

House Bill 2212

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for State Department of Agriculture)

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**.

Broadens statutes currently applicable to tansy ragwort to include all noxious weeds. Repeals statutes regarding ragweed.

Revises quarantine authority of State Department of Agriculture.

Authorizes department to adopt rules for nonquarantine regulation of plant pests. Makes violation of rule subject to civil penalty, not to exceed \$10,000.

Authorizes department to conduct research for control of plant pests. Prohibits possession or movement of plant pests except in compliance with federal or state permit. Makes violation subject to fine not to exceed \$720 and civil penalty not to exceed \$10,000.

Declares plant pests to be public nuisance. Authorizes department to issue orders or adopt rules to abate public nuisance caused by plant pests. Makes violation of order or rule for abating nuisance subject to civil penalty not to exceed \$10,000.

A BILL FOR AN ACT

1
2 Relating to State Department of Agriculture control methods; creating new provisions; amending
3 ORS 195.308, 452.610, 452.615, 452.620, 452.625, 452.630, 452.990, 561.510, 561.560, 561.680, 561.990,
4 570.705, 570.990, 570.995, 571.063, 571.145, 634.212, 634.216, 634.232 and 634.236; repealing ORS
5 452.510, 452.520, 452.530, 452.540, 452.550, 452.560, 452.570, 452.580, 452.590, 561.520, 561.530,
6 561.550, 570.005, 570.196, 570.200, 570.370, 570.375, 570.407, 570.500 and 571.035; and appropriat-
7 ing money.

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

9 **SECTION 1. Section 2 of this 2009 Act is added to and made a part of ORS chapter 561.**

10 **SECTION 2. The State Department of Agriculture may preapprove and issue permits for**
11 **shipments of articles that are subject to a quarantine if the department finds that the arti-**
12 **cles are subject to appropriate mitigation tactics or strategies that can be enforced at the**
13 **point of origin for the shipment. The department may also permit and preapprove articles**
14 **that are subject to department control methods adopted by rule under section 5 of this 2009**
15 **Act or to product grades, standards or classifications adopted by the department under ORS**
16 **632.900 to 632.940, if the department finds that the articles are subject to appropriate in-**
17 **spection programs at the point of origin for the shipment.**

18 **SECTION 3. (1) Notwithstanding any other provision of law, ORS 452.610, 452.615, 452.620,**
19 **452.625 and 452.630 shall not be considered to have been added to or made a part of ORS**
20 **chapter 452 for the purpose of statutory compilation or for the application of definitions,**
21 **penalties or administrative provisions applicable to statute sections in that chapter.**

22 **(2) Notwithstanding any other provision of law, ORS 561.650, 561.660, 561.670 and 561.680**
23 **shall not be considered to have been added to or made a part of ORS chapter 561 for the**
24 **purpose of statutory compilation or for the application of definitions, penalties or adminis-**
25 **trative provisions applicable to statute sections in that chapter.**

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 (3) Notwithstanding any other provisions of law, ORS 570.505, 570.510 and 570.515 to
 2 570.600 shall not be considered to have been added to or made a part of ORS chapter 570 for
 3 the purpose of statutory compilation or for the application of definitions, penalties or ad-
 4 ministrative provisions applicable to statute sections in that chapter.

5 **SECTION 4.** As used in sections 5 to 8 of this 2009 Act, “plant pest” means:

6 (1) A disease, microscopic organism, insect, nematode, arthropod, parasite or weed, ca-
 7 pable of having a significant adverse effect on the environmental quality of the state or of
 8 causing a significant level of economic damage in this state, including but not limited to
 9 damage to agricultural, horticultural or forest plants, crops, commodities or products; and

10 (2) Any biotic agent identified in an order or rule of the State Department of Agriculture
 11 as capable of having a significant adverse effect on the environmental quality of the state,
 12 or of causing a significant level of economic damage in this state, including but not limited
 13 to damage to agricultural, horticultural or forest plants, crops, commodities or products.

14 **SECTION 5.** The State Department of Agriculture may adopt rules requiring the use of
 15 measures to control the spread of a specific plant pest that is not the subject of a quarantine
 16 if:

17 (1) The department believes that failure to control the plant pest will have an identifiable
 18 effect on plants, with a resulting unacceptable level of economic impact in the state; and

19 (2) The measures required by the department are of a type proven effective to achieve
 20 the control levels determined by the department for the plant pest.

21 **SECTION 6.** (1) A person may not possess or move a plant pest within this state unless
 22 the person possesses:

23 (a) A plant protection and quarantine permit issued by the United States Department of
 24 Agriculture’s Animal and Plant Health Inspection Service, or by a successor to that service,
 25 authorizing the possession or movement; or

26 (b) A State Department of Agriculture permit authorizing the possession or movement.

27 (2) The State Department of Agriculture may not issue a permit to possess or move a
 28 plant pest unless the department determines that the proposed possession or movement will
 29 not create a hazard to agricultural, forest or horticultural interests within the state or to
 30 the environmental quality of the state.

31 (3) If the department issues a permit to move a plant pest, the permittee must ensure
 32 that a copy of the permit is affixed to or accompanies the shipping container, box, package
 33 or other receptacle containing the plant pest. The department may adopt rules governing the
 34 attachment or accompaniment.

35 **SECTION 7.** The State Department of Agriculture may conduct research to prevent the
 36 introduction or spread of plant pests into or within the state. The department may conduct
 37 the research independently or as part of a cooperative effort involving other entities. The
 38 research may include, but need not be limited to, researching the feasibility of controlling
 39 or eradicating plant pests.

40 **SECTION 8.** (1) The Legislative Assembly finds and declares that:

41 (a) A plant pest, other than a plant pest possessed or moved in compliance with a permit
 42 described in section 6 of this 2009 Act, is a public nuisance.

43 (b) A plant, crop or agricultural, horticultural or forest commodity or product, that is
 44 infested with or harbors a plant pest is a public nuisance.

45 (2) The State Department of Agriculture may abate a public nuisance described in sub-

1 section (1) of this section by using the public nuisance abatement processes described in ORS
 2 570.170 and 570.180.

3 (3) The State Department of Agriculture is not required to compensate a person for any
 4 loss incurred from the abatement of a public nuisance under this section or ORS 570.170 or
 5 570.180, including but not limited to:

6 (a) The loss of any economic or noneconomic value the public nuisance may have had;

7 (b) The costs of measures to control or eradicate the public nuisance;

8 (c) Any loss from the destruction of, or damage to, a plant, crop, or agricultural,
 9 horticultural or forest commodity or product that is in whole or in part infested with or
 10 harboring a plant pest;

11 (d) Any loss of use or capacity of an orchard, nursery, packing house, storeroom,
 12 salesroom or other article, place or thing that is in whole or in part infested with or har-
 13 boring a public nuisance described in this section or ORS 570.170; or

14 (e) Incidental damages to property reasonably resulting from the abatement process.

15 **SECTION 9.** (1) Violation of a provision of ORS 452.610 to 452.630 or a rule adopted under
 16 ORS 452.610 to 452.630 is a Class B violation.

17 (2) Violation of a provision of ORS 561.605 to 561.630 is a Class D violation.

18 (3) Violation of a provision of ORS 570.515 to 570.600 or section 6 of this 2009 Act is a
 19 Class A violation.

20 **SECTION 10.** (1) In addition to any applicable fine under section 9 of this 2009 Act or
 21 other penalty, a person is subject to imposition by the State Department of Agriculture of
 22 a civil penalty, not to exceed \$10,000, if the person:

23 (a) Violates a rule adopted under section 5 of this 2009 Act; or

24 (b) Violates the conditions of a permit described in section 6 of this 2009 Act.

25 (2) Each violation of a rule adopted under section 5 of this 2009 Act or of a condition of
 26 a permit described in section 6 of this 2009 Act is a separate offense subject to a separate
 27 civil penalty.

28 (3) The department shall develop one or more schedules setting the amounts of civil
 29 penalties that may be imposed for particular types of violations.

30 (4) The imposition of a civil penalty under this section is subject to ORS 183.745.

31 (5) The State Treasurer shall deposit all moneys from penalties recovered under this
 32 section into the Department of Agriculture Account. Moneys deposited under this subsection
 33 are continuously appropriated to the State Department of Agriculture for carrying out plant
 34 pest prevention and control activities.

35 **SECTION 11.** ORS 195.308 is amended to read:

36 195.308. Notwithstanding the requirement to pay just compensation for certain land use regu-
 37 lations under ORS 195.305 (1), compensation is not due for the enforcement or enactment of a land
 38 use regulation established in ORS 30.930 to 30.947, 527.310 to 527.370, 561.685, 561.687, 561.689,
 39 561.691, 561.693, 561.695, 561.995, [570.005 to 570.600,] **570.005 to 570.055, 570.105 to 570.200, 570.305,**
 40 **570.310, 570.320 to 570.360, 570.405, 570.412, 570.420, 570.425, 570.450, 570.515 to 570.600,** 570.650,
 41 570.700 to 570.710, 570.995, 596.095, 596.100, 596.105, 596.393, 596.990 or 596.995 or in administrative
 42 rules or statewide plans implementing these statutes.

43 **SECTION 12.** ORS 452.610 is amended to read:

44 452.610. As used in ORS 452.610 to 452.630 [and 452.990 (2), unless the context requires
 45 otherwise]:

1 [(1) "Department" means the State Department of Agriculture.]

2 (1) "Noxious weed" means a terrestrial, aquatic or marine plant designated by the State
3 Weed Board under ORS 561.680 as among those representing the greatest public menace and
4 as a top priority for action by weed control programs.

5 (2) "Person" means [any individual, partnership, association, corporation] a person as defined
6 in ORS 174.100, the federal government[,], or any of its agencies, the State of Oregon[,], or any of its
7 agencies, or any city, county, district or municipal corporation of this state.

8 **SECTION 13.** ORS 452.615 is amended to read:

9 452.615. In recognition of the imminent and continuous [*menace to*] **threat to natural re-**
10 **sources, watershed health,** livestock, wildlife, land and agricultural products of this state, and in
11 recognition of the widespread infestations and potential infestations of [*tansy ragwort*] **noxious**
12 **weeds** throughout this state, [*and in exercise of the police power of this state for the protection of the*
13 *health and welfare of the people of this state, tansy ragwort (Senecio jacobaea) is*] **noxious weeds are**
14 declared to be a public nuisance and shall be detected, controlled and, where feasible, eradicated
15 on all lands in this state. [, *and in further recognition that known, effective and practical control or*
16 *eradication measures are presently unavailable and that suppression of this public nuisance is de-*
17 *pendent upon determining such measures, the State Department of Agriculture shall undertake studies,*
18 *investigations and research for the development of control or eradication methods.*] It is declared to
19 be the policy of this state that priority shall be given first to the prevention of new infestations of
20 [*tansy ragwort*] **noxious weeds** and then to the control and, **where feasible,** eradication of [*tansy*
21 *ragwort*] **noxious weeds** in infested areas.

22 **SECTION 14.** ORS 452.620 is amended to read:

23 452.620. The State Department of Agriculture shall administer and enforce [*the provisions of*]
24 ORS 452.610 to 452.630 [*and 452.990 (2), and in furtherance thereof is authorized.*]. **The department**
25 **may:**

26 (1) [*In accordance with the applicable provisions of ORS chapter 183, to*] Adopt rules to carry out
27 [*the provisions of ORS 452.610 to 452.630 and 452.990 (2)*] **ORS 452.610 to 452.630.** In [*making such*]
28 **adopting the** rules the department shall consider:

29 [(a) *The existence, availability and practicality of chemical, biological or other means for the con-*
30 *trol or eradication of tansy ragwort, and the effectiveness thereof;*]

31 [(b)] (a) The effect on the immediate environment of the use of [*such*] chemical, biological or
32 other means for control or eradication; and

33 [(c)] (b) The overall benefit to be derived compared to the costs to be incurred.

34 (2) **Implement an integrated weed management approach that includes chemical, biolog-**
35 **ical or other means for the control and eradication of noxious weeds and evaluation of the**
36 **effectiveness of the control means.**

37 [(2)] (3) [*To*] Cooperate with Oregon State University or any other person in the administration
38 and enforcement of ORS 452.610 to 452.630 [*and 452.990 (2)*].

39 [(3)] (4) [*To*] Collect, publish, disseminate and furnish information, statistics and advice con-
40 cerning the research, experimentation, control and eradication of [*tansy ragwort*] **noxious weeds**
41 and the land management and cultural practices recommended for such control and eradication.

42 [(4)] (5) Notwithstanding any provisions of ORS 279.835 to 279.855 and 561.240 and ORS chapters
43 279A, 279B and 279C to the contrary, [*to*] enter into contracts with Oregon State University or any
44 other person for the purpose of research, experimentation, control or eradication of [*tansy ragwort*]
45 **noxious weeds,** to receive and expend funds pursuant to such contracts and to employ or authorize

1 personnel to act on behalf of the department.

2 [(5)] (6) [To] Rear, propagate and release biological control agents **approved by the United**
3 **States Department of Agriculture**, including insects or disease organisms, and to construct, pur-
4 chase, maintain and operate facilities and equipment for such purpose.

5 [(6)] (7) [To] Control, or direct control of, predators and diseases of biological control agents,
6 and to limit or prohibit the movement or use of pesticides or other agriculture chemicals [*which*]
7 **that** reasonably could damage or injure such biological control agents.

8 [(7)] (8) [To] Purchase, use and apply chemical control agents, including pesticides, and [to]
9 purchase, maintain and operate any application equipment for such purpose.

10 [(8)] (9) [To] Regulate, restrict or prohibit the movement or sale of hay, **straw**, seed, other ag-
11 ricultural crops or residues thereof, [*which*] **that** are found to contain [*tansy ragwort*] **noxious**
12 **weeds** or seeds [*thereof*] **or propagules of noxious weeds**.

13 [(9)] (10) [To] Limit or prohibit the collection or taking of any biological control agents from
14 public or private lands within this state.

15 [(10)] (11) [To] Develop appropriate measures for the control or eradication of [*tansy ragwort*]
16 **noxious weeds** on any lands in this state.

17 [(11)] (12) [To] Have access to all lands within this state to carry out [*the provisions of*] ORS
18 452.610 to 452.630 [*and 452.990 (2)*], including survey, control and eradication activities and the es-
19 tablishment of quarantines [*in accordance with ORS 561.510 to 561.600*].

20 [(12)] (13) [To] Request any person owning or controlling land within this state to control, pre-
21 vent the spread of, or, when feasible, eradicate [*tansy ragwort*] **noxious weeds**, and to supervise
22 such activities.

23 [(13)] (14) To the extent funds are available for such purpose, [to] employ or use personnel of
24 other agencies of this state, including but not limited to persons acting under work-release, reha-
25 bilitation or youth programs or persons employed and paid from federal funds received under the
26 Emergency Job and Unemployment Assistance Act of 1974 (Public Law 93-567) or any other federal
27 or state program intended primarily to alleviate unemployment or to advance research.

28 [(14)] (15) [To] Establish advisory committees to assist the department **and the State Weed**
29 **Board** in carrying out [*the provisions of*] ORS 452.610 to 452.630 [*and 452.990 (2)*].

30 **SECTION 15.** ORS 452.625 is amended to read:

31 452.625. [*In addition to the authority of the State Department of Agriculture provided in ORS*
32 *452.610 to 452.630 and 452.990 (2),*] Oregon State University [*is authorized to carry out the activities*
33 *described in ORS 452.620 (3) and (5).*], **acting by itself or in cooperation with the State Depart-**
34 **ment of Agriculture, may:**

35 (1) **Collect, publish, disseminate and furnish information, statistics and advice concerning**
36 **the research, experimentation, control and eradication of noxious weeds and the land man-**
37 **agement and cultural practices recommended for such control and eradication.**

38 (2) **Rear, propagate and release biological control agents approved by the United States**
39 **Department of Agriculture, including insects or disease organisms, and construct, purchase,**
40 **maintain and operate facilities and equipment for such purpose.**

41 **SECTION 16.** ORS 452.630 is amended to read:

42 452.630. (1) No person shall fail to cooperate with the State Department of Agriculture in the
43 administration or enforcement of ORS 452.610 to 452.630 [*and 452.990 (2)*], or rules promulgated
44 pursuant thereto, nor otherwise violate any provision of ORS 452.610 to 452.630 [*and 452.990 (2)*].

45 (2) In addition to any other remedy provided by law, the department may bring suit in circuit

1 court to enjoin or restrain any person from violating any provision of ORS 452.610 to 452.630 *[and*
2 *452.990 (2)]* or any rule promulgated thereunder.

3 **SECTION 17.** ORS 452.990 is amended to read:

4 452.990. *[(1)]* Violation of ORS 452.250 is a Class C misdemeanor.

5 *[(2) Subject to ORS 153.022, failure to comply with any provision of ORS 452.610 to 452.630 and*
6 *this subsection or any rule promulgated pursuant thereto is a Class B violation.]*

7 **SECTION 18.** ORS 561.510 is amended to read:

8 561.510. *[Whenever, in the opinion of]* **(1) The Director of Agriculture may adopt rules under**
9 **ORS chapter 183 declaring a quarantine if the director believes that** any animals, fowls, bees,
10 fruits, vegetables, plants, parts of plants or seeds within any area or section are diseased or *[infected*
11 *with any infestation]* **infested with a pest, or that** any area or section is infested with *[any kind*
12 *of weed, which]* **a weed, and that the** disease, infestation or weed is *[liable]* **likely** to spread and
13 become detrimental to the plant or animal life of this state or *[is liable to injuriously affect]* **to** the
14 health of citizens of the state.*[, with reference to any of which]* **The director may declare the**
15 **quarantine for any area or section for which** the Secretary of Agriculture of the United States
16 has not determined that a quarantine is necessary and established a quarantine.*[, the director is*
17 *authorized, with the consent of the Governor, to declare a quarantine against]* **The quarantine may**
18 **prohibit:**

19 **(a)** The movement of *[any such]* **diseased or infested** animals, fowls, bees, fruits, vegetables,
20 plants, parts of plants or seeds,*[,]* **or of weeds or weed seeds;** or *[against the movement of any arti-*
21 *cles which may contain such weeds or the seeds thereof, or which may be liable to spread such disease*
22 *or infestation into the state, if such area or section be outside the boundaries of this state, or against*
23 *the movement from such area or section of such animals, bees, fowls, fruits, vegetables, plants, parts*
24 *of plants or seeds, or against the movement within the state of articles liable to spread such weeds or*
25 *weed seeds, or which may be liable to spread such disease or infestation, if such]*

26 **(b) Articles that might contain the disease, infestation, weeds or weed seeds or that**
27 **might otherwise spread the disease, infestation or weeds into the state from outside the**
28 **state or from one area or section of the state to another** area or section *[is]* within or outside
29 the state.

30 **(2) Except as provided in subsection (3) of this section, the director shall hold at least**
31 **one public hearing in this state before adopting a rule that declares a quarantine under this**
32 **section.**

33 **(3) If an emergency exists and postponement of the effective date of the quarantine would**
34 **result in serious prejudice to the public health, safety or welfare, or to the health, safety or**
35 **welfare of the affected parties, the director may make the quarantine effective immediately**
36 **as authorized by ORS 183.355 (2)(b).**

37 **SECTION 19.** ORS 561.560 is amended to read:

38 561.560. *[(1) Notwithstanding ORS chapter 183, whenever the Director of Agriculture determines*
39 *the fact that a dangerous plant, animal, fowl or bee disease or insect infestation new to, or not*
40 *theretofore widely prevalent or distributed within and throughout the state, exists in any state, territory,*
41 *country or locality outside of this state, or in any locality within this state, which disease or infestation*
42 *is of such nature that it will be impossible to follow the procedure provided for in ORS 561.510 to*
43 *561.530 without serious danger of the wide spread within the state of such disease or infestation during*
44 *the time required by such procedure, the director is authorized and directed to declare, by written or-*
45 *der, a quarantine against the movement into or within the state from such state, territory, country or*

1 *locality, of any plants, animals, fowls, bees or articles which are liable to spread such disease or*
 2 *infestation. A written order may be amended as the director determines is necessary. A written order*
 3 *and any subsequent amendments thereto shall be signed by the director.]*

4 **(1) The Director of Agriculture shall issue a written order declaring a quarantine if the**
 5 **director determines that:**

6 **(a) A disease or an infestation has a significantly adverse effect on plants, animals, fowls**
 7 **or bees;**

8 **(b) The disease or infestation is not widely prevalent or distributed within this state;**

9 **(c) The disease or infestation exists in another state, territory or country or in any lo-**
 10 **cality within this state; and**

11 **(d) Following the procedure for declaring a quarantine by rule under ORS 561.510 would**
 12 **create a serious danger of the disease or infestation spreading within the state during the**
 13 **time required by the procedure.**

14 **(2) The written order declaring the quarantine shall prohibit the movement into or within**
 15 **the state of any plants, animals, fowls, bees or articles that are likely to spread the disease**
 16 **or infestation. The director may amend the order as the director considers necessary. The**
 17 **director shall sign the written order and any amendments to the order.**

18 [(2)] **(3) The director shall file all quarantine orders and [any] amendments [thereto] to the or-**
 19 **ders** with the Secretary of State and shall publish a notice of [such] **the** quarantine and of any
 20 amendments to a quarantine order in a newspaper of general circulation throughout the state. The
 21 director [shall take such] **may take** other action [as] the director considers reasonable to [insure
 22 that persons affected by a quarantine have knowledge thereof] **ensure that the affected persons**
 23 **have knowledge of the quarantine.** [From and after the filing of] A quarantine order[,] or amend-
 24 ment [thereto,] **to an order is effective upon filing** with the Secretary of State. [it shall be unlawful
 25 for any person, firm or corporation to] **A person may not** carry, move or transport any plants, ani-
 26 mals, fowls, bees or articles specified in [a quarantine order, or amendment thereto,] **a quarantine**
 27 **order or amendment** from the quarantined area into or through any part of the state, except as
 28 provided in the order[,] or amendment[thereto]. Proofs of the publication of the notices provided for
 29 in this section shall be filed in the office of the State Department of Agriculture.

30 [(3)] **(4) [No such emergency quarantine, as provided for in this section, shall be effective for more**
 31 **than 90 days after the date of the first publication of notice thereof.] A quarantine created by a**
 32 **written order issued under this section may not remain in effect more than 180 days after**
 33 **the first publication of notice under subsection (3) of this section.** However, a quarantine for
 34 a longer period may be declared under [the provisions of] ORS 561.510 [to 561.550], to take effect at
 35 or before the expiration of [such 90-day] **the 180-day** period.

36 [(4)] **(5) The Governor by filing an order with the Secretary of State may terminate [such de-**
 37 **partment order] a quarantine ordered by the director under this section. [Thereafter and relating**
 38 **only to that particular subject matter and emergency, the department shall be required to] If the**
 39 **Governor terminates a quarantine under this subsection, the director must** obtain the ap-
 40 proval of the Governor before **issuing** any additional quarantine or amendments [thereto are
 41 issued] under this [statute] **section for the same disease or infestation.**

42 **SECTION 20.** ORS 561.680 is amended to read:

43 561.680. The State Weed Board shall:

44 (1) Act in conjunction with the State Department of Agriculture to identify those weeds growing
 45 in this state that represent the greatest public menace and establish those weeds as the top priority

1 for action by weed control programs in this state.

2 (2) Assist the Director of Agriculture in allocating moneys made available to the State Depart-
 3 ment of Agriculture for the payment of weed control expenses to weed control programs conducted
 4 in the various counties on the basis of the plan implemented under ORS 561.683.

5 (3) Help the department to coordinate the weed control program efforts of the various counties
 6 and advise the director in performing weed control duties, functions and powers assigned to the
 7 State Department of Agriculture [*pursuant to ORS chapter 570 or any other provision of law*].

8 **SECTION 21.** ORS 561.990 is amended to read:

9 561.990. (1) Violation of ORS 561.170 is a Class C violation.

10 (2) Violation of ORS 561.200 is punishable, upon conviction, by a fine of not to exceed \$100 or
 11 by imprisonment for not more than 30 days, or both.

12 (3) Violation of ORS 561.220 or 561.230 is a misdemeanor.

13 (4) Violation of ORS 561.590 is punishable, upon conviction, by a fine of not less than \$500 nor
 14 more than \$5,000.

15 [*(5) Violation of any of the provisions of ORS 561.605 to 561.630 is a Class D violation.*]

16 **SECTION 22.** ORS 570.705 is amended to read:

17 570.705. (1) The Legislative Assembly finds that imported, untreated timber products increase
 18 the hazards of introducing and spreading injurious plant pests and diseases in this state and that
 19 the State Department of Agriculture is directed to establish and implement an inspection and con-
 20 trol program to safeguard the health of trees and plants in this state.

21 (2) In carrying out the [*provisions of this chapter*] **duties, functions and powers of the de-**
 22 **partment** to prevent the introduction and spread of and to control injurious plant pests and dis-
 23 eases, with regard to imported, untreated timber products, the department [*is authorized to*] **may:**

24 (a) Inspect such timber products at any facility that receives, handles, transports or processes
 25 such products.

26 (b) Conduct testing and detection activities aimed at plant pests and diseases that may be as-
 27 sociated with receiving, handling, transporting or processing such products.

28 (c) Inspect import permits and bills of lading relating to such products.

29 (d) Establish regulations controlling the handling, transportation and processing of such pro-
 30 ducts.

31 (e) Assess and collect from receivers, handlers, transporters and processors of such products
 32 fees to recover for the department the cost of conducting the program referred to in this section.

33 **SECTION 23.** ORS 570.990 is amended to read:

34 570.990. Violation of **a provision of** ORS 570.010 to 570.050, 570.105 to 570.200, 570.320 to
 35 570.360[,] **or** 570.410 [*and 570.515 to 570.600*] is a Class A violation.

36 **SECTION 24.** ORS 570.995 is amended to read:

37 570.995. (1) In addition to any applicable fine under ORS 570.990 or other penalty, a person
 38 [*who*] **is subject to imposition by the State Department of Agriculture of a civil penalty, not**
 39 **to exceed \$10,000, if the person:**

40 (a) Violates a quarantine order issued under ORS 570.115;[,]

41 (b) Violates ORS 570.410; or

42 (c) Fails to timely pay a fee required under ORS 570.710. [*is subject to a civil penalty imposed*
 43 *by the State Department of Agriculture. The civil penalty shall not exceed \$10,000.*]

44 (2) [*Every*] **Each** violation of a quarantine order issued under ORS 570.115, violation of ORS
 45 570.410 or failure to timely pay a fee required under ORS 570.710 is a separate offense subject to a

1 separate civil penalty.

2 (3) The department shall develop one or more schedules setting the amounts of civil penalties
3 that may be imposed for particular types of violations.

4 (4) The imposition of a civil penalty under this section is subject to ORS 183.745.

5 (5) The State Treasurer shall deposit all moneys from penalties recovered under this section into
6 the Department of Agriculture Account.

7 (6) Moneys from civil penalties recovered under this section for violation of a quarantine order
8 issued under ORS 570.115 are continuously appropriated to the department for the administration
9 and enforcement of quarantine laws under ORS 570.110 to 570.190[, 570.196 and 570.200].

10 (7) Moneys from civil penalties recovered under this section for a violation of ORS 570.410 are
11 continuously appropriated to the department for the administration and enforcement of control area
12 programs.

13 (8) Moneys from civil penalties recovered under this section for failure to timely pay a fee under
14 ORS 570.710 are continuously appropriated to the department for the administration of the timber
15 products health program described under ORS 570.705 and 570.710.

16 **SECTION 25.** ORS 571.063 is amended to read:

17 571.063. (1) Upon *[payment]* **receipt** of a fee *[of \$5,]* **established by the State Department of**
18 **Agriculture, the department may issue** a temporary nursery sale license *[may be issued by the*
19 *State Department of Agriculture]* for the holding of a nursery stock sale conducted by, or for the
20 benefit of, a duly registered nonprofit organization, where such sale does not exceed seven consec-
21 utive days.

22 (2) Application for a temporary nursery sale license shall be made on a form furnished by the
23 department, and shall be accompanied by the license fee. A separate application and license fee is
24 required for each sale.

25 (3) The department may prescribe the conditions of such temporary nursery sales license, which
26 conditions shall be stated in the license. Any such license may be revoked or suspended by the de-
27 partment for violation of any of the conditions stated therein. ORS 571.005 to 571.230 and 571.991
28 shall not be applicable to such temporary nursery sales except as provided in this section.

29 **(4) The department shall establish the fee described in subsection (1) of this section by**
30 **rule. The department shall establish the fee at a level sufficient to cover the costs to the**
31 **department associated with issuing the temporary nursery sale license, but not more than**
32 **\$50.**

33 **SECTION 26.** ORS 571.145 is amended to read:

34 571.145. (1) The State Department of Agriculture shall inspect each licensed nursery at least
35 once *[each fiscal year]* **and** as often thereafter as the department considers necessary to determine
36 and control pest, disease and noxious weed conditions.

37 (2) The department may make additional inspections as necessary for the issuance of
38 phytosanitary and other certificates. Such additional inspections are in addition to normal in-
39 spections as provided by subsection (1) of this section. The department may charge for such in-
40 spections requested by nurseries in order to issue state or federal phytosanitary certificates and any
41 other certificate that requires inspection prior to issuance of such certificates. Such charge shall
42 not be less than \$10 per requested certificate or greater than \$50 per such certificate. However, for
43 license years after June 30, 1995, the department may establish the certificate fee without regard
44 to the limitations provided in this subsection after consulting with the State Nursery Research and
45 Regulatory Committee and after holding public hearings in accordance with ORS chapter 183.

1 (3) The department may establish a schedule of fees for nursery stock inspections and special
2 services which may be performed by the department for persons who are not required to obtain a
3 license pursuant to ORS 571.005 to 571.230 and 571.991. The fees shall be established in such
4 amounts as are reasonably necessary to recover all costs incurred by the department in the per-
5 formance of such inspections and special services. Payment for such inspections and special services
6 shall be made to the department at the time the inspections or special services are performed.

7 **SECTION 27.** ORS 634.212 is amended to read:

8 634.212. (1) Upon receiving a petition of any 25 or more landowners, representing at least 70
9 percent of the acres of land, situated within the territory proposed to be a protected area, the State
10 Department of Agriculture may establish a protected area, in accordance with the provisions of ORS
11 561.510 to 561.590 governing the procedures for the declaration of quarantines[, *except the consent*
12 *of the Governor is not required*].

13 (2) The petition, referred to in subsection (1) of this section, shall include the following:

14 (a) The proposed name of the protected area.

15 (b) The description, including proposed boundaries, of the territory proposed to be a protected
16 area.

17 (c) A concise statement of the need for the establishment of the protected area proposed.

18 (d) A concise statement of the pesticides and the times, methods or rates of pesticide applica-
19 tions to be restricted or prohibited and the extent such are to be restricted or prohibited.

20 (e) A request that a public hearing be held by the department.

21 (f) The name of the person authorized to act as attorney in fact for the petitioners in all matters
22 relating to the establishment of a proposed protected area.

23 (g) A concise statement of any desired limitations of the powers and duties of the governing
24 body of the proposed protected area.

25 (3) If more than one petition, referred to in subsection (1) of this section, is received by the
26 department describing parts of the same territory, the department may consolidate all or any of such
27 petitions.

28 (4) Each petition, described in subsection (1) of this section, shall be accompanied by a filing fee
29 of \$125. Upon receipt of such petition and payment of such fee, the department shall prepare and
30 submit to the petitioners an estimated budget of the costs of establishing such proposed protected
31 area, including cost of preparation of the estimated budget, of the hearing and of the preparation
32 of required documents. Within 15 days of the receipt of the estimated budget, the petitioners shall
33 remit to the department the difference between the filing fee and total estimated budget. If the
34 petitioners fail to remit such difference, the department shall retain the filing fee and terminate the
35 procedure for establishment of a proposed protected area. If, upon completion of the procedure for
36 establishment of a proposed protected area, there remains an unexpended and unencumbered balance
37 of funds received by the department under this section, such balance shall be refunded to the
38 petitioners through their designated attorney in fact.

39 (5) [*In making a determination pursuant to the authority granted under ORS 561.520 (3)*] **When**
40 **determining whether to amend or revoke a rule or order declaring a protected area**, the Di-
41 rector of Agriculture shall consider, among other factors, the following:

42 (a) The agricultural and horticultural crops, wildlife or forest industries to be affected and their
43 locations.

44 (b) The topography and climate, including temperature, humidity and prevailing winds, of the
45 territory in which the proposed protected area is situated.

1 (c) The characteristics and properties of pesticides used or applied and proposed to be restricted
2 or prohibited.

3 **SECTION 28.** ORS 634.216 is amended to read:

4 634.216. *[In addition to the filings of an order establishing a protected area as required by ORS*
5 *561.530 (1), a certified copy of such order shall be filed]* **If the Director of Agriculture declares a**
6 **protected area under ORS 634.212, the copy of the rule or order that the director files** with
7 the Secretary of State[,] **must be** accompanied by a map of a scale of at least one inch per mile[,
8 *which documents shall be maintained]* **The Secretary of State shall maintain a copy of the rule**
9 **or order, and of the map,** as a public record in the office of the Secretary of State. Upon such
10 required filings, the protected area shall be deemed to be a governmental subdivision of the state
11 and a public body corporate.

12 **SECTION 29.** ORS 634.232 is amended to read:

13 634.232. (1) At any time after the establishment of a protected area, the State Department of
14 Agriculture at the request of the area committee of such protected area, may establish a restricted
15 area in accordance with the provisions of ORS 561.510 to 561.590 governing the procedures for the
16 declaration of quarantines[, *except the consent of the Governor shall not be required*].

17 (2) The request, referred to in subsection (1) of this section, shall include the following:

18 (a) The description, including proposed boundaries, of the territory proposed to be a restricted
19 area.

20 (b) A concise statement of the need for the establishment of the restricted area proposed.

21 (c) A concise statement of the pesticides and the times, methods or rates of pesticide application
22 to be restricted.

23 (3)(a) In considering the establishment of a restricted area wherein herbicides are to be re-
24 stricted, the outer boundaries of such proposed restricted area shall not be in excess of 10 airline
25 miles beyond the outer boundary of the protected area, and if a restricted area wherein all other
26 pesticides are to be restricted shall not be in excess of one airline mile beyond the outer boundary
27 of the protected area.

28 (b) In considering the establishment of a restricted area, the factors set forth in ORS 634.212 (5)
29 shall be considered.

30 (c) ORS 634.216 shall apply to the establishment of a restricted area, except that such restricted
31 area shall be governed and administered by the area committee of the protected area, which com-
32 mittee shall have the same powers and duties set forth in ORS 634.226 (2)(b), and except such re-
33 stricted area shall not be deemed to be a governmental subdivision of this state as a public body
34 corporate.

35 (d) In the event that a restricted area is established pursuant to subsection (1) of this section,
36 the area committee shall be expanded to include one additional member who resides in the restricted
37 area, but outside of the protected area. The additional member shall be elected in accordance with
38 ORS 634.226.

39 **SECTION 30.** ORS 634.236 is amended to read:

40 634.236. (1) Upon receiving a petition of any 25 or more landowners, representing at least 70
41 percent of the acres of land, situated within a protected area, the State Department of Agriculture
42 may include additional adjacent territory in a protected area or withdraw territory from a protected
43 area. The procedures to be followed by the department in considering such petition shall be those
44 set forth in ORS 561.510 to 561.590 governing the procedures for the declaration of quarantines[,
45 *except that the consent of the Governor shall not be required*].

1 (2)(a) Upon receiving a petition of any 25 or more landowners, representing at least 70 percent
 2 of the acres of land, situated within two or more adjacent protected areas, the department may
 3 consolidate such adjacent protected areas. The procedures shall be the same as described in sub-
 4 section (1) of this section.

5 (b) In the event of consolidation of protected areas, the corporate existence and terms of office
 6 of the area committee members of the preexisting protected areas shall terminate upon the filing
 7 of the order described in ORS 634.216. ORS 634.216 applies to the newly consolidated protected area,
 8 and all rights, powers, assets and duties of the several preexisting protected areas shall be vested
 9 in, and assumed by the newly consolidated protected area.

10 (c) The establishment, organization, duties and authority of the area committee of the consol-
 11 idated protected area shall be in accordance with ORS 634.226.

12 **SECTION 31. ORS 452.510, 452.520, 452.530, 452.540, 452.550, 452.560, 452.570, 452.580,**
 13 **452.590, 561.520, 561.530, 561.550, 570.005, 570.196, 570.200, 570.370, 570.375, 570.407, 570.500 and**
 14 **571.035 are repealed.**

15 **SECTION 32. Section 3 of this 2009 Act, the amendments to ORS 195.308, 452.610, 452.615,**
 16 **452.620, 452.625, 452.630, 452.990, 561.510, 561.560, 561.680, 561.990, 570.705, 570.990, 570.995,**
 17 **571.063, 571.145, 634.212, 634.216, 634.232 and 634.236 by sections 11 to 30 of this 2009 Act and**
 18 **the repeal of ORS 452.510, 452.520, 452.530, 452.540, 452.550, 452.560, 452.570, 452.580, 452.590,**
 19 **561.520, 561.530, 561.550, 570.005, 570.196, 570.200, 570.370, 570.375, 570.407, 570.500 and 571.035**
 20 **by section 31 of this 2009 Act do not affect the validity of any quarantine, control area or**
 21 **protected area established before the effective date of this 2009 Act or relieve a person from**
 22 **any liability with respect to a contribution, tax fine, interest, penalty or other liability, duty**
 23 **or obligation accruing under those statutes before the effective date of this 2009 Act.**

24