

D R A F T

SUMMARY

Requires operator for forest operation that includes pesticide application by aircraft to ensure spraying does not occur within watershed supplying water for human consumption to residence or school.

Punishes violation by maximum of one year's imprisonment, \$6,250 fine, or both. Makes violation subject to civil penalty as determined by State Board of Forestry by rule.

Allows aggrieved party to bring action for enforcement and other relief.

A BILL FOR AN ACT

1
2 Relating to forest operations that include the aerial application of pesticides;
3 creating new provisions; and amending ORS 527.990 and 527.992.

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

5 **SECTION 1. Section 2 of this 2017 Act is added to and made a part**
6 **of ORS 527.610 to 527.770.**

7 **SECTION 2. (1) As used in this section:**

8 (a) **“Aerial pesticide applicator” means an individual certified under**
9 **ORS 634.128.**

10 (b) **“Aggrieved party” means a person or unit of government that**
11 **is directly exposed to pesticide applied by aircraft or is an owner or**
12 **occupant of a residence or school that is supplied with water for hu-**
13 **man consumption by a watershed that is sprayed with pesticide applied**
14 **by aircraft.**

15 (c) **“Pesticide” and “pesticide operator” have the meanings given**
16 **those terms in ORS 634.006.**

17 (2) **If an operation includes pesticide application by aircraft, the**
18 **operator shall ensure that pesticide application by aircraft does not**

1 **occur within:**

2 **(a) A watershed that supplies water for human consumption to a**
3 **residence or school; or**

4 **(b) A strip at least 60 feet in width adjacent to the boundaries of a**
5 **watershed described in paragraph (a) of this subsection.**

6 **(3) If an operator commits a violation of subsection (2) of this sec-**
7 **tion, and the State Forester does not issue and serve an order under**
8 **ORS 527.680 directing the operator to cease further violation, an**
9 **aggrieved party may bring an action:**

10 **(a) For a court order directing the State Forester to take actions**
11 **necessary to prevent the operator from committing further violations**
12 **of subsection (2) of this section within the watershed; or**

13 **(b) For a court order directing the operator to cease further vio-**
14 **lation of subsection (2) of this section within the watershed and for**
15 **additional relief as the court deems appropriate.**

16 **(4) A court shall award an aggrieved party that prevails in an action**
17 **under subsection (3) of this section costs and reasonable attorney fees**
18 **at trial or on appeal.**

19 **(5) The responsibility of the operator under subsection (2) of this**
20 **section is in addition to any responsibility of the aerial pesticide**
21 **applicator or pesticide operator under ORS chapter 634.**

22 **SECTION 3. ORS 527.990 is amended to read:**

23 527.990. (1) Subject to ORS 153.022, violation of ORS 527.670, 527.672,
24 527.676, 527.740, 527.750 or 527.755 **or section 2 of this 2017 Act**, or any rule
25 promulgated under ORS 527.710, is a Class A misdemeanor. Each day of op-
26 eration in violation of an order issued under ORS 527.680 (3) shall be deemed
27 to be a separate offense.

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

30 **SECTION 4. ORS 527.992 is amended to read:**

31 527.992. (1) In addition to any other penalty provided by law, any person

1 who fails to comply with any of the following may incur a civil penalty in
2 the amount adopted under ORS 527.685:

3 (a) The requirements of ORS 527.670, 527.672, 527.676, 527.740, 527.750 or
4 527.755 **or section 2 of this 2017 Act.**

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

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

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

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

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