

**PROPOSED AMENDMENTS TO
HOUSE BILL 3123**

1 On page 1 of the printed bill, delete line 3 and insert “634.006, 634.116,
2 634.306 and 634.900.”.

3 Delete lines 5 through 31 and delete pages 2 through 12 and insert:

4 **“SECTION 1. Sections 2 and 4 to 6 of this 2015 Act are added to and
5 made a part of ORS chapter 634.**

6 **“SECTION 2. (1) A person may not spray or otherwise apply a pes-
7 ticide by aircraft unless the person holds a valid aerial pesticide
8 applicator certificate issued by the State Department of Agriculture.**

9 **“(2) The department may issue an aerial pesticide applicator certif-
10 icate to a person who:**

11 **“(a) Holds a pesticide applicator license or public applicator license;**

12 **“(b) Holds a valid commercial pilot certificate for the type of air-
13 craft to be used by the person in applying pesticides;**

14 **“(c) Has 50 or more hours of experience as a pesticide applicator or
15 public applicator, or as a pesticide trainee or public trainee under the
16 supervision of a pesticide applicator or public applicator, on flights
17 conducted for the purpose of carrying out, or training to carry out,
18 spraying or otherwise applying pesticides by aircraft; and**

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

20 **“(3)(a) An aerial pesticide applicator certificate has a term of five
21 years. The department shall suspend or revoke the certificate if the
22 certificate holder fails to maintain a valid pesticide applicator license**

1 or public applicator license. Except as provided in paragraph (b) of this
2 subsection, a certificate may be renewed.

3 “(b) If the certificate holder is licensed as a pesticide applicator, the
4 certificate holder may renew a certificate only if during the preceding
5 five years the holder successfully completed at least 10 credit hours in
6 programs of instruction or educational courses satisfactory to the de-
7 partment and related to the spraying or other application of pesticides
8 by aircraft. In determining whether programs of instruction or edu-
9 cational courses are satisfactory for purposes of this subsection, the
10 department shall consult with professional associations or other or-
11 ganizations serving aerial applicators of pesticides or with a national
12 organization for state agencies that regulate agriculture. The depart-
13 ment shall count any credit hours in satisfactory programs of in-
14 struction or educational courses described in this subsection toward
15 any instruction or education requirements imposed by the department
16 for the renewal of pesticide applicator licenses.

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

20 “SECTION 3. Section 2 of this 2015 Act is amended to read:

21 “**Sec. 2.** (1) A person may not spray or otherwise apply a pesticide by
22 aircraft unless the person holds a valid aerial pesticide applicator certificate
23 issued by the State Department of Agriculture.

24 “(2) The department may issue an aerial pesticide applicator certificate
25 to a person who:

26 “(a) Holds a pesticide applicator license or public applicator license;

27 “(b) **Passes a national examination or other examination approved**
28 **by the department testing the knowledge of the person regarding**
29 **proper spraying and other application of pesticides by aircraft;**

30 “[*b*] (c) Holds a valid commercial pilot certificate for the type of aircraft

1 to be used by the person in applying pesticides;

2 “[*(c)*] **(d)** Has 50 or more hours of experience as a pesticide applicator or
3 public applicator, or as a pesticide trainee or public trainee under the
4 supervision of [*a pesticide applicator or public applicator*] **an aerial pesticide**
5 **applicator certificate holder**, on flights conducted for the purpose of car-
6 rying out, or training to carry out, spraying or otherwise applying pesticides
7 by aircraft; and

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

9 **“(3) In determining appropriate examinations for approval under**
10 **subsection (2)(b) of this section, the department shall give consider-**
11 **ation to any examination of aerial applicator competency developed**
12 **or approved by a national organization for state agencies that regulate**
13 **agriculture.**

14 “[*(3)(a)*] **(4)(a)** An aerial pesticide applicator certificate has a term of five
15 years. The department shall suspend or revoke the certificate if the certif-
16 icate holder fails to maintain a valid pesticide applicator license or public
17 applicator license. Except as provided in paragraph (b) of this subsection,
18 a certificate may be renewed.

19 **“(b)** If the certificate holder is licensed as a pesticide applicator, the
20 certificate holder may renew a certificate only if during the preceding five
21 years the holder successfully completed at least 10 credit hours in programs
22 of instruction or educational courses satisfactory to the department and re-
23 lated to the spraying or other application of pesticides by aircraft. In deter-
24 mining whether programs of instruction or educational courses are
25 satisfactory for purposes of this subsection, the department shall consult
26 with professional associations or other organizations serving aerial
27 applicators of pesticides or with a national organization for state agencies
28 that regulate agriculture. The department shall count any credit hours in
29 satisfactory programs of instruction or educational courses described in this
30 subsection toward any instruction or education requirements imposed by the

1 department for the renewal of pesticide applicator licenses.

2 “[4] (5) If a certificate holder is licensed as a public applicator, the
3 certificate holder may spray or otherwise apply pesticides by aircraft only
4 to properties described in ORS 634.116 (12).

5 **“SECTION 4. (1) In addition to any other requirements of this**
6 **chapter, a pesticide operator engaged in the business of making ap-**
7 **plications of pesticide by aircraft must be or employ a licensed pesti-**
8 **cide applicator who holds a valid aerial pesticide applicator certificate**
9 **and is in responsible charge of overseeing the activities of the business**
10 **related to the spraying or other application of pesticides by aircraft.**
11 **If the business is a sole proprietorship or a partnership, the overseeing**
12 **pesticide applicator must be an owner or part owner of the business.**
13 **If the business is owned by an association, the overseeing pesticide**
14 **applicator must be a member of the association. If the business is not**
15 **a sole proprietorship or partnership or owned by an association, the**
16 **overseeing pesticide applicator must be an officer or employee of the**
17 **business. The designation of an overseeing pesticide applicator by a**
18 **pesticide operator does not excuse a pesticide applicator or pesticide**
19 **trainee who sprays or otherwise applies pesticide by aircraft for the**
20 **business from compliance with this chapter or State Department of**
21 **Agriculture rules for carrying out this chapter.**

22 **“(2) The pesticide operator shall file with the department a written**
23 **notice, signed by the overseeing pesticide applicator, acknowledging**
24 **responsibility of the pesticide applicator for overseeing activities of the**
25 **business related to the spraying or other application of pesticides by**
26 **aircraft. If a person ceases to be the overseeing pesticide applicator for**
27 **a business, the pesticide operator shall cease engaging in the business**
28 **of making applications of pesticide by aircraft until the department**
29 **has received a new notice that designates a properly licensed and cer-**
30 **tified pesticide applicator to be responsible for overseeing activities of**

1 the business related to the spraying or other application of pesticides
2 by aircraft.

3 “(3) If the department believes that a business has sprayed or oth-
4 erwise applied pesticide by aircraft in a manner that violates this
5 chapter or department rules for carrying out this chapter:

6 “(a) In addition to any sanctions that the department imposes un-
7 der this chapter against the pesticide operator or the person who ac-
8 tually made the application, the department may impose sanctions
9 under ORS 634.900 against the overseeing pesticide applicator due to
10 the violation by the business;

11 “(b) Any notice of the violation provided to the overseeing pesticide
12 applicator identified in department records qualifies as notice to the
13 pesticide operator; and

14 “(c) Any notice of the violation provided to the pesticide operator
15 qualifies as notice to the overseeing pesticide applicator.

16 “(4) If a violation of this chapter involves a faulty, careless,
17 negligent or prohibited spraying or other application of a pesticide by
18 aircraft:

19 “(a) The violation establishes for purposes of ORS 183.430 that the
20 failure to immediately suspend the pesticide operator license, and to
21 suspend the license and aerial pesticide applicator certificate of the
22 overseeing pesticide applicator, would result in serious danger to the
23 public health or safety;

24 “(b) Any oral or written notice by the department informing the
25 pesticide operator or the overseeing pesticide applicator that the vio-
26 lation involved a faulty, careless, negligent or prohibited spraying or
27 other application of a pesticide by aircraft is a notice setting forth
28 specific reasons to suspend or refuse renewal of a license without prior
29 hearing;

30 “(c) Upon giving notice of the violation as provided in this sub-

1 section the department shall immediately suspend the license of the
2 pesticide operator until the department determines to its satisfaction
3 that:

4 “(A) The pesticide operator has ceased engaging in the business of
5 making pesticide applications by aircraft; or

6 “(B) The pesticide operator has taken adequate measures to ensure
7 that the activities of the pesticide application business related to the
8 spraying or other application of pesticides by aircraft will be conducted
9 in compliance with this chapter and department rules for carrying out
10 this chapter; and

11 “(d) Upon giving notice of the violation as provided in this sub-
12 section the department shall immediately suspend the license and the
13 aerial pesticide applicator certificate of the overseeing pesticide
14 applicator until:

15 “(A) The department receives a notice under subsection (2) of this
16 section that the pesticide operator has designated a different pesticide
17 applicator to be the overseeing pesticide applicator for the pesticide
18 application business; or

19 “(B) The department determines to its satisfaction that the pesti-
20 cide operator will oversee the activities of the business related to the
21 spraying or other application of pesticides by aircraft in compliance
22 with this chapter and department rules for carrying out this chapter.

23 **“SECTION 5. If a pesticide applicator or pesticide operator violates**
24 **a provision of this chapter related to the spraying or other application**
25 **of pesticide by aircraft, or a State Department of Agriculture rule re-**
26 **lated to those applications, and the department in its discretion deems**
27 **that the violation indicates an inadequate knowledge of the laws and**
28 **rules applicable for spraying or other applications of pesticide by air-**
29 **craft, in addition to any other available penalty or sanction:**

30 “(1) The department may require that the person retake any ex-

1 amination required for issuance of the type of license that the person
2 holds or is required to hold and, if the person holds or is required to
3 hold an aerial pesticide applicator certificate, any examination re-
4 quired for issuance or renewal of a certificate.

5 “(2) If the person fails an examination required by the department
6 under subsection (1) of this section, the department may suspend, re-
7 voke or refuse to renew the license or certificate of the person. A
8 suspension, revocation or refusal to renew under this subsection is
9 subject to ORS chapter 183.

10 **“SECTION 6. (1) The State Forestry Department, in consultation**
11 **with the State Board of Forestry, shall collect and analyze information**
12 **regarding the use of buffer zones to protect schools, homes and do-**
13 **mestic water sources that are in proximity to forestlands from con-**
14 **tamination due to the spraying or other application of pesticides by**
15 **aircraft. The department shall consider issues regarding the protection**
16 **of schools, homes and domestic water sources from direct application**
17 **of the pesticides and from the drifting of the pesticides following ap-**
18 **plication. Information that the department relies upon for purposes**
19 **of subsection (3) of this section must be based on the best available**
20 **science and focussed on the need to protect human health.**

21 “(2) The department may undertake any actions reasonable or nec-
22 essary to carry out its duties under this section. All agencies of state
23 government, as defined in ORS 174.111, are directed to assist the de-
24 partment in the performance of its duties under this section and, to
25 the extent permitted by laws relating to confidentiality, to furnish
26 such information and advice as the department considers necessary to
27 perform its duties under this section.

28 “(3) The department shall complete its work under this section and
29 report the results to an interim committee of the Legislative Assembly
30 relating to natural resources no later than September 15, 2016. The

1 **report shall include, but need not be limited to, recommendations of**
2 **the department regarding the need for, and size of, buffer zones to**
3 **protect schools, homes and domestic water sources that are in prox-**
4 **imity to forestland from contamination due to the spraying or other**
5 **application of pesticides by aircraft.**

6 **“SECTION 7.** ORS 634.006 is amended to read:

7 “634.006. As used in this chapter unless the context requires otherwise:

8 “(1) ‘Antidote’ means a practical immediate treatment in case of poisoning
9 and includes first-aid treatment.

10 “(2) ‘Brand’ or ‘trademark’ means any word, name, symbol or any combi-
11 nation thereof adopted or used by a person to identify pesticides manufac-
12 tured, compounded, delivered, distributed, sold or offered for sale in this
13 state and to distinguish them from pesticides manufactured, compounded,
14 delivered, distributed, sold or offered for sale by others.

15 “(3) ‘Department’ means the State Department of Agriculture.

16 “(4) ‘Device’ means any instrument or contrivance containing pesticides
17 or other chemicals intended for trapping, destroying, repelling or mitigating
18 insects or rodents or destroying, repelling or mitigating fungi, nematodes or
19 such other pests as may be designated by the department, but does not in-
20 clude equipment used for the application of pesticides or other chemicals
21 when sold separately from such pesticides or chemicals.

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

26 “(6) ‘Highly toxic’ means a pesticide or device determined by the depart-
27 ment to be capable of causing severe injury, disease or death to human be-
28 ings.

29 “(7) ‘Landowner’ means a person owning three acres or more within a
30 proposed protected area; and in the case of multiple ownership of land, the

1 owner is only a person whose interest is greater than an undivided one-half
2 interest therein or who holds an authorization in writing from one or more
3 of the other owners whose interest, when added to the interest of the person,
4 are greater than an undivided one-half interest in the land.

5 “(8) ‘Pesticide’ includes:

6 “(a) ‘Defoliant’ which means any substance or mixture of substances in-
7 tended for causing the leaves or foliage to drop from a plant with or without
8 causing abscission;

9 “(b) ‘Desiccant’ which means any substance or mixture of substances in-
10 tended for artificially accelerating the drying of plant tissue;

11 “(c) ‘Fungicide’ which means any substance or mixture of substances in-
12 tended for preventing, destroying, repelling or mitigating any fungus;

13 “(d) ‘Herbicide’ which means any substance or mixture of substances in-
14 tended for preventing, destroying, repelling or mitigating any weed;

15 “(e) ‘Insecticide’ which means any substance or mixture of substances in-
16 tended for preventing, destroying, repelling or mitigating any insects which
17 may be present in any environment whatsoever;

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

20 “(g) ‘Plant regulator’ which means any substance or mixture of substances
21 intended, through physiological action, to accelerate or retard the rate of
22 growth or rate of maturation or to otherwise alter the behavior of
23 ornamental or crop plants or the produce thereof, but shall not include sub-
24 stances to the extent that they are intended as plant nutrients, trace ele-
25 ments, nutritional chemicals, plant inoculants or soil amendments; or

26 “(h) Any substance, or mixture of substances intended to be used for
27 defoliating plants or for preventing, destroying, repelling or mitigating all
28 insects, plant fungi, weeds, rodents, predatory animals or any other form of
29 plant or animal life which is, or which the department may declare to be a
30 pest, which may infest or be detrimental to vegetation, humans, animals, or

1 be present in any environment thereof.

2 “(9) ‘Pesticide applicator’ or ‘applicator’ means a person who:

3 “(a) Is spraying or applying pesticides for others;

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

6 “(c) Is in direct charge of or supervises the spraying or **other** application
7 of pesticides or operates, uses, drives or physically directs propulsion of
8 equipment, apparatus or machinery **during the spraying or other applica-**
9 **tion**, either on the ground or, **if certified under section 2 of this 2015 Act**,
10 by aircraft [*in such activity*].

11 “(10) ‘Pesticide consultant’ means a person, including governmental em-
12 ployees, who offers or supplies technical advice, supervision, aid or recom-
13 mendations to the user of pesticides classified by the department as
14 restricted-use or highly toxic pesticides, whether licensed as a pesticide
15 dealer or not.

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

19 “(12) ‘Pesticide equipment’ means any equipment, machinery or device
20 used in the actual application of pesticides, including aircraft and ground
21 spraying equipment.

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

24 “(14) ‘Pesticide trainee’ means a person who:

25 “(a) Is employed by a pesticide operator; and

26 “(b) Is working and engaged in a training program under special certif-
27 icate to qualify as a pesticide applicator.

28 “(15) ‘Professed standard of quality’ means a plain and true statement of
29 the name and percentage of each active ingredient and the total percentage
30 of all inert ingredients contained in any pesticide.

1 “(16) ‘Protected area’ means an area established under the provisions of
2 this chapter to prohibit or restrict the application of pesticides.

3 “(17) ‘Public applicator’ means a person who is an employee of the State
4 of Oregon or its agencies, counties, cities, municipal corporations, other
5 governmental bodies or subdivisions thereof, irrigation districts, drainage
6 districts and public utilities and telecommunications utilities and who per-
7 forms or carries out the work, duties or responsibilities of a pesticide
8 applicator.

9 “(18) ‘Public trainee’ means a person who is an employee of the State of
10 Oregon or its agencies, counties, cities, municipal corporations, other gov-
11 ernmental bodies or subdivisions thereof, irrigation districts, drainage dis-
12 tricts and public utilities and telecommunications utility and who performs
13 or carries out the work, duties or responsibilities of a pesticide trainee.

14 “(19) ‘Registrant’ means a person registering any pesticide pursuant to
15 this chapter.

16 “(20) ‘Restricted area’ means an area established under the provisions of
17 this chapter to restrict, but not prohibit, the application of pesticides.

18 “(21) ‘Restricted-use pesticide’ means any pesticide or device which the
19 department has found and determined to be so injurious or detrimental to
20 persons, pollinating insects, bees, animals, crops, wildlife, land or environ-
21 ment, other than the pests it is intended to prevent, destroy, control or mit-
22 igate, that additional restrictions are required.

23 “(22) ‘Weed’ means any plant which grows where not wanted.

24 “**SECTION 8.** ORS 634.116 is amended to read:

25 “634.116. (1) A pesticide operator’s license, or supplements thereto, shall
26 authorize the licensee to engage in one or more of the classes of pest control
27 or pesticide application business prescribed by the State Department of Ag-
28 riculture under ORS 634.306 (2). The department may not issue a pesticide
29 operator license to the United States, the State of Oregon or federal, state
30 or local agencies, instrumentalities, political subdivisions, counties, cities,

1 towns, municipal corporations, irrigation, drainage or other districts or other
2 federal, state or local governmental bodies.

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

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

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

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

28 “(5) The department shall not issue or renew a pesticide operator’s license
29 until the applicant or licensee has furnished evidence to the department, in
30 the form of a public liability policy issued by an insurance company qualified

1 to do business in Oregon, protecting the applicant or licensee against li-
2 ability for injury or death to persons and loss of or damage to property re-
3 sulting from the application of pesticides, or in lieu of a policy, has furnished
4 a deposit of cash, surety bond or other evidence of financial responsibility
5 acceptable to the department that may be applied by the department to the
6 payment of damages resulting from operator liability. However:

7 “(a) Except as required under paragraph (b) of this subsection, the finan-
8 cial responsibility required by this section shall not apply to damages or
9 injury to crops, real or personal property being worked upon by the appli-
10 cant.

11 “(b) If the applicant or licensee is to be engaged in the business of con-
12 trolling or eradicating structural pests, or pests within a public or private
13 place, or pests within private or public places where food is served, prepared
14 or processed or where persons are regularly housed, the financial responsi-
15 bility required by this section shall apply to damages or injury to real or
16 personal property being worked upon, as well as all the other real and per-
17 sonal property set forth in this section.

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

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

28 “(8) Notwithstanding the provisions of ORS 105.810 and 105.815 or other
29 laws to the contrary, the amount of damages for which a pesticide operator
30 or pesticide applicator is liable as a result of use of pesticides, or financial

1 responsibility for the same is limited to actual damages only.

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

13 “(10) If the pesticide operator is **certified under section 2 of this 2015**
14 **Act to spray or otherwise apply pesticides** by aircraft, [*then the depart-*
15 *ment,*] in addition to other provisions of this section relating to financial
16 responsibility, **the department** may by rule allow aircraft pesticide opera-
17 tors to reduce, suspend or terminate the liability insurance, applicable to
18 spraying **or otherwise applying pesticides** by aircraft, and required by
19 subsections (5) and (6) of this section during certain periods of the year.

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

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

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

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

3 “(C) Applying pesticides to property under the ownership, possession,
4 control or jurisdiction of another federal, state or local agency,
5 instrumentality, political subdivision, county, city, town, municipal corpo-
6 ration, irrigation, drainage or other district or other federal, state or local
7 governmental body or of a homeowners association as defined under ORS
8 94.550 if:

9 “(i) The land is in a jurisdiction adjacent to property under their owner-
10 ship, possession, control or jurisdiction;

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

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

16 “(b) A public utility or telecommunications utility is not required to ob-
17 tain a license as a pesticide operator or to furnish evidence of financial re-
18 sponsibility to the department when applying pesticides to property under
19 the ownership, possession or control of the utility.

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

1 of profit.

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

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

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

14 “(b) Valid and used by the licensee or certificate holder only when ap-
15 plying pesticides as described in subsection (12) of this section.

16 “(c) Renewed, suspended or revoked each year in the same manner, under
17 the same provisions and at the same time as other pesticide applicator li-
18 censes and trainee certificates are renewed, suspended or revoked.

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

20 “(a) The application of restricted-use pesticides;

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

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

25 “(16) Prior to applying pesticides to land described in subsection (12)(a)(C)
26 of this section, a public applicator shall inform the person requesting pesti-
27 cide application of the possible availability of alternative sources of assist-
28 ance, including sources in the private sector that are registered with the
29 department or with industry trade or professional organizations.

30 “(17) A federal, state or local agency, instrumentality, political subdivi-

1 sion, county, city, town, municipal corporation, irrigation, drainage or other
2 district or other federal, state or local governmental body may not solicit
3 or advertise for pesticide application business in areas outside its jurisdic-
4 tion.

5 **“SECTION 9.** ORS 634.306 is amended to read:

6 “634.306. In accordance with the provisions of ORS chapter 183, the State
7 Department of Agriculture [*is authorized to promulgate regulations*
8 *necessary*] **may adopt rules** to carry out the purposes and intent of this
9 chapter, including but not limited to [*the following*] **rules that:**

10 “(1) Establish and maintain a program required for a person to work or
11 engage in the application or spraying of pesticides as a pesticide trainee. In
12 this regard, the department may take into consideration:

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

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

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

18 “(d) Acceptance of educational qualifications, applicable work or experi-
19 ence in similar or other fields in lieu of, or as a part of, periods of employ-
20 ment or work by pesticide trainees.

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

24 “(f) Laws and requirements relating to other professional, trade or in-
25 dustry trainee or apprenticeship programs in this or other states.

26 “(g) Special requirements if the pesticide trainee is to [*apply*] **assist a**
27 **pesticide applicator certified under section 2 of this 2015 Act in the**
28 **spraying or other application of** pesticides by the use of aircraft, and the
29 advisability of allowing participation in federal flight training programs to
30 be substituted, all or in part, for training requirements under this chapter.

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

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

8 “(b) Various methods of application of such pesticides.

9 “(c) Precautions required for safe and effective application of such pesti-
10 cides.

11 “(3) Designate pesticides authorized to be used or applied, or prohibited
12 from use or application, by persons in order to qualify for an exemption un-
13 der ORS 634.106.

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

17 “(a) Laws and regulations of the federal government, including the pro-
18 visions of the Federal Insecticide, Fungicide and Rodenticide Act, as
19 amended, and the Federal Environmental Pesticide Control Act.

20 “(b) Laws and regulations of other states.

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

23 “(5) Establish and maintain types of pesticide consultant or applicator
24 examinations and reexaminations, schedules for required reexaminations and
25 other measures deemed necessary for fair and reasonable testing of appli-
26 cants as provided in ORS 634.122 (5).

27 “(6) Designate the conditions under which pesticide operators [*spraying*]
28 **certified under section 2 of this 2015 Act to spray or otherwise apply**
29 **pesticides** by aircraft may reduce, suspend or terminate the liability insur-
30 **ance** required by ORS 634.116, and the periods of time [*therefor*] **for a re-**

1 **duction, suspension or termination.** In this regard, the department may
2 take into consideration:

3 “(a) Changes in climate or seasons.

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

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

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

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

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

17 “(9) Prepare and distribute a manual, or other form of publication, con-
18 taining information helpful and beneficial to persons engaged in pesticide
19 application or use or to persons preparing to qualify for licensing as a pes-
20 ticide operator, consultants or applicator and establish charges therefor.

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

26 “(11) Establish registration fees for pesticide brands and formulae or for-
27 mulations thereunder.

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

30 “(13) Establish restrictions, methods and procedures in the storage,

1 transportation, use or application of restricted-use pesticides or highly toxic
2 pesticides in order to protect humans, pollinating insects, bees, animals,
3 crops, wildlife, land or environment.

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

6 “(a) Laws and regulations of the federal government, including the pro-
7 visions of the Federal Environmental Pesticide Control Act of 1972, 86 Stat.
8 973, and the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 135
9 et seq., as amended thereby, and regulations thereunder.

10 “(b) Minimum periods of experience required and types of experience, ed-
11 ucation or work acceptable.

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

15 “(15) Establish requirements for the reporting of pesticide sales, distrib-
16 ution or use by any person.

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

19 “634.306. In accordance with the provisions of ORS chapter 183, the State
20 Department of Agriculture [*is authorized to promulgate regulations*
21 *necessary*] **may adopt rules** to carry out the purposes and intent of this
22 chapter, including but not limited to [*the following*] **rules that:**

23 “(1) Establish and maintain a program required for a person to work or
24 engage in the application or spraying of pesticides as a pesticide trainee. In
25 this regard, the department may take into consideration:

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

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

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

1 “(d) Acceptance of educational qualifications, applicable work or experi-
2 ence in similar or other fields in lieu of, or as a part of, periods of employ-
3 ment or work by pesticide trainees.

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

7 “(f) Laws and requirements relating to other professional, trade or in-
8 dustry trainee or apprenticeship programs in this or other states.

9 “(g) Special requirements if the pesticide trainee is to [*apply*] **assist a**
10 **pesticide applicator certified under section 2 of this 2015 Act in the**
11 **spraying or other application of** pesticides by the use of aircraft, and the
12 advisability of allowing participation in federal flight training programs to
13 be substituted, all or in part, for training requirements under this chapter.

14 “(2) Establish and maintain classifications of the various pesticides and
15 of the various pest control or pesticide application businesses in order to
16 facilitate the licensing or certification and regulation of pesticide consult-
17 ants, operators, applicators, private applicators and trainees. In this regard
18 the department may take into consideration:

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

21 “(b) Various methods of application of such pesticides.

22 “(c) Precautions required for safe and effective application of such pesti-
23 cides.

24 “(3) Designate pesticides authorized to be used or applied, or prohibited
25 from use or application, by persons in order to qualify for an exemption un-
26 der ORS 634.106.

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

30 “(a) Laws and regulations of the federal government, including the pro-

1 visions of the Federal Insecticide, Fungicide and Rodenticide Act, as
2 amended, and the Federal Environmental Pesticide Control Act.

3 “(b) Laws and regulations of other states.

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

6 “(5) Establish and maintain types of pesticide consultant or applicator
7 examinations and reexaminations, schedules for required reexaminations and
8 other measures deemed necessary for fair and reasonable testing of appli-
9 cants as provided in ORS 634.122 (5).

10 “(6) Designate the conditions under which pesticide operators [*spraying*]
11 **certified under section 2 of this 2015 Act to spray or otherwise apply**
12 **pesticides** by aircraft may reduce, suspend or terminate the liability insur-
13 ance required by ORS 634.116, and the periods of time [*therefor*] **for a re-**
14 **duction, suspension or termination.** In this regard, the department may
15 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
20 or personal property.

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

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

30 “(9) Prepare and distribute a manual, or other form of publication, con-

1 taining information helpful and beneficial to persons engaged in pesticide
2 application or use or to persons preparing to qualify for licensing as a pes-
3 ticide operator, consultants or applicator and establish charges therefor.

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

9 “(11) Establish registration fees for pesticide brands and formulae or for-
10 mulations thereunder.

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

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

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

19 “(a) Laws and regulations of the federal government, including the pro-
20 visions of the Federal Environmental Pesticide Control Act of 1972, 86 Stat.
21 973, and the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 135
22 et seq., as amended thereby, and regulations thereunder.

23 “(b) Minimum periods of experience required and types of experience, ed-
24 ucation or work acceptable.

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

28 “**SECTION 11.** ORS 634.900 is amended to read:

29 “634.900. (1) In addition to any other liability or penalty provided by law,
30 the Director of Agriculture may impose a civil penalty on a person for vio-

1 lation of any of the provisions of this chapter relating to pesticide applica-
2 tion, sale or labeling. The civil penalty for a first violation shall be not more
3 than \$1,000. For a subsequent violation, the director may impose a civil
4 penalty of not more than \$2,000.

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

9 “(3)(a) **Notwithstanding subsection (1) of this section, except as**
10 **provided in subsection (2) of this section:**

11 “(A) **The maximum civil penalty for a first violation related to the**
12 **spraying or other application of pesticide by aircraft is \$2,000; and**

13 “(B) **The maximum civil penalty for a second or subsequent vio-**
14 **lation related to the spraying or other application of pesticide by air-**
15 **craft is \$4,000.**

16 “(b) **A violation described in subsection (1) of this section is not a**
17 **prior violation for purposes of determining a civil penalty under this**
18 **subsection. A violation described in this subsection is a prior violation**
19 **for purposes of determining a civil penalty for a violation described in**
20 **subsection (1) of this section.**

21 “[3] (4) A civil penalty may not be imposed under this section for vio-
22 lations other than those involving pesticide application, sale or labeling vi-
23 olation under this chapter.

24 “**SECTION 12. Notwithstanding section 2 of this 2015 Act, if a person**
25 **licensed as a pesticide applicator or public applicator files an applica-**
26 **tion on or before 90 days after the effective date of this 2015 Act for**
27 **certification under section 2 of this 2015 Act, the State Department of**
28 **Agriculture may allow the person to spray or otherwise apply pesti-**
29 **cides by aircraft until the department refuses or grants the certifica-**
30 **tion.**

1 **SECTION 13. Sections 6 and 12 of this 2015 Act are repealed Janu-**
2 **ary 2, 2017.**

3 **SECTION 14. The amendments to section 2 of this 2015 Act by**
4 **section 3 of this 2015 Act become operative January 1, 2017.”.**

5
