed at a public hearing or in findings of fact issued by the director.

7. **Exemption protects:** ☐ Safety ☐ Privacy ☒ Financial ☒ Other (explain):

Trade secrets, commercial information regarding pests introduced into state

8. **Purpose (including purpose of accompanying legislation if applicable):**

Final bill report states that the director is not required to disclose information that the director determines contains or relates to trade secrets, or financial or commercial information.

9. **Information covered:** ☐ About gov't function ☒ Collected/held by gov't

☐ Public funds ☐ Public official ☐ Vital gov't Interest ☐ Confidential/private ☐ Other

Describe: To introduce into state of Washington products that have been identified as plants, pests, or noxious weeds, businesses must apply for a special permit from the Department.

10. **Stakeholders:**

1. Dept of Agriculture

Contacted: ☒ yes ☐ no

2. Wash. Horticulture Assoc.

Contacted: ☐ yes ☒ no

3.

Contacted: ☐ yes ☐ no

4.

Contacted: ☐ yes ☐ no

11. Add'l bill

Information:

Floor debate: ☐ yes ☒ no

Bill Reports: ☒ yes ☐ no

12. Comments (including significant court decisions; related WACs sections, or other).

RCW 17.24.051 requires a special permit to transport these substances. The Department is authorized to request confidential business information from applicants.

Tab 14 Nov 1, 2007 binder prepared by Dept of Agriculture

RCW 17.24.061

Protection of privileged or confidential information — Procedure — Notice — Declaratory judgment.

(1) In submitting data required by this chapter, the applicant may: (a) Mark clearly portions of data which in his or her opinion are trade secrets or commercial or financial information; and (b) submit the marked material separately from other material required to be submitted under this chapter.

(2) Notwithstanding any other provision of this chapter or other law, the director shall not make information submitted by an applicant or registrant under this chapter available to the public if, in the judgment of the director, the information is privileged or confidential because it contains or relates to trade secrets or commercial or financial information. Where necessary to carry out the provisions of this chapter, information relating to unpublished formulas of products acquired by authorization of this chapter may be revealed to any state or federal agency consulted and may be revealed at a public hearing or in findings of fact issued by the director.

(3) If the director proposes to release for inspection or to reveal at a public hearing or in findings of fact issued by the director, information that the applicant or registrant believes to be protected from disclosure under subsection (2) of this section, he or she shall notify the applicant or registrant in writing, by certified mail. The director may not make this data available for inspection nor reveal the information at a public hearing or in findings of fact issued by the director until thirty days after receipt of the notice by the applicant or registrant. During this period, the applicant or registrant may withdraw the application or may institute an action in the superior court of Thurston county for a declaratory judgment as to whether the information is subject to protection under subsection (2) of this section.

[1991 c 257 § 10.]

NEW SECTION. Sec. 9. **INTRODUCTION OF PLANT PESTS, NOXIOUS WEEDS, OR ORGANISMS AFFECTING PLANT LIFE.** The introduction into or release within the state of a plant pest, noxious weeds, bee pest, or any other organism that may directly or indirectly affect the plant life of the state as an injurious pest, parasite, predator, or other organism is prohibited, except under special permit issued by the department under rules adopted by the director. A special permit is not required for the introduction or release within the state of a genetically engineered plant or plant pest organism if the introduction or release has been approved under provisions of federal law and the department has been notified of the planned introduction or release. The department shall be the sole issuing agency for the permits. Except for research projects approved by the department, no permit for a biological control agent shall be issued unless the department has determined that the parasite, predator, or plant pathogen is target organism or plant specific and not likely to become a pest of nontarget plants or other beneficial organisms. The director may also exclude biological control agents that are infested with parasites determined to be detrimental to the biological control efforts of the state. The department may rely upon findings of the United States department of agriculture or any experts that the director may deem appropriate in making a determination about the threat posed by such organisms. In addition, the director may request confidential business information subject to the conditions in section 10 of this act.

Plant pests, noxious weeds, or other organisms introduced into or released within this state in violation of this section shall be subject to detention and disposition as otherwise provided in this chapter.

NEW SECTION. Sec. 10. **PROTECTION OF PRIVILEGED OR CONFIDENTIAL INFORMATION—PROCEDURE—NOTICE—DECLARATORY JUDGMENT.** (1) In submitting data required by this chapter, the applicant may: (a) Mark clearly portions of data which in his or her opinion are trade secrets or commercial or financial information; and (b) submit the marked material separately from other material required to be submitted under this chapter.

(2) Notwithstanding any other provision of this chapter or other law, the director shall not make information submitted by an applicant or registrant under this chapter available to the public if, in the judgment of the director, the information is privileged or confidential because it contains or relates to trade secrets or commercial or financial information. Where necessary to carry out the provisions of this chapter, information relating to unpublished formulas of products acquired by authorization of this chapter may be revealed to any state or federal agency consulted and may be revealed at a public hearing or in findings of fact issued by the director.

(3) If the director proposes to release for inspection or to reveal at a public hearing or in findings of fact issued by the director, information that

the applicant or registrant believes to be protected from disclosure under subsection (2) of this section, he or she shall notify the applicant or registrant in writing, by certified mail. The director may not make this data available for inspection nor reveal the information at a public hearing or in findings of fact issued by the director until thirty days after receipt of the notice by the applicant or registrant. During this period, the applicant or registrant may withdraw the application or may institute an action in the superior court of Thurston county for a declaratory judgment as to whether the information is subject to protection under subsection (2) of this section.

NEW SECTION. Sec. 11. **COMPLIANCE AGREEMENTS.** The director may enter into compliance agreements with a person engaged in growing, handling, or moving articles, bees, plants, or plant products regulated under this chapter.

NEW SECTION. Sec. 12. **PROHIBITED ACTS.** It shall be unlawful for a person to:

(1) Sell, offer for sale, or distribute a noxious weed or a plant or plant product or regulated article infested or infected with a plant pest declared by rule to be a threat to the state's forest, agricultural, horticultural, floricultural, or beekeeping industries or environment;

(2) Knowingly receive a noxious weed, or a plant, plant product, bees, bee hive or appliances, or regulated article sold, given away, carried, shipped, or delivered for carriage or shipment within this state, in violation of the provisions of this chapter or the rules adopted under this chapter;

(3) Fail to immediately notify the department and isolate and hold the noxious weed, bees, bee hives or appliances, plants or plant products, or other thing unopened or unused subject to inspection or other disposition as may be provided by the department, where the item has been received without knowledge of the violation and the receiver has become subsequently aware of the potential problem;

(4) Knowingly conceal or willfully withhold available information regarding an infested or infested plant, plant product, regulated article, or noxious weed;

(5) Introduce or move into this state, or to move or dispose of in this state, a plant, plant product, or other item included in a quarantine, except under rules as may be prescribed by the department, after a quarantine order has been adopted under this chapter against a place, nursery, orchard, vineyard, apiary, other agricultural establishment, county of this state, another state, territory, or a foreign country as to a plant pest, bee pest, or noxious weed or genetically engineered plant or plant pest organism, until such quarantine is removed.

NEW SECTION. Sec. 13. **IMPOUND AND DISPOSITION.** (1) If upon inspection, the director finds that an inspected plant or plant product or bees are infected or infested or that a regulated article is being held or

FINAL BILL REPORT

SHB 1956

C 257 L 91
Synopsis As Enacted

Brief Description: Changing provisions for plant protection.

By House Committee on Agriculture & Rural Development
(originally sponsored by Representatives Rayburn, Nealey,
McLean, Kremen, Chandler, Roland and Rasmussen; by
request of Department of Agriculture).

House Committee on Agriculture & Rural Development
House Committee on Revenue
Senate Committee on Agriculture & Water Resources

Background:

Local Plant Pest & Disease Boards: State law permits the county commissioners of a county to create a horticultural pest and disease board. Among the authorities of such a board is the power to require the owner of land to control and prevent the spread of horticultural pests and diseases on the owner's land. If the owner fails to perform the required work, the board may perform that work or cause it to be performed. The expense of the work is charged to the landowner.

Plant & Bee Protection: The Director of Agriculture has broad authority to impose quarantines and to take actions regarding plant pests and diseases under the state's plant pest and disease control laws. The director has similar authorities regarding bees, hives, and beekeeping articles under the state's apiary laws. A person's first violation of the plant pest and disease laws or rules is a misdemeanor; each subsequent violation is a gross misdemeanor. A violation of the apiary laws is a Class I civil infraction.

Pesticides: Amendments to the Federal Insecticide, Fungicide, and Rodenticide Act require pesticides registered with the federal government before November 1, 1984, to be re-registered under current standards.

Summary:

LOCAL PEST AND DISEASE BOARDS:

The circumstances are identified under which an action may be taken by a county horticultural pest and disease board to destroy infested plants without the consent of the owner of the land on which the plants are located.

The board may petition the superior court of the county for an order directing the landowner to show cause why the plants should not be removed at the owner's expense and for an order authorizing the removal. If the landowner fails to appear or fails to show by competent evidence that the pest or disease has been controlled, the court must authorize the board to remove the plants at the owner's expense.

If this procedure is followed, no action for damages for removal of the plants lies against the board, its officers or agents, or the county.

PLANT AND BEE PROTECTION:

General: Some of the authorities of the Director of Agriculture to regulate bees and pests of bees under the state's apiary laws are integrated with the director's authorities to regulate plants and pests of plants.

The authority of the director now expressly includes the power to adopt rules under which plants, plant products, bees, hives and beekeeping equipment and noxious weeds may be brought into this State and the circumstances under which these and genetically engineered organisms may be transported through this State. The purposes for which the Director may establish a quarantine now expressly include the protection of environmental interests. The director may require a person with controlled articles which may carry plant or bee pests or noxious weeds to disclose the origin and source of these items.

Penalties: A person who fails to comply with these laws or rules may be subject to a civil penalty of not more than \$5000 dollars for each violation if a criminal penalty has not been imposed for the violation.

Permits: No organism that may directly or indirectly affect plant life in the State may be introduced into or released within the State without a special permit issued by the Department of Agriculture. Except for approved research projects, no permit for a biological control agent may be issued unless the department has determined that the parasite, predator, or plant pathogen is a target organism or plant specific and is not likely to become a pest of nontarget plants or other beneficial organisms. Although the department must be notified regarding the introduction or release of a genetically engineered plant or plant pest

organism, a permit is not required if the introduction or release has been approved under federal law.

Actions - Costs: Before taking an action to treat, return or destroy an article impounded by the department, the director must provide the owner of the article with an opportunity for a hearing on the action. The costs of impounding, treating, returning, or destroying an article must be borne by the owner of the article. A person who causes an infestation to become established through the knowing and willful violation of a quarantine may be required to pay the costs of public control or eradication measures.

Disclosure: The director shall not make information submitted by applicants or registrants under these laws available to the public if the director determines that it contains or relates to trade secrets or commercial or financial information.

Fees; Dedicated Account: The authority of the department to provide services on a fee-for-service basis is expanded. Fees for these services are to be deposited in a plant pest account, which is created in the agricultural local fund rather than being deposited in the general fund.

Other: The director may acquire property for establishing quarantine stations, for the propagation of biological control agents, or for the isolation of biological control agents, genetically engineered plants or plant pests, or of bee pests. The director may enter cooperative arrangements with other persons and entities for conducting enforcement activities.

Pesticide Re-registration: The Tree Fruit Research Commission is expressly granted the authority to use assessments levied by the commission and approved by tree fruit growers for the re-registration of plant protection products for minor crops.

Votes on Final Passage:

House	88	7	
Senate	46	2	(Senate amended)
House	98	0	(House concurred)

Effective: May 17, 1991

RCW 17.24.051

Introduction of plant pests, noxious weeds, or organisms affecting plant life.

The introduction into or release within the state of a plant pest, noxious weeds, bee pest, or any other organism that may directly or indirectly affect the plant life of the state as an injurious pest, parasite, predator, or other organism is prohibited, except under special permit issued by the department under rules adopted by the director. A special permit is not required for the introduction or release within the state of a genetically engineered plant or plant pest organism if the introduction or release has been approved under provisions of federal law and the department has been notified of the planned introduction or release. The department shall be the sole issuing agency for the permits. Except for research projects approved by the department, no permit for a biological control agent shall be issued unless the department has determined that the parasite, predator, or plant pathogen is target organism or plant specific and not likely to become a pest of nontarget plants or other beneficial organisms. The director may also exclude biological control agents that are infested with parasites determined to be detrimental to the biological control efforts of the state. The department may rely upon findings of the United States department of agriculture or any experts that the director may deem appropriate in making a determination about the threat posed by such organisms. In addition, the director may request confidential business information subject to the conditions in RCW 17.24.061.

Plant pests, noxious weeds, or other organisms introduced into or released within this state in violation of this section shall be subject to detention and disposition as otherwise provided in this chapter.

[1991 c 257 § 9.]