

# House Bill 2972

Sponsored by COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Removes sunset on pesticide use reporting system. Removes sunset on partial use of pesticide, formula and formulation registration fee to fund pesticide use reporting system. Continues State Department of Agriculture duty to report to Legislative Assembly regarding pesticide use reporting system.

## A BILL FOR AN ACT

1  
2 Relating to pesticide use reporting system; amending ORS 634.016, 634.306 and 634.372 and sections  
3 15, 19 and 21, chapter 1059, Oregon Laws 1999; and repealing section 22, chapter 1059, Oregon  
4 Laws 1999.

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

6 **SECTION 1.** Section 15, chapter 1059, Oregon Laws 1999, as amended by section 3, chapter 743,  
7 Oregon Laws 2005, is amended to read:

8 **Sec. 15.** [*Notwithstanding the maximum registration fee established under ORS 634.016 (5), for the*  
9 *years beginning January 1, 2002, and ending December 31, 2009:*]

10 [(1) *The registration fee may not exceed \$160 for each pesticide, formula or formulation; and*]

11 [(2)] Up to \$40 [*in*] **of the registration [fees] fee assessed under ORS 634.016** for each pesticide,  
12 formula or formulation may be used by the **State Department of Agriculture** for the implementation  
13 **and operation** of the pesticide use reporting system **described** under sections 2 to 9, chapter 1059,  
14 Oregon Laws 1999, [*as long as*] **if** the Legislative Assembly appropriates an equivalent amount of  
15 moneys from the General Fund for the system.

16 **SECTION 2.** Section 21, chapter 1059, Oregon Laws 1999, is amended to read:

17 **Sec. 21.** The State Department of Agriculture shall report **biennially** to the [*Seventy-second*  
18 *Legislative Assembly and to the Seventy-third*] Legislative Assembly on the implementation and op-  
19 eration of the pesticide use reporting system under sections 2 to 9, **chapter 1059, Oregon Laws**  
20 **1999** [*of this 1999 Act*]. The report shall include any recommendations to improve the effectiveness  
21 or efficiency of the system in order to achieve the purposes of sections 2 to 9, **chapter 1059, Oregon**  
22 **Laws 1999** [*of this 1999 Act*].

23 **SECTION 3. Section 22, chapter 1059, Oregon Laws 1999, is repealed.**

24 **SECTION 4.** ORS 634.016 is amended to read:

25 634.016. (1) Every pesticide, including each formula or formulation, manufactured, compounded,  
26 delivered, distributed, sold, offered or exposed for sale in this state shall be registered each year  
27 with the State Department of Agriculture.

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

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

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.  
New sections are in **boldfaced** type.

1 (4) The application for registration shall include:

2 (a) The name and address of the registrant.

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

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

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

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

9 (f) The total percentage of inert ingredients.

10 (5) The application for registration shall be accompanied by a registration fee to be established  
11 by the department for each pesticide, and each formula or formulation, [*which shall*] not **to** exceed  
12 [*\$120*] **\$160** for each [*such*] pesticide, or each formula or formulation.

13 (6) The department, at the time of application for registration of any pesticide or after a decla-  
14 ration of a ground water management area under ORS 468.698 may:

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

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

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

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

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

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

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

29 (D) Residual or delayed toxicity of the material.

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

32 (7) The provisions of this section [*shall*] **do** not, except as provided herein, apply to:

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

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

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

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

39 **SECTION 5.** ORS 634.306, as amended by section 17, chapter 1059, Oregon Laws 1999, is  
40 amended to read:

41 634.306. In accordance with the provisions of ORS chapter 183, the State Department of Agri-  
42 culture is authorized to promulgate regulations necessary to carry out the purposes and intent of  
43 this chapter, including but not limited to the following:

44 (1) Establish and maintain a program required for a person to work or engage in the application  
45 or spraying of pesticides as a pesticide trainee. In this regard, the department may take into con-

1 sideration:

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

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

4 (c) Work performance records or reports to be maintained by pesticide trainees or their em-  
5 ployers.

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

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

11 (f) Laws and requirements relating to other professional, trade or industry trainee or appren-  
12 ticeship programs in this or other states.

13 (g) Special requirements if the pesticide trainee is to apply pesticides by the use of aircraft, and  
14 the advisability of allowing participation in federal flight training programs to be substituted, all  
15 or in part, for training requirements under this chapter.

16 (2) Establish and maintain classifications of the various pesticides and of the various pest con-  
17 trol or pesticide application businesses in order to facilitate the licensing or certification and regu-  
18 lation of pesticide consultants, operators, applicators, private applicators and trainees. In this regard  
19 the department may take into consideration:

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

21 (b) Various methods of application of [*such*] **those** pesticides.

22 (c) Precautions required for safe and effective application of [*such*] **those** pesticides.

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

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

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

31 (b) Laws and regulations of other states.

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

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

37 (6) Designate the conditions under which pesticide operators spraying by aircraft may reduce,  
38 suspend or terminate the liability insurance required by ORS 634.116, and the periods of time  
39 therefor. In this regard, the department may take into consideration:

40 (a) Changes in climate or seasons.

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

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

43 (d) Possibilities of injury or death to persons and loss or damage to real or personal property.

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

1 (8) Establish and maintain programs of instruction or educational courses for pesticide consult-  
 2 ants, operators, applicators and private applicators in cooperation with Oregon State University or  
 3 others, wherein, as far as is practicable, provisions are made so as to allow [such] **the** pesticide  
 4 operators and applicators to participate only in the instruction or courses directly or indirectly re-  
 5 lated to their particular activities. Attendance of licensees may be required.

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

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

13 (11) Establish registration fees for pesticide brands and formulae or formulations thereunder.

14 (12) Establish restrictions or prohibitions as to the form of pesticides allowed to be mixed, ap-  
 15 plied or added to fertilizers, seed or grains.

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

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

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

24 (b) Minimum periods of experience required and types of experience, education or work accept-  
 25 able.

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

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

31 **SECTION 6.** ORS 634.372, as amended by section 18, chapter 1059, Oregon Laws 1999, and  
 32 section 4, chapter 307, Oregon Laws 2001, is amended to read:

33 634.372. A person may not:

34 (1) Make false or misleading claims through any media, relating to the effect of pesticides or  
 35 application methods to be utilized.

36 (2) As a pesticide applicator or operator, intentionally or willfully apply or use a worthless  
 37 pesticide or any pesticide inconsistent with its labeling, or as a pesticide consultant or dealer, re-  
 38 commend or distribute such pesticides.

39 (3) Operate a faulty or unsafe pesticide spray apparatus, aircraft or other application device or  
 40 equipment.

41 (4) Perform pesticide application activities in a faulty, careless or negligent manner.

42 (5) Refuse or neglect to prepare and maintain records required to be kept by the provisions of  
 43 this chapter.

44 (6) Make false, misleading or fraudulent records, reports or application forms required by the  
 45 provisions of this chapter.

1 (7) Operate pesticide applicators' apparatus, machinery or equipment without a licensed pesti-  
2 cide applicator or certified private applicator performing the actual application, or supervising  
3 [such] **the** application if [such] **the application** is performed by a pesticide trainee. This prohibition  
4 does not apply to the operation of tractors, trucks or other vehicular equipment used only under the  
5 supervision of a certified private applicator.

6 (8) As a pesticide applicator, work or engage in the application of any classes of pesticides  
7 without first obtaining and maintaining a pesticide applicator's license, or apply pesticides that are  
8 not specifically authorized by [such] **the** license.

9 (9) As a pesticide operator, engage in the business of, or represent or advertise as being in the  
10 business of, applying pesticides upon the land or property of another, without first obtaining and  
11 maintaining a pesticide operator's license. The operator also may not engage in a class of pesticide  
12 application business that is not specifically authorized by license issued by the State Department  
13 of Agriculture. The operator also may not employ or use any person to apply or spray pesticides  
14 who is not a licensed pesticide applicator or pesticide trainee.

15 (10) As a pesticide trainee, work or engage in the application of any class of pesticides without  
16 first obtaining and maintaining a pesticide trainee's certificate and is otherwise in compliance with  
17 the provisions of this chapter.

18 (11) Act as, or purport to be, a pesticide dealer or advertise as [such] **a pesticide dealer** without  
19 first obtaining and maintaining a pesticide dealer's license.

20 (12) Act as, or purport to be, a pesticide consultant without first obtaining and maintaining a  
21 pesticide consultant's license.

22 (13) Apply any pesticide classified as a restricted-use or highly toxic pesticide to agricultural,  
23 horticultural or forest crops on land owned or leased by the person without first obtaining and  
24 maintaining a private applicator certificate.

25 (14) As a person described in ORS 634.106 (5), use power-driven pesticide application equipment  
26 or devices (use hand or backpack types only), or use or apply any pesticide other than those pre-  
27 scribed by the department.

28 (15) Deliver, distribute, sell or offer for sale any pesticide that is misbranded.

29 (16) Formulate, deliver, distribute, sell or offer for sale any pesticide that is adulterated.

30 (17) Formulate, deliver, distribute, sell or offer for sale any pesticide that has not been regis-  
31 tered as required by ORS 634.016.

32 (18) Formulate, deliver, distribute, sell or offer for sale any powdered pesticide containing  
33 arsenic or any highly toxic fluoride that is not distinctly colored.

34 (19) Distribute, sell or offer for sale any pesticide except in the manufacturer's original unbroke-  
35 n package.

36 (20) Make application of pesticides, by aircraft or otherwise, within a protected or restricted  
37 area without first obtaining a permit for [such] **the** application from the committee of the protected  
38 or restricted area in which the application is to be made. The person also may not make [such] **the**  
39 application contrary to the conditions or terms of the permit so issued.

40 (21) Use isopropyl ester of 2,4-D, or any other ester of equal or higher volatility with regard to  
41 plant damage as determined by the department, without first obtaining a permit for [such] **that** use  
42 as provided in ORS 634.322 (10).

43 (22) Sell, use or remove any pesticide or device subjected to a "stop sale, use or removal" order  
44 until the pesticide or device has been released therefrom as provided in ORS 634.322 (3).

45 **(23) Fail to comply with any provision or requirement of sections 2 to 9, chapter 1059,**

1 **Oregon Laws 1999, or rules adopted thereunder.**

2 **SECTION 7.** Section 19, chapter 1059, Oregon Laws 1999, is amended to read:

3 **Sec. 19.** The amendments to ORS [192.502,] 634.306 and 634.372 by sections [16,] 17 and 18,  
4 **chapter 1059, Oregon Laws 1999,** [*of this 1999 Act*] become operative on [*December 31, 2009*] **the**  
5 **effective date of this 2007 Act.**

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