

Enrolled
House Bill 3549

Sponsored by COMMITTEE ON RULES

CHAPTER

AN ACT

Relating to pesticide control; creating new provisions; amending ORS 527.990, 527.992, 634.006, 634.016, 634.116, 634.126, 634.172, 634.306, 634.550 and 634.900; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

ADDITIONS TO PESTICIDE CHAPTER

SECTION 1. Sections 3, 9, 10, 15 to 17 and 19 of this 2015 Act are added to and made a part of ORS chapter 634.

NOTE: Section 2 was deleted by amendment. Subsequent sections were not renumbered.

AERIAL APPLICATORS

SECTION 3. (1) An individual may not spray or otherwise apply a pesticide by aircraft unless the individual holds a valid aerial pesticide applicator certificate issued by the State Department of Agriculture.

(2) The department may issue an aerial pesticide applicator certificate to an individual who:

(a) Is a licensed pesticide applicator, licensed public applicator or certified private applicator;

(b) Holds a valid commercial pilot certificate for the type of aircraft to be used by the individual in applying pesticides;

(c) Has 50 or more hours of experience as a licensed pesticide applicator, licensed public applicator or certified private applicator, or as a pesticide trainee or public trainee under the supervision of a licensed pesticide applicator, licensed public applicator or certified private applicator, on flights conducted for the purpose of carrying out, or training to carry out, spraying or otherwise applying pesticides by aircraft; and

(d) Pays a certificate fee established by the department by rule.

(3)(a) The department shall establish a term for aerial pesticide applicator certificates, not to exceed five years. The department shall suspend or revoke the certificate if the certificate holder fails to maintain a valid pesticide applicator license, public applicator license or private applicator certificate. Except as provided in paragraph (b) of this subsection, an aerial pesticide applicator certificate may be renewed.

(b) The certificate holder may renew an aerial pesticide applicator certificate only if, during the preceding five years, the holder successfully completed at least 10 credit hours in

programs of instruction or educational courses satisfactory to the department and related to the spraying or other application of pesticides by aircraft. In determining whether programs of instruction or educational courses are satisfactory for purposes of this subsection, the department shall consult with professional associations or other organizations serving aerial applicators of pesticides or with a national organization of state agencies that regulate agriculture. The department shall count any credit hours in satisfactory programs of instruction or educational courses described in this subsection toward any instruction or education requirements imposed by the department for the renewal of a pesticide applicator license.

(4) If a certificate holder is licensed as a public applicator, the certificate holder may spray or otherwise apply pesticides by aircraft only to properties described in ORS 634.116 (12).

SECTION 4. Section 3 of this 2015 Act is amended to read:

Sec. 3. (1) An individual may not spray or otherwise apply a pesticide by aircraft unless the individual holds a valid aerial pesticide applicator certificate issued by the State Department of Agriculture.

(2) The department may issue an aerial pesticide applicator certificate to an individual who:

(a) Is a licensed pesticide applicator, licensed public applicator or certified private applicator;

(b) Passes a national examination, or other examination approved by the department, testing the knowledge of the individual regarding proper spraying and other application of pesticides by aircraft;

[(b)] (c) Holds a valid commercial pilot certificate for the type of aircraft to be used by the individual in applying pesticides;

[(c)] (d) Has 50 or more hours of experience as a licensed pesticide applicator, licensed public applicator or certified private applicator, or as a pesticide trainee or public trainee under the supervision of a *[[licensed pesticide applicator, licensed public applicator or certified private applicator]* **certified aerial pesticide applicator**, on flights conducted for the purpose of carrying out, or training to carry out, spraying or otherwise applying pesticides by aircraft; and

[(d)] (e) Pays a certificate fee established by the department by rule.

(3) In determining appropriate examinations for approval under subsection (2)(b) of this section, the department shall give consideration to any examination of aerial pesticide applicator competency developed or approved by a national organization of state agencies that regulate agriculture.

[(3)(a)] (4)(a) The department shall establish a term for aerial pesticide applicator certificates, not to exceed five years. The department shall suspend or revoke the certificate if the certificate holder fails to maintain a valid pesticide applicator license, public applicator license or private applicator certificate. Except as provided in paragraph (b) of this subsection, an aerial pesticide applicator certificate may be renewed.

(b) The certificate holder may renew an aerial pesticide applicator certificate only if, during the preceding five years, the holder successfully completed at least 10 credit hours in programs of instruction or educational courses satisfactory to the department and related to the spraying or other application of pesticides by aircraft. In determining whether programs of instruction or educational courses are satisfactory for purposes of this subsection, the department shall consult with professional associations or other organizations serving aerial applicators of pesticides or with a national organization of state agencies that regulate agriculture. The department shall count any credit hours in satisfactory programs of instruction or educational courses described in this subsection toward any instruction or education requirements imposed by the department for the renewal of a pesticide applicator license.

[(4)] (5) If a certificate holder is licensed as a public applicator, the certificate holder may spray or otherwise apply pesticides by aircraft only to properties described in ORS 634.116 (12).

SECTION 5. ORS 634.116 is amended to read:

634.116. (1) A pesticide operator's license, or supplements thereto, shall authorize the licensee to engage in one or more of the classes of pest control or pesticide application business prescribed by the State Department of Agriculture under ORS 634.306 (2). The department may not issue a pesticide operator license to the United States, the State of Oregon or federal, state or local agencies, instrumentalities, political subdivisions, counties, cities, towns, municipal corporations, irrigation, drainage or other districts or other federal, state or local governmental bodies.

(2) During a license period, and after a person has been issued a license to engage in certain classes of pest control or pesticide application business during a license period, the department upon receiving an additional application and applicable fees, may authorize the licensee to engage in additional classes of pest control or pesticide application business for the remainder of the license period as prescribed in ORS 634.306 (2).

(3)(a) The department shall establish a pesticide operator license fee not to exceed \$90 for the first class of pest control or pesticide application business as prescribed in ORS 634.306 (2) and not to exceed \$15 for each additional class.

(b) After a person makes first application for a specific license period, if later during the same license period the person desires to engage in additional classes of pest control or pesticide application businesses, such person shall pay the fee for each additional class established by the department not to exceed \$20.

(4) At least one owner or part owner of the pest control or pesticide application business shall also obtain and maintain a pesticide applicator's license if the pesticide operator is a sole proprietorship or a partnership. At least one officer or employee shall obtain and maintain a pesticide applicator's license if the pesticide operator is a corporation. If a pesticide operator is found to be in violation of this subsection, the pesticide operator's license, notwithstanding ORS chapter 183, is automatically suspended until the pesticide operator is in compliance. If the business is owned by one individual, the department shall make no charge for the pesticide applicator license issued to the individual under ORS 634.122.

(5) The department shall not issue or renew a pesticide operator's license until the applicant or licensee has furnished evidence to the department, in the form of a public liability policy issued by an insurance company qualified to do business in Oregon, protecting the applicant or licensee against liability for injury or death to persons and loss of or damage to property resulting from the application of pesticides, or in lieu of a policy, has furnished a deposit of cash, surety bond or other evidence of financial responsibility acceptable to the department that may be applied by the department to the payment of damages resulting from operator liability. However:

(a) Except as required under paragraph (b) of this subsection, the financial responsibility required by this section shall not apply to damages or injury to crops, real or personal property being worked upon by the applicant.

(b) If the applicant or licensee is to be engaged in the business of controlling or eradicating structural pests, or pests within a public or private place, or pests within private or public places where food is served, prepared or processed or where persons are regularly housed, the financial responsibility required by this section shall apply to damages or injury to real or personal property being worked upon, as well as all the other real and personal property set forth in this section.

(6) The financial responsibility required by subsection (5) of this section must be not less than \$25,000 for bodily injury to one or more persons and not less than \$25,000 for property damage.

(7) Notwithstanding the provisions of ORS chapter 183, if the licensed pesticide operator fails to maintain the financial responsibility required by subsections (5) and (6) of this section, the license is automatically suspended until the department again verifies the pesticide operator is in compliance with subsections (5) and (6) of this section. The liability insurance company shall notify the department in writing at least 30 days prior to any cancellation of an insurance policy required by this section.

(8) Notwithstanding the provisions of ORS 105.810 and 105.815 or other laws to the contrary, the amount of damages for which a pesticide operator or pesticide applicator is liable as a result of use of pesticides, or financial responsibility for the same is limited to actual damages only.

(9) The department shall return the deposit required by subsection (5) of this section to the pesticide operator if the pesticide operator at any time establishes exemption from the financial responsibility requirements under this chapter. After the expiration of two years from the date of an injury, death, loss or damage, the department shall return any deposit remaining to the pesticide operator or to the personal representative of the pesticide operator except that the department shall not make a return if the department has received notice that an action for damages arising out of the provisions of this section has been filed against the pesticide operator for whom the deposit was made, and the department has determined that the action is pending or that any judgment resulting from the action remains unpaid.

(10) If the pesticide operator is **or employs a pesticide applicator** to spray **or otherwise apply pesticides** by aircraft, [*then the department,*] in addition to other provisions of this section relating to financial responsibility, **the department** may by rule allow [*aircraft pesticide operators*] **the pesticide operator** to reduce, suspend or terminate the liability insurance, applicable to spraying **or otherwise applying pesticides** by aircraft, and required by subsections (5) and (6) of this section during certain periods of the year.

(11) The department may by rule allow liability insurance policies required by subsections (5) and (6) of this section to include deductible clauses of amounts to be determined by the department.

(12)(a) The United States, the State of Oregon or federal, state or local agencies, instrumentalities, political subdivisions, counties, cities, towns, municipal corporations, irrigation, drainage or other districts or other federal, state or local governmental bodies are not required to obtain a license as a pesticide operator or to furnish evidence of financial responsibility to the department when:

(A) Applying pesticides to property under their ownership, possession, control or jurisdiction;

(B) Applying pesticides pursuant to an order issued by the department for purposes of controlling or eradicating noxious weeds or pests; or

(C) Applying pesticides to property under the ownership, possession, control or jurisdiction of another federal, state or local agency, instrumentality, political subdivision, county, city, town, municipal corporation, irrigation, drainage or other district or other federal, state or local governmental body or of a homeowners association as defined under ORS 94.550 if:

(i) The land is in a jurisdiction adjacent to property under their ownership, possession, control or jurisdiction;

(ii) The application is done in conjunction with, or as an extension of, an application of pesticides to property under their ownership, possession, control or jurisdiction; and

(iii) The pesticide application is done on a cost recovery, cooperative trade of services or no cost basis, and not as a source for profit.

(b) A public utility or telecommunications utility is not required to obtain a license as a pesticide operator or to furnish evidence of financial responsibility to the department when applying pesticides to property under the ownership, possession or control of the utility.

(c) In addition to any application allowed under paragraph (a) of this subsection, a vector control district is not required to obtain a license as a pesticide operator or to furnish evidence of financial responsibility to the department when applying pesticides for the prevention, control or eradication of a public health vector as defined in ORS 452.010 to property under the ownership, possession, control or jurisdiction of another federal, state or local agency, instrumentality, political subdivision, county, city, town, municipal corporation, irrigation, drainage or other district or other federal, state or local governmental body or of a homeowners association as defined under ORS 94.550 if the pesticide application is done on a cost recovery, cooperative trade of services or no cost basis, and not as a source of profit.

(13) Subject to subsection (15) of this section, the employees of the agencies, instrumentalities, subdivisions, counties, cities, towns, municipal corporations, districts, governmental bodies or utilities described in subsection (12) of this section who perform or carry out the work, duties or responsibilities of a pesticide applicator are subject to the provisions of this chapter, except they shall be issued "public applicator" licenses or, if they carry out the work, duties or responsibilities of a

pesticide trainee, shall be issued “public trainee” certificates, if they otherwise comply or qualify with the provisions of this chapter relating thereto.

(14) The public applicator license or public trainee certificate shall be:

(a) Issued by the department upon payment of the fee for the pesticide applicator license or pesticide trainee certificate.

(b) Valid and used by the licensee or certificate holder only when applying pesticides as described in subsection (12) of this section.

(c) Renewed, suspended or revoked each year in the same manner, under the same provisions and at the same time as other pesticide applicator licenses and trainee certificates are renewed, suspended or revoked.

(15) The provisions of subsection (13) of this section apply only to:

(a) The application of restricted-use pesticides;

(b) The application of any pesticide by using a machine-powered device; or

(c) The application of any pesticide at the campus of a school, as defined in ORS 634.700, by an employee of the school.

(16) Prior to applying pesticides to land described in subsection (12)(a)(C) of this section, a public applicator shall inform the person requesting pesticide application of the possible availability of alternative sources of assistance, including sources in the private sector that are registered with the department or with industry trade or professional organizations.

(17) A federal, state or local agency, instrumentality, political subdivision, county, city, town, municipal corporation, irrigation, drainage or other district or other federal, state or local governmental body may not solicit or advertise for pesticide application business in areas outside its jurisdiction.

SECTION 6. ORS 634.126 is amended to read:

634.126. (1) In accordance with [*regulations promulgated*] **rules adopted** by the State Department of Agriculture, as provided in ORS 634.306 (1), the department shall issue or renew its pesticide trainee’s certificate if the applicant or certificate holder:

(a) Is at least 18 years of age;

(b) Is employed by a licensed pesticide operator;

(c) Is working under the direct supervision and control of a licensed applicator **or, if spraying or otherwise applying pesticides by aircraft, a certified aerial pesticide applicator**; and

(d) Is in compliance with the applicable provisions of this chapter and [*regulations promulgated thereunder*] **rules adopted under this chapter**.

(2) The fees for a pesticide trainee’s certificate, or renewal thereof, shall be the same as the license fee for a pesticide applicator.

SECTION 7. ORS 634.306 is amended to read:

634.306. In accordance with the provisions of ORS chapter 183, the State Department of Agriculture [*is authorized to promulgate regulations necessary*] **may adopt rules** to carry out the purposes and intent of this chapter, including but not limited to [*the following*] **rules that**:

(1) Establish and maintain a program required for [*a person*] **an individual** to work or engage in the application or spraying of pesticides as a pesticide trainee. In this regard, the department may take into consideration:

(a) Requirements for submission of applications by pesticide trainees.

(b) Minimum and maximum periods of work or experience required for pesticide trainees.

(c) Work performance records or reports to be maintained by pesticide trainees or their employers.

(d) Acceptance of educational qualifications, applicable work or experience in similar or other fields in lieu of, or as a part of, periods of employment or work by pesticide trainees.

(e) Forms and types of pesticide trainee certificates to be issued by the department, authorizing trainees to apply pesticides in all or part of the classes of operations or businesses set forth in subsection (2) of this section.

(f) Laws and requirements relating to other professional, trade or industry trainee or apprenticeship programs in this or other states.

(g) Special requirements if the pesticide trainee is to *[apply]* **assist a pesticide applicator in the spraying or other application of** pesticides by *[the use of]* aircraft, and the advisability of allowing participation in federal flight training programs to be substituted, all or in part, for training requirements under this chapter.

(2) Establish and maintain classifications of the various pesticides and of the various pest control or pesticide application businesses in order to facilitate the licensing or certification and regulation of pesticide consultants, operators, applicators, private applicators and trainees. In this regard the department may take into consideration:

(a) Various types, formulations and characteristics of pesticides used and their purposes.

(b) Various methods of application of such pesticides.

(c) Precautions required for safe and effective application of such pesticides.

(3) Designate pesticides authorized to be used or applied, or prohibited from use or application, by persons in order to qualify for an exemption under ORS 634.106.

(4) Establish and maintain classifications of pesticides and devices *[which]* **that** are deemed to be highly toxic or restricted-use pesticides or devices. In this regard, the department shall take into consideration:

(a) Laws and regulations of the federal government, including the provisions of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, and the Federal Environmental Pesticide Control Act.

(b) Laws and regulations of other states.

(c) Advice and counsel of experts in pesticides from industry, universities and colleges and other governmental agencies or bodies.

(5) Establish and maintain types of pesticide consultant or applicator examinations and reexaminations, schedules for required reexaminations and other measures deemed necessary for fair and reasonable testing of applicants as provided in ORS 634.122 (5).

(6) Designate the conditions under which pesticide operators *[spraying]* **that are or that employ pesticide applicators to spray or otherwise apply pesticides** by aircraft may reduce, suspend or terminate the liability insurance required by ORS 634.116, and the periods of time *[therefor]* **for a reduction, suspension or termination**. In this regard, the department may take into consideration:

(a) Changes in climate or seasons.

(b) Periods when certain crops are or have been harvested.

(c) Restricted or limited use of various types or classes of pesticides.

(d) Possibilities of injury or death to *[persons]* **humans** and loss or damage to real or personal property.

(7) Establish the conditions and amounts allowed for deductible classes in the liability insurance required by ORS 634.116.

(8) Establish and maintain programs of instruction or educational courses for pesticide consultants, operators, applicators and private applicators in cooperation with Oregon State University or others, wherein, as far as is practicable, provisions are made so as to allow such pesticide operators and applicators to participate only in the instruction or courses directly or indirectly related to their particular activities. Attendance of licensees may be required.

(9) Prepare and distribute a manual, or other form of publication, containing information helpful and beneficial to *[persons]* **individuals** engaged in pesticide application or use or to persons preparing to qualify for licensing as a pesticide operator, *[consultants]* **consultant** or applicator and establish charges therefor.

(10) Establish, from time to time, advisory groups or committees to assist the department in formulation of policies, plans or regulations under this chapter. Each member of any such group or committee so established shall be entitled to compensation and expenses as provided in ORS 292.495, *[which shall]* **to** be charged to the department.

(11) Establish registration fees for pesticide brands and formulae or formulations *[thereunder]* **under those pesticide brands.**

(12) Establish restrictions or prohibitions as to the form of pesticides allowed to be mixed, applied or added to fertilizers, seed or grains.

(13) Establish restrictions, methods and procedures in the storage, transportation, use or application of restricted-use pesticides or highly toxic pesticides in order to protect humans, pollinating insects, bees, animals, crops, wildlife, land or environment.

(14) Establish and maintain a system for certification of private applicators. In this regard, the department shall take into consideration:

(a) Laws and regulations of the federal government, including the provisions of the Federal Environmental Pesticide Control Act of 1972, 86 Stat. 973, and the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 135 et seq., as amended thereby, and regulations thereunder.

(b) Minimum periods of experience required and types of experience, education or work acceptable.

(c) Forms and types of private applicator certificates to be issued by the department, authorizing private applicators to apply pesticides in all or part of the classifications of pesticides set forth in subsection (4) of this section.

(15) Establish requirements for the reporting of pesticide sales, distribution or use by any person.

SECTION 8. ORS 634.306, as amended by section 17, chapter 1059, Oregon Laws 1999, is amended to read:

634.306. In accordance with the provisions of ORS chapter 183, the State Department of Agriculture *[is authorized to promulgate regulations necessary]* **may adopt rules** to carry out the purposes and intent of this chapter, including but not limited to *[the following]* **rules that:**

(1) Establish and maintain a program required for *[a person]* **an individual** to work or engage in the application or spraying of pesticides as a pesticide trainee. In this regard, the department may take into consideration:

(a) Requirements for submission of applications by pesticide trainees.

(b) Minimum and maximum periods of work or experience required for pesticide trainees.

(c) Work performance records or reports to be maintained by pesticide trainees or their employers.

(d) Acceptance of educational qualifications, applicable work or experience in similar or other fields in lieu of, or as a part of, periods of employment or work by pesticide trainees.

(e) Forms and types of pesticide trainee certificates to be issued by the department, authorizing trainees to apply pesticides in all or part of the classes of operations or businesses set forth in subsection (2) of this section.

(f) Laws and requirements relating to other professional, trade or industry trainee or apprenticeship programs in this or other states.

(g) Special requirements if the pesticide trainee is to *[apply]* **assist a pesticide applicator in the spraying or other application of** pesticides by *[the use of]* aircraft, and the advisability of allowing participation in federal flight training programs to be substituted, all or in part, for training requirements under this chapter.

(2) Establish and maintain classifications of the various pesticides and of the various pest control or pesticide application businesses in order to facilitate the licensing or certification and regulation of pesticide consultants, operators, applicators, private applicators and trainees. In this regard the department may take into consideration:

(a) Various types, formulations and characteristics of pesticides used and their purposes.

(b) Various methods of application of such pesticides.

(c) Precautions required for safe and effective application of such pesticides.

(3) Designate pesticides authorized to be used or applied, or prohibited from use or application, by persons in order to qualify for an exemption under ORS 634.106.

(4) Establish and maintain classifications of pesticides and devices [*which*] **that** are deemed to be highly toxic or restricted-use pesticides or devices. In this regard, the department shall take into consideration:

(a) Laws and regulations of the federal government, including the provisions of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, and the Federal Environmental Pesticide Control Act.

(b) Laws and regulations of other states.

(c) Advice and counsel of experts in pesticides from industry, universities and colleges and other governmental agencies or bodies.

(5) Establish and maintain types of pesticide consultant or applicator examinations and reexaminations, schedules for required reexaminations and other measures deemed necessary for fair and reasonable testing of applicants as provided in ORS 634.122 (5).

(6) Designate the conditions under which pesticide operators [*spraying*] **that are or that employ pesticide applicators to spray or otherwise apply pesticides** by aircraft may reduce, suspend or terminate the liability insurance required by ORS 634.116, and the periods of time [*therefor*] **for a reduction, suspension or termination**. In this regard, the department may take into consideration:

(a) Changes in climate or seasons.

(b) Periods when certain crops are or have been harvested.

(c) Restricted or limited use of various types or classes of pesticides.

(d) Possibilities of injury or death to [*persons*] **humans** and loss or damage to real or personal property.

(7) Establish the conditions and amounts allowed for deductible classes in the liability insurance required by ORS 634.116.

(8) Establish and maintain programs of instruction or educational courses for pesticide consultants, operators, applicators and private applicators in cooperation with Oregon State University or others, wherein, as far as is practicable, provisions are made so as to allow such pesticide operators and applicators to participate only in the instruction or courses directly or indirectly related to their particular activities. Attendance of licensees may be required.

(9) Prepare and distribute a manual, or other form of publication, containing information helpful and beneficial to [*persons*] **individuals** engaged in pesticide application or use or to persons preparing to qualify for licensing as a pesticide operator, [*consultants*] **consultant** or applicator and establish charges therefor.

(10) Establish, from time to time, advisory groups or committees to assist the department in formulation of policies, plans or regulations under this chapter. Each member of any such group or committee so established shall be entitled to compensation and expenses as provided in ORS 292.495, [*which shall*] **to** be charged to the department.

(11) Establish registration fees for pesticide brands and formulae or formulations [*thereunder*] **under those pesticide brands**.

(12) Establish restrictions or prohibitions as to the form of pesticides allowed to be mixed, applied or added to fertilizers, seed or grains.

(13) Establish restrictions, methods and procedures in the storage, transportation, use or application of restricted-use pesticides or highly toxic pesticides in order to protect humans, pollinating insects, bees, animals, crops, wildlife, land or environment.

(14) Establish and maintain a system for certification of private applicators. In this regard, the department shall take into consideration:

(a) Laws and regulations of the federal government, including the provisions of the Federal Environmental Pesticide Control Act of 1972, 86 Stat. 973, and the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 135 et seq., as amended thereby, and regulations thereunder.

(b) Minimum periods of experience required and types of experience, education or work acceptable.

(c) Forms and types of private applicator certificates to be issued by the department, authorizing private applicators to apply pesticides in all or part of the classifications of pesticides set forth in subsection (4) of this section.

SECTION 9. (1) **Notwithstanding section 3 of this 2015 Act, if an individual licensed as a pesticide applicator or public applicator, or certified as a private applicator, files an application on or before 90 days after the operative date of section 3 of this 2015 Act for certification under section 3 of this 2015 Act, the State Department of Agriculture may allow the individual to spray or otherwise apply pesticides by aircraft until the department refuses or grants the certification.**

(2) **Notwithstanding the amendments to ORS 634.126 by section 6 of this 2015 Act, a pesticide trainee may receive supervision in the spraying or other application of pesticides by aircraft from an individual described in subsection (1) of this section.**

(3) **Notwithstanding the amendments to ORS 634.116 and 634.306 by sections 5, 7 and 8 of this 2015 Act, the State Department of Agriculture may continue in effect any department rule allowing pesticide operators that spray by aircraft to reduce, suspend or terminate the liability insurance applicable to spraying by aircraft during certain periods of the year.**

CIVIL PENALTIES

SECTION 10. **The State Department of Agriculture may suspend, revoke or refuse to renew a license, certificate or other authorization issued to a person under this chapter if the person fails to pay a civil penalty under ORS 634.900 on or before 90 days after the date that the order imposing the civil penalty becomes final by operation of law or on appeal.**

SECTION 11. ORS 634.900 is amended to read:

634.900. (1) In addition to any other liability or penalty provided by law, the Director of Agriculture may impose a civil penalty on a person for violation of any of the provisions of this chapter relating to pesticide application, sale or labeling. The civil penalty for a first violation shall be not more than [~~\$1,000~~] **\$2,000**. For a subsequent violation, the director may impose a civil penalty of not more than [~~\$2,000~~] **\$4,000**.

(2) Notwithstanding subsection (1) of this section, if the violation of a provision relating to pesticide application, sale or labeling results from gross negligence or willful misconduct, the civil penalty for a first or subsequent violation may not exceed \$10,000.

(3) A civil penalty may not be imposed under this section for violations other than those involving pesticide application, sale or labeling violation under this chapter.

DEFINITION CHANGES

SECTION 12. ORS 634.006 is amended to read:

634.006. As used in this chapter unless the context requires otherwise:

(1) "Antidote" means a practical immediate treatment in case of poisoning and includes first-aid treatment.

(2) "Brand" or "trademark" means any word, name, symbol or any combination thereof adopted or used by a person to identify pesticides manufactured, compounded, delivered, distributed, sold or offered for sale in this state and to distinguish them from pesticides manufactured, compounded, delivered, distributed, sold or offered for sale by others.

(3) "Department" means the State Department of Agriculture.

(4) "Device" means any instrument or contrivance containing pesticides or other chemicals intended for trapping, destroying, repelling or mitigating insects or rodents or destroying, repelling or mitigating fungi, nematodes or such other pests as may be designated by the department, but does not include equipment used for the application of pesticides or other chemicals when sold separately from such pesticides or chemicals.

[(5) “Private applicator” means a person who uses or supervises the use of any pesticide, classified by the department as a restricted-use or highly toxic pesticide, for the purpose of producing agricultural commodities or forest crops on land owned or leased by the person.]

[(6)] (5) “Highly toxic” means a pesticide or device determined by the department to be capable of causing severe injury, disease or death to human beings.

[(7)] (6) “Landowner” means a person:

(a) Owning three acres or more within a proposed protected area; and

(b) In the case of multiple ownership of land[, *the owner is only a person*]:

(A) Whose interest is greater than an undivided one-half interest [*therein*] **in the land**; or

(B) Who holds an authorization in writing from one or more of the other owners whose interest, when added to the interest of the person, are greater than an undivided one-half interest in the land.

(7) “Person” means:

(a) A person as defined in ORS 174.100;

(b) A public body as defined in ORS 174.109; and

(c) The federal government or any of its agencies.

(8) “Pesticide” includes:

(a) “Defoliant” which means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant with or without causing abscission;

(b) “Desiccant” which means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue;

(c) “Fungicide” which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any fungus;

(d) “Herbicide” which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed;

(e) “Insecticide” which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any insects which may be present in any environment whatsoever;

(f) “Nematocide” which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating nematodes;

(g) “Plant regulator” which means any substance or mixture of substances intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation or to otherwise alter the behavior of ornamental or crop plants or the produce thereof, but [*shall*] **does** not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants or soil amendments; or

(h) Any substance, or mixture of substances intended to be used for defoliating plants or for preventing, destroying, repelling or mitigating all insects, plant fungi, weeds, rodents, predatory animals or any other form of plant or animal life which is, or which the department [*may declare*] **declares** to be a pest, which may infest or be detrimental to vegetation, humans, animals, or be present in any environment thereof.

(9) “Pesticide applicator” or “applicator” means [*a person*] **an individual** who:

(a) Is spraying or applying pesticides for others;

(b) Is authorized to work for and is employed by a pesticide operator; and

(c) Is in direct charge of or supervises the spraying or **other** application of pesticides or operates, uses, drives or physically directs propulsion of equipment, apparatus or machinery **during the spraying or other application of pesticides**, either on the ground or, **if certified under section 3 of this 2015 Act**, by aircraft [*in such activity*].

(10) “Pesticide consultant” means a person[, *including governmental employees,*] who offers or supplies technical advice, supervision, aid or recommendations to the user of pesticides classified by the department as restricted-use or highly toxic pesticides, whether licensed as a pesticide dealer or not.

(11) “Pesticide dealer” means a person who sells, offers for sale, handles, displays or distributes any pesticide classified by the department as a restricted-use or highly toxic pesticide.

(12) "Pesticide equipment" means any equipment, machinery or device used in the actual application of pesticides, including aircraft and ground spraying equipment.

(13) "Pesticide operator" means a person who owns or operates a business engaged in the application of pesticides upon the land or property of another.

(14) "Pesticide trainee" means *[a person]* **an individual** who:

(a) Is employed by a pesticide operator; and

(b) Is working and engaged in a training program under special certificate to qualify as a pesticide applicator.

(15) "Private applicator" means an individual who uses or supervises the use of any pesticide, classified by the department as a restricted-use or highly toxic pesticide, for the purpose of producing agricultural commodities or forest crops on land owned or leased by the individual or the employer of the individual.

[(15)] **(16) "Professed standard of quality" means a plain and true statement of the name and percentage of each active ingredient and the total percentage of all inert ingredients contained in any pesticide.**

[(16)] **(17) "Protected area" means an area established under the provisions of this chapter to prohibit or restrict the application of pesticides.**

[(17)] **(18) "Public applicator" means *[a person]* an individual who is an employee of the State of Oregon or its agencies, counties, cities, municipal corporations, other governmental bodies or subdivisions thereof, irrigation districts, drainage districts and public utilities and telecommunications utilities and who performs or carries out the work, duties or responsibilities of a pesticide applicator.**

[(18)] **(19) "Public trainee" means *[a person]* an individual who is an employee of the State of Oregon or its agencies, counties, cities, municipal corporations, other governmental bodies or subdivisions thereof, irrigation districts, drainage districts and public utilities and telecommunications utility and who performs or carries out the work, duties or responsibilities of a pesticide trainee.**

[(19)] **(20) "Registrant" means a person registering any pesticide pursuant to this chapter.**

[(20)] **(21) "Restricted area" means an area established under the provisions of this chapter to restrict, but not prohibit, the application of pesticides.**

[(21)] **(22) "Restricted-use pesticide" means any pesticide or device *[which]* that the department has found and determined to be so injurious or detrimental to *[persons]* humans, pollinating insects, bees, animals, crops, wildlife, land or environment, other than the pests it is intended to prevent, destroy, control or mitigate, that additional restrictions are required.**

[(22)] **(23) "Weed" means any plant *[which]* that grows where not wanted.**

SECTION 13. ORS 634.172 is amended to read:

634.172. (1) No action against a landowner, person for whom the pesticide was applied or pesticide operator arising out of the use or application of any pesticide shall be commenced unless, within 60 days from the occurrence of the loss, within 60 days from the date the loss is discovered, or, if the loss is alleged to have occurred out of damage to growing crops, before the time when 50 percent of the crop is harvested, the person commencing the action:

(a) Files a report of the alleged loss with the State Department of Agriculture;

(b) Mails or personally delivers to the landowner or pesticide operator who is allegedly responsible for the loss a true copy of the report provided for under paragraph (a) of this subsection; and

(c) Mails or personally delivers to the person for whom the pesticide was applied a true copy of the report required under paragraph (a) of this subsection if that person is not the person commencing the action.

(2) Any person who claims to have sustained any loss arising out of the use or application of any pesticide by any state agency, county or municipality may file a report of loss with the department, and mail or personally deliver a true copy of such report of loss to the state agency, county or municipality allegedly responsible, within the time provided in subsection (1) of this section.

(3) Upon receiving a report of loss as provided by this section:

(a) The department may investigate, examine and determine the extent and nature of the damage alleged to have been caused to property or crops. The department shall not determine the source of the damage, the person who may have caused the damage or the financial extent of the loss or damage. The department shall prepare and file in its office a report of the investigation, examination and determination. Copies of the report made by the department may be given upon request to persons who are financially interested in the matter.

(b) The department at the request of, and without cost to, any persons financially interested in the matter may undertake to mediate an equitable settlement of the controversy.

(4) Upon receiving a request [therefor] from any person, other than a person who may file a report of loss as provided by subsection (1) or (2) of this section, the department may investigate, examine and determine the extent and nature of damage alleged to have been caused to property or crops arising out of the use or application of any pesticide by any other person[or any state agency, county or municipality], provided that the person making such request reimburses the department for its work. The department shall not determine the source of the damage, the person who may have caused the damage or the financial extent of the loss or damage. The department shall prepare and file in its office a report of the investigation, examination and determination. Copies of the report made by the department may be given upon request to persons who are financially interested in the matter.

(5) Nothing in this section shall be construed as a waiver by the State of Oregon or any state agency, county or municipality of any immunity against suit [which] **that** otherwise may exist.

(6) Notwithstanding ORS 634.006 [(7)], as used in this section, "landowner" includes any person[, firm, corporation, the state, any county within the state, or municipality,] shown by records of the county to be the owner of land or having such land under contract for purchase.

PESTICIDE ANALYTICAL AND RESPONSE CENTER

SECTION 14. ORS 634.550 is amended to read:

634.550. (1) There is created a Pesticide Analytical and Response Center with a governing board consisting of the following members:

(a) The Director of Agriculture or designee.

(b) The State Forester or designee.

(c) The State Fish and Wildlife Director or designee.

(d) The Director of the Department of Environmental Quality or designee.

(e) The Director of the Oregon Health Authority or designee.

(f) The Administrator of the Occupational Safety and Health Division or designee.

(g) The State Fire Marshal or designee.

(h) The Director of the Poison Control and Drug Information Program of the Oregon Health and Science University or designee.

(i) One citizen from the state at large appointed jointly by the Director of Agriculture and the Director of the Oregon Health Authority.

(2) The Director of Agriculture shall appoint an administrator for the Pesticide Analytical and Response Center, who shall be responsible to the board for performance of the duties of the center and the board.

(3) The Director of Agriculture or designee and the Director of the Oregon Health Authority or designee shall alternate as chairperson of the board for terms of one year each. When one is serving as chairperson, the other shall serve as vice chairperson.

(4) The board shall seek expert consultation from the extension service toxicology program, the Oregon Institute of Occupational Health Sciences and such other sources as may be needed.

(5) The functions of the board are to:

(a) Direct the activities and priorities of the administrator of the center.

(b) Centralize receiving of information relating to actual or alleged health and environmental incidents involving pesticides.

(c) Mobilize expertise necessary for timely and accurate investigation of pesticide incidents and analyses of associated samples.

(d) Identify trends and patterns of problems related to pesticide use.

(e) Make recommendations for action to a state agency when a majority of the board considers that such action may be warranted on the basis of the findings of an incident investigation or on the basis of identification of a trend or pattern of problems. Recommended actions may include, but not be limited to, regulatory action, modification of administrative rules, proposal of new legislation, public education and consultation to industry.

(f) Develop standard operating procedures for implementation by the public entities represented on the board to coordinate the receipt of, and response to, pesticide-related complaints indicating possible health or environmental effects.

(g) Report biennially to the Legislative Assembly, or to an interim committee dealing with natural resource issues, regarding activities during the reporting period by the board and by public entities represented on the board regarding the development, implementation, amendment or operation of standard operating procedures described in paragraph (f) of this subsection.

[(f)] **(h)** Report in a standardized format the results of the investigations of pesticide incidents.

[(g)] **(i)** Establish by consensus, procedures for carrying out its responsibilities within the limits of available resources.

[(h)] **(j)** Prepare and submit to each odd-numbered year regular session of the Legislative Assembly a report of the activities of the center that includes a record of recommendations made by the board and the actions resulting from the board's work.

(6) Upon receipt of a recommendation from the board, a state agency shall respond in a timely manner to inform the board of actions taken or the reasons for taking no action on the recommendation.

(7) Any medical information received by a member of the board or by a staff member of the center in the course of carrying out the duties of the center or the board shall be held confidential as provided in ORS 192.553 to 192.581 and 433.008.

(8) The functions of the board do not supersede the regulatory authority of any agency and are not in lieu of the regulatory authority of any agency.

PESTICIDE INCIDENT REPORTING

SECTION 15. (1) The State Department of Agriculture, in consultation with the Pesticide Analytical and Response Center, shall establish a pesticide incident telephone line for receiving, and facilitating the coordination of public entities' responses to, pesticide-related complaints by the public indicating possible health or environmental effects.

(2) The center shall develop and maintain standard operating procedures for use with the telephone line. The department, in consultation with the center and other affected public entities, shall periodically update the telephone line operating procedures to comply with any new standard operating procedures developed by the center.

SECTION 16. The State Department of Agriculture shall report biennially to the Legislative Assembly regarding the operation of the pesticide incident telephone line required under section 15 of this 2015 Act. The report may include, but need not be limited to, any recommendations of the department or the Pesticide Analytical and Response Center for legislation regarding the telephone line.

PESTICIDE INFORMATION

SECTION 17. The State Department of Agriculture shall post information regarding pesticides on a department website that is available for access by the public without charge. The department shall indicate on the website those pesticides and devices that the department has listed under ORS 634.316 as highly toxic or restricted-use pesticides or devices.

PESTICIDE REGISTRATION FEES

SECTION 18. ORS 634.016 is amended to read:

634.016. (1) Every pesticide, including each formula or formulation, manufactured, compounded, delivered, distributed, sold, offered or exposed for sale in this state shall be registered each year with the State Department of Agriculture.

(2) Every device manufactured, delivered, distributed, sold, offered or exposed for sale in this state shall be registered each year with the department.

(3) The registration shall be made by the manufacturer or a distributor of the pesticide.

(4) The application for registration shall include:

(a) The name and address of the registrant.

(b) The name and address of the manufacturer if different than the registrant.

(c) The brand name or trademark of the pesticide.

(d) A specimen or facsimile of the label of each pesticide, and each formula or formulation, for which registration is sought, except for annual renewals of the registration when the label remains unchanged.

(e) The correct name and total percentage of each active ingredient.

(f) The total percentage of inert ingredients.

(5) The application for registration shall be accompanied by a registration fee to be established by the department for each pesticide and each formula or formulation. The registration fee may not exceed [~~\$250~~] **\$400** for each such pesticide, or each formula or formulation.

(6) The department, at the time of application for registration of any pesticide or after a declaration of a ground water management area under ORS 468B.180 may:

(a) Restrict or limit the manufacture, delivery, distribution, sale or use of any pesticide in this state.

(b) Refuse to register any pesticide [*which*] **that** is highly toxic for which there is no effective antidote under the conditions of use for which such pesticide is intended or recommended.

(c) Refuse to register any pesticide for use on a crop for which no finite tolerances for residues of such pesticide have been established by either the department or the federal government.

(d) In restricting the purposes for which pesticides may be manufactured, delivered, distributed, sold or used, or in refusing to register any pesticide, give consideration to:

(A) The damage to health or life of humans or animals, or detriment to the environment, [*which*] **that** might result from the distribution and use of such pesticide.

(B) Authoritative findings and recommendations of agencies of the federal government and of any advisory committee or group established under ORS 634.306 (10).

(C) The existence of an effective antidote under known conditions of use for which the material is intended or recommended.

(D) Residual or delayed toxicity of the material.

(E) The extent to which a pesticide or its carrying agent simulates by appearance and may be mistaken for human food or animal feed.

(7) The provisions of this section shall not, except as provided herein, apply to:

(a) The use and purchase of pesticides by the federal government or its agencies.

(b) The sale or exchange of pesticides between manufacturers and distributors.

(c) Drugs, chemicals or other preparations sold or intended for medicinal or toilet purposes or for use in the arts or sciences.

(d) Common carriers, contract carriers or public warehousemen delivering or storing pesticides, except as provided in ORS 634.322.

RETESTING OF VIOLATORS

SECTION 19. If an individual holding a license, certificate or other authorization issued under this chapter commits or has responsibility for a violation of this chapter related to the spraying or other application of a pesticide, or for a violation of a State Department of Agriculture rule related to those applications, and the department in its discretion deems that the violation indicates an inadequate knowledge of the laws and rules applicable to pesticides, in addition to any other available penalty or sanction:

(1) The department may require that the individual retake any examination required for issuance of a license, certificate or other authorization that the individual holds or is required to hold for activities related to pesticides; and

(2) If the individual fails an examination required by the department under subsection (1) of this section, the department may suspend, revoke or refuse to renew the license, certificate or other authorization of the individual. A suspension, revocation or refusal to renew under this subsection is subject to ORS chapter 183.

ZONES

SECTION 20. Section 21 of this 2015 Act is added to and made a part of ORS 527.610 to 527.770.

SECTION 21. When a forest operation involves applying herbicides by aircraft near an inhabited dwelling or school, the operator is responsible for leaving an unsprayed strip of at least 60 feet adjacent to the dwelling or school. The responsibility of the operator under this section is in addition to any responsibility of the aerial pesticide applicator under ORS chapter 634.

SECTION 22. ORS 527.990 is amended to read:

527.990. (1) Subject to ORS 153.022, violation of ORS 527.670, 527.676, 527.740, 527.750 or 527.755 or section 21 of this 2015 Act, or any rule promulgated under ORS 527.710 is a Class A misdemeanor. Each day of operation in violation of an order issued under ORS 527.680 (3) shall be deemed to be a separate offense.

(2) Violation of ORS 527.260 (1) is a Class A misdemeanor. Violation of ORS 527.260 (3) is a Class C misdemeanor.

SECTION 23. ORS 527.992 is amended to read:

527.992. (1) In addition to any other penalty provided by law, any person who fails to comply with any of the following may incur a civil penalty in the amount adopted under ORS 527.685:

(a) The requirements of ORS 527.670, 527.676, 527.740, 527.750 or 527.755 or section 21 of this 2015 Act.

(b) The terms or conditions of any order of the State Forester issued in accordance with ORS 527.680.

(c) Any rule or standard of the State Board of Forestry adopted or issued pursuant to ORS 527.710.

(d) Any term or condition of a written waiver, or prior approval granted by the State Forester pursuant to the rules adopted under ORS 527.710.

(2) Imposition or payment of a civil penalty under this section shall not be a bar to actions alleging trespass under ORS 105.810, nor to actions under ORS 161.635 or 161.655 seeking to recover an amount based on the gain resulting from individual or corporate criminal violations.

OPERATIVE DATES AND APPLICABILITY

SECTION 24. (1) Sections 3, 9, 10, 15 to 17, 19 and 21 of this 2015 Act and the amendments to ORS 527.990, 527.992, 634.006, 634.016, 634.116, 634.126, 634.172, 634.306, 634.550 and 634.900 by sections 5 to 8, 11 to 14, 18, 22 and 23 of this 2015 Act become operative January 1, 2016.

(2) The amendments to section 3 of this 2015 Act by section 4 of this 2015 Act become operative January 1, 2017.

(3) The amendments to ORS 634.900 by section 11 of this 2015 Act apply to violations committed on or after January 1, 2016.

(4) Section 26 of this 2015 Act becomes operative July 1, 2015.

REPEALS

SECTION 25. Section 9 of this 2015 Act is repealed January 2, 2017.

EXPENDITURES

SECTION 26. Notwithstanding any other law limiting expenditures, the limitation on expenditures for purposes of natural resources established by section 2, chapter __, Oregon Laws 2015 (Enrolled House Bill 5002), for the biennium beginning July 1, 2015, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, and including federal funds for contract services, but excluding lottery funds and federal funds not described in section 2, chapter __, Oregon Laws 2015 (Enrolled House Bill 5002), collected or received by the State Department of Agriculture, is increased by \$255,000 for the purpose of carrying out the duties, functions and powers of the department under ORS chapter 634 set forth in this 2015 Act.

CAPTIONS

SECTION 27. The unit captions used in this 2015 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2015 Act.

EMERGENCY

SECTION 28. This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.

Passed by House July 1, 2015

.....
Timothy G. Sekerak, Chief Clerk of House

.....
Tina Kotek, Speaker of House

Passed by Senate July 2, 2015

.....
Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2015

Approved:

.....M,....., 2015

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2015

.....
Jeanne P. Atkins, Secretary of State