

House Bill 3123

Sponsored by Representative HOLVEY; Representative BUCKLEY

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**.

Prohibits application of pesticide by aircraft except under terms and conditions of pest emergency declaration issued by State Department of Agriculture or State Forestry Department. Establishes conditions for issuing pest emergency declaration.

A BILL FOR AN ACT

1
2 Relating to the application of pesticides by aircraft; creating new provisions; and amending ORS
3 634.016, 634.116, 634.142, 634.146, 634.306 and 634.372.

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

5 **SECTION 1. Section 2 of this 2015 Act is added to and made a part of ORS chapter 634.**

6 **SECTION 2. (1) Pesticides may not be applied by aircraft except as authorized by a pest
7 emergency declaration issued under this section.**

8 **(2) The State Department of Agriculture or the State Forestry Department may issue a
9 pest emergency declaration to allow pesticide application by aircraft if the presence of a pest
10 in an area poses an imminent threat of:**

11 **(a) Significant adverse effect on the environmental quality of this state; or**

12 **(b) Significant economic damage to agricultural, horticultural or forest plants, crops,
13 commodities or products.**

14 **(3) A pest emergency declaration must identify the area where the pest is known to be
15 present, identify the pesticides that may be applied by aircraft to treat for the pest and
16 specify the period during which application by aircraft may be carried out. A pest emergency
17 declaration may include any other specifications regarding pesticide application by aircraft
18 that the department issuing the pest emergency declaration considers necessary or appro-
19 priate to effectively treat for the pest while minimizing application by aircraft.**

20 **(4) If either department issues a pest emergency declaration for an area that includes a
21 protected area or restricted area described in ORS 634.206, the declaration does not authorize
22 application by aircraft within the protected area or restricted area except in a manner con-
23 sistent with the regulations of the area that govern pesticide applications by aircraft. If ei-
24 ther department issues a pest emergency declaration for an area that includes a protected
25 area established under ORS 634.212, the declaration does not authorize application by aircraft
26 within the protected area unless approved by the governing committee of the protected area.**

27 **SECTION 3. ORS 634.116 is amended to read:**

28 **634.116. (1) A pesticide operator's license, or supplements thereto, shall authorize the licensee
29 to engage in one or more of the classes of pest control or pesticide application business prescribed
30 by the State Department of Agriculture under ORS 634.306 (2). The department may not issue a
31 pesticide operator license to the United States, the State of Oregon or federal, state or local agen-**

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 cies, instrumentalities, political subdivisions, counties, cities, towns, municipal corporations, irri-
 2 gation, drainage or other districts or other federal, state or local governmental bodies.

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

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

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

15 (4) At least one owner or part owner of the pest control or pesticide application business shall
 16 also obtain and maintain a pesticide applicator's license if the pesticide operator is a sole
 17 proprietorship or a partnership. At least one officer or employee shall obtain and maintain a pesti-
 18 cide applicator's license if the pesticide operator is a corporation. If a pesticide operator is found
 19 to be in violation of this subsection, the pesticide operator's license, notwithstanding ORS chapter
 20 183, is automatically suspended until the pesticide operator is in compliance. If the business is
 21 owned by one individual, the department shall make no charge for the pesticide applicator license
 22 issued to the individual under ORS 634.122.

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

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

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

38 (6) The financial responsibility required by subsection (5) of this section must be not less than
 39 \$25,000 for bodily injury to one or more persons and not less than \$25,000 for property damage.

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

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

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

13 *[(10) If the pesticide operator is to spray by aircraft, then the department, in addition to other*
 14 *provisions of this section relating to financial responsibility, may by rule allow aircraft pesticide oper-*
 15 *ators to reduce, suspend or terminate the liability insurance, applicable to spraying by aircraft, and*
 16 *required by subsections (5) and (6) of this section during certain periods of the year.]*

17 **(10) If a pesticide operator is to apply pesticide by aircraft, the pesticide operator is re-**
 18 **quired to maintain liability insurance applicable to pesticide application by aircraft only for**
 19 **the period of the pest emergency declaration issued under section 2 of this 2015 Act that**
 20 **authorizes the application by aircraft.**

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

23 (12)(a) The United States, the State of Oregon or federal, state or local agencies, instrument-
 24 alities, political subdivisions, counties, cities, towns, municipal corporations, irrigation, drainage or
 25 other districts or other federal, state or local governmental bodies are not required to obtain a li-
 26 cense as a pesticide operator or to furnish evidence of financial responsibility to the department
 27 when:

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

29 (B) Applying pesticides pursuant to an order issued by the department for purposes of control-
 30 ling or eradicating noxious weeds or pests; or

31 (C) Applying pesticides to property under the ownership, possession, control or jurisdiction of
 32 another federal, state or local agency, instrumentality, political subdivision, county, city, town, mu-
 33 nicipal corporation, irrigation, drainage or other district or other federal, state or local govern-
 34 mental body or of a homeowners association as defined under ORS 94.550 if:

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

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

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

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

44 (c) In addition to any application allowed under paragraph (a) of this subsection, a vector con-
 45 trol district is not required to obtain a license as a pesticide operator or to furnish evidence of fi-

1 nancial responsibility to the department when applying pesticides for the prevention, control or
 2 eradication of a public health vector as defined in ORS 452.010 to property under the ownership,
 3 possession, control or jurisdiction of another federal, state or local agency, instrumentality, political
 4 subdivision, county, city, town, municipal corporation, irrigation, drainage or other district or other
 5 federal, state or local governmental body or of a homeowners association as defined under ORS
 6 94.550 if the pesticide application is done on a cost recovery, cooperative trade of services or no
 7 cost basis, and not as a source of profit.

8 (13) Subject to subsection (15) of this section, the employees of the agencies, instrumentalities,
 9 subdivisions, counties, cities, towns, municipal corporations, districts, governmental bodies or utili-
 10 ties described in subsection (12) of this section who perform or carry out the work, duties or re-
 11 sponsibilities of a pesticide applicator are subject to the provisions of this chapter, except they shall
 12 be issued “public applicator” licenses or, if they carry out the work, duties or responsibilities of a
 13 pesticide trainee, shall be issued “public trainee” certificates, if they otherwise comply or qualify
 14 with the provisions of this chapter relating thereto.

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

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

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

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

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

24 (a) The application of restricted-use pesticides;

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

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

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

32 (17) A federal, state or local agency, instrumentality, political subdivision, county, city, town,
 33 municipal corporation, irrigation, drainage or other district or other federal, state or local govern-
 34 mental body may not solicit or advertise for pesticide application business in areas outside its ju-
 35 risdiction.

36 **SECTION 4.** ORS 634.146 is amended to read:

37 634.146. (1) Pesticide operators shall prepare and maintain records on forms approved by the
 38 State Department of Agriculture. Such records shall include:

39 (a) The name of the person for whom the pesticide was applied.

40 (b) The approximate location of the land or property on which the pesticide was applied.

41 (c) The date and approximate time of application.

42 (d) The person who supplied the pesticides.

43 (e) The trade name and the strength of such pesticides.

44 (f) The amount or concentration (pounds or gallons per acre of active ingredient or concen-
 45 tration per approximately 100 gallons).

1 (g) The specific property, crop or crops to which the pesticide was applied.

2 (h) The summary information of equipment, device or apparatus used and, if applied by
3 aircraft[,]:

4 (A) The Federal Aviation Administration number; and

5 (B) **Identification of the pest emergency declaration issued under section 2 of this 2015**
6 **Act that authorized the application.**

7 (i) The names of the pesticide applicator or pesticide trainees who did the actual application or
8 spraying.

9 (2) The records, which shall be kept for a period of at least three years from the date of appli-
10 cation of pesticides, shall be available during business hours for review and inspection by the de-
11 partment.

12 (3) Upon receiving a request from any owner of field crops on which pesticides were applied, the
13 pesticide operator within 40 days after making such application shall give or forward to the owner
14 a written statement setting forth the information described in subsection (1)(a), (b), (c), (e), (f),
15 [and] (g) and (h)(B) of this section.

16 **SECTION 5.** ORS 634.306 is amended to read:

17 634.306. In accordance with the provisions of ORS chapter 183, the State Department of Agri-
18 culture is authorized to promulgate regulations necessary to carry out the purposes and intent of
19 this chapter, including but not limited to the following:

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

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

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

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

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

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

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

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

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

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

42 (b) Various methods of application of such pesticides.

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

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

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

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

7 (b) Laws and regulations of other states.

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

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

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

16 *[(a) Changes in climate or seasons.]*

17 *[(b) Periods when certain crops are or have been harvested.]*

18 *[(c) Restricted or limited use of various types or classes of pesticides.]*

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

20 *[(7)]* (6) Establish the conditions and amounts allowed for deductible classes in the liability in-
 21 surance required by ORS 634.116.

22 *[(8)]* (7) Establish and maintain programs of instruction or educational courses for pesticide
 23 consultants, operators, applicators and private applicators in cooperation with Oregon State Uni-
 24 versity or others, wherein, as far as is practicable, provisions are made so as to allow such pesticide
 25 operators and applicators to participate only in the instruction or courses directly or indirectly re-
 26 lated to their particular activities. Attendance of licensees may be required.

27 *[(9)]* (8) Prepare and distribute a manual, or other form of publication, containing information
 28 helpful and beneficial to persons engaged in pesticide application or use or to persons preparing to
 29 qualify for licensing as a pesticide operator, consultants or applicator and establish charges there-
 30 for.

31 *[(10)]* (9) Establish, from time to time, advisory groups or committees to assist the department
 32 in formulation of policies, plans or regulations under this chapter. Each member of any such group
 33 or committee so established shall be entitled to compensation and expenses as provided in ORS
 34 292.495, which shall be charged to the department.

35 *[(11)]* (10) Establish registration fees for pesticide brands and formulae or formulations there-
 36 under.

37 *[(12)]* (11) Establish restrictions or prohibitions as to the form of pesticides allowed to be mixed,
 38 applied or added to fertilizers, seed or grains.

39 *[(13)]* (12) Establish restrictions, methods and procedures in the storage, transportation, use or
 40 application of restricted-use pesticides or highly toxic pesticides in order to protect humans,
 41 pollinating insects, bees, animals, crops, wildlife, land or environment.

42 *[(14)]* (13) Establish and maintain a system for certification of private applicators. In this regard,
 43 the department shall take into consideration:

44 (a) Laws and regulations of the federal government, including the provisions of the Federal En-
 45 vironmental Pesticide Control Act of 1972, 86 Stat. 973, and the Federal Insecticide, Fungicide and

1 Rodenticide Act, 7 U.S.C. 135 et seq., as amended thereby, and regulations thereunder.

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

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

7 [(15)] (14) Establish requirements for the reporting of pesticide sales, distribution or use by any
8 person.

9 **SECTION 6.** ORS 634.306, as amended by section 17, chapter 1059, Oregon Laws 1999, is
10 amended to read:

11 634.306. In accordance with the provisions of ORS chapter 183, the State Department of Agri-
12 culture is authorized to promulgate regulations necessary to carry out the purposes and intent of
13 this chapter, including but not limited to the following:

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

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

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

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

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

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

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

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

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

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

36 (b) Various methods of application of such pesticides.

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

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

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

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

1 (b) Laws and regulations of other states.

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

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

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

10 [(a) *Changes in climate or seasons.*]

11 [(b) *Periods when certain crops are or have been harvested.*]

12 [(c) *Restricted or limited use of various types or classes of pesticides.*]

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

14 [(7)] (6) Establish the conditions and amounts allowed for deductible classes in the liability in-
15 surance required by ORS 634.116.

16 [(8)] (7) Establish and maintain programs of instruction or educational courses for pesticide
17 consultants, operators, applicators and private applicators in cooperation with Oregon State Uni-
18 versity or others, wherein, as far as is practicable, provisions are made so as to allow such pesticide
19 operators and applicators to participate only in the instruction or courses directly or indirectly re-
20 lated to their particular activities. Attendance of licensees may be required.

21 [(9)] (8) Prepare and distribute a manual, or other form of publication, containing information
22 helpful and beneficial to persons engaged in pesticide application or use or to persons preparing to
23 qualify for licensing as a pesticide operator, consultants or applicator and establish charges there-
24 for.

25 [(10)] (9) Establish, from time to time, advisory groups or committees to assist the department
26 in formulation of policies, plans or regulations under this chapter. Each member of any such group
27 or committee so established shall be entitled to compensation and expenses as provided in ORS
28 292.495, which shall be charged to the department.

29 [(11)] (10) Establish registration fees for pesticide brands and formulae or formulations there-
30 under.

31 [(12)] (11) Establish restrictions or prohibitions as to the form of pesticides allowed to be mixed,
32 applied or added to fertilizers, seed or grains.

33 [(13)] (12) Establish restrictions, methods and procedures in the storage, transportation, use or
34 application of restricted-use pesticides or highly toxic pesticides in order to protect humans,
35 pollinating insects, bees, animals, crops, wildlife, land or environment.

36 [(14)] (13) Establish and maintain a system for certification of private applicators. In this regard,
37 the department shall take into consideration:

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

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

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

SECTION 7. ORS 634.372 is amended to read:

634.372. A person may not:

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

(2) As a pesticide applicator or operator, intentionally or willfully apply or use a worthless pesticide or any pesticide inconsistent with its labeling, or as a pesticide consultant or dealer, recommend or distribute such pesticides.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (19) Distribute, sell or offer for sale any pesticide except in the manufacturer's original unbroke
4 ken package.

5 (20) Make application of pesticides, by aircraft or otherwise, within a protected or restricted
6 area without first obtaining a permit for such application from the committee of the protected or
7 restricted area in which the application is to be made. The person also may not make such appli-
8 cation contrary to the conditions or terms of the permit so issued.

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

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

14 (23) Fail to comply with any provision or requirement of sections 2 to 9, chapter 1059, Oregon
15 Laws 1999, or rules adopted thereunder.

16 **(24) Make an application of pesticide by aircraft except as authorized by a pest emergency**
17 **declaration issued under section 2 of this 2015 Act.**

18 **SECTION 8.** ORS 634.372, as amended by section 18, chapter 1059, Oregon Laws 1999, and
19 section 4, chapter 307, Oregon Laws 2001, is amended to read:

20 634.372. A person may not:

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

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

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

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

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

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

33 (7) Operate pesticide applicators' apparatus, machinery or equipment without a licensed pesti-
34 cide applicator or certified private applicator performing the actual application, or supervising such
35 application if such is performed by a pesticide trainee. This prohibition does not apply to the oper-
36 ation of tractors, trucks or other vehicular equipment used only under the supervision of a certified
37 private applicator.

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

41 (9) As a pesticide operator, engage in the business of, or represent or advertise as being in the
42 business of, applying pesticides upon the land or property of another, without first obtaining and
43 maintaining a pesticide operator's license. The operator also may not engage in a class of pesticide
44 application business that is not specifically authorized by license issued by the State Department
45 of Agriculture. The operator also may not employ or use any person to apply or spray pesticides

1 who is not a licensed pesticide applicator or pesticide trainee.

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

5 (11) Act as, or purport to be, a pesticide dealer or advertise as such without first obtaining and
 6 maintaining a pesticide dealer's license.

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

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

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

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

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

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

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

21 (19) Distribute, sell or offer for sale any pesticide except in the manufacturer's original unbroke-
 22 ken package.

23 (20) Make application of pesticides, by aircraft or otherwise, within a protected or restricted
 24 area without first obtaining a permit for such application from the committee of the protected or
 25 restricted area in which the application is to be made. The person also may not make such appli-
 26 cation contrary to the conditions or terms of the permit so issued.

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

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

32 **(23) Make an application of pesticide by aircraft except as authorized by a pest emergency**
 33 **declaration issued under section 2 of this 2015 Act.**

34 **SECTION 9.** ORS 634.016 is amended to read:

35 634.016. (1) Every pesticide, including each formula or formulation, manufactured, compounded,
 36 delivered, distributed, sold, offered or exposed for sale in this state shall be registered each year
 37 with the State Department of Agriculture.

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

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

41 (4) The application for registration shall include:

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

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

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

45 (d) A specimen or facsimile of the label of each pesticide, and each formula or formulation, for

1 which registration is sought, except for annual renewals of the registration when the label remains
 2 unchanged.

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

4 (f) The total percentage of inert ingredients.

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

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

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

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

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

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

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

20 (B) Authoritative findings and recommendations of agencies of the federal government and of
 21 any advisory committee or group established under ORS 634.306 [(10)] (9).

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

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

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

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

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

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

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

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

34 **SECTION 10.** ORS 634.142 is amended to read:

35 634.142. (1) The State Department of Agriculture shall issue or renew a private applicator's
 36 certificate if the applicant or certificate holder meets the certification standards established by the
 37 department pursuant to ORS 634.306 [(14)] (13).

38 (2) A fee, established by the department, shall be assessed for a private applicator's certificate
 39 or renewal thereof. The fee may not exceed \$25. The time for which a certificate is valid shall be
 40 five years.