

House Bill 2031

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for State Department of Agriculture)

SUMMARY

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

Creates and modifies definitions used in State Pesticide Control Act. Eliminates and limits some exemptions from Act. Changes qualifications for private applicator certificate. Changes record keeping requirements.

A BILL FOR AN ACT

1
2 Relating to regulation of the use of pesticides by the State Department of Agriculture; amending
3 ORS 12.272, 634.005, 634.006, 634.106, 634.142, 634.146, 634.172, 634.212, 634.226, 634.306, 634.312,
4 634.322 and 634.372.

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

6 **SECTION 1.** ORS 634.005 is amended to read:

7 634.005. The purpose of this chapter, which shall be known as the State Pesticide Control Act
8 and shall be enforced by the State Department of Agriculture, is to regulate in the public interest
9 the formulation[,] **or** distribution[,] **or** storage, transportation, application [*and*] **or other** use of
10 pesticides. Many materials have been discovered or synthesized [*which*] **that** are necessary and
11 valuable for the control of insects, plant diseases and weeds. Many more pesticides will be discov-
12 ered and needed. Such materials, however, may injure health, property, wildlife or environment by
13 being distributed, stored, transported[,] **or** applied or **otherwise** used in an improper or careless
14 manner. The pesticide industry of this state has achieved and maintained high standards in its for-
15 mulation and use of pesticides while at the same time experiencing a minimum of injury to persons,
16 property or the environment. Currently updating the law to maintain this achievement and to con-
17 sider future new pesticides and problems is necessary for the protection of persons, property,
18 wildlife and environment of this state.

19 **SECTION 2.** ORS 634.006 is amended to read:

20 634.006. As used in this chapter unless the context requires otherwise:

21 (1) "Antidote" means a practical immediate treatment in case of poisoning and includes first-aid
22 treatment.

23 (2) "Brand" or "trademark" means any word, name, symbol or any combination thereof adopted
24 or used by a person to identify pesticides manufactured, compounded, delivered, distributed, sold or
25 offered for sale in this state and to distinguish them from pesticides manufactured, compounded,
26 delivered, distributed, sold or offered for sale by others.

27 (3) "Department" means the State Department of Agriculture.

28 (4) "Device" means any instrument or contrivance containing pesticides or other chemicals in-
29 tended for trapping, destroying, repelling or mitigating insects or rodents or destroying, repelling
30 or mitigating fungi, nematodes or such other pests as may be designated by the department, but does

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 not include equipment used for the application of pesticides or other chemicals when sold separately
 2 from such pesticides or chemicals.

3 (5) "Highly toxic" means a pesticide or device determined by the department to be capable of
 4 causing severe injury, disease or death to human beings.

5 (6) "Landowner" means a person:

6 (a) Owning three acres or more within a proposed protected area; and

7 (b) In the case of multiple ownership of land:

8 (A) Whose interest is greater than an undivided one-half interest in the land; or

9 (B) Who holds an authorization in writing from one or more of the other owners whose interest,
 10 when added to the interest of the person, are greater than an undivided one-half interest in the land.

11 (7) "Person" means:

12 (a) A person as defined in ORS 174.100;

13 (b) A public body as defined in ORS 174.109; and

14 (c) The federal government or any of its agencies.

15 (8) "Pesticide" includes:

16 (a) "Defoliant" which means any substance or mixture of substances intended for causing the
 17 leaves or foliage to drop from a plant with or without causing abscission;

18 (b) "Desiccant" which means any substance or mixture of substances intended for artificially
 19 accelerating the drying of plant tissue;

20 (c) "Fungicide" which means any substance or mixture of substances intended for preventing,
 21 destroying, repelling or mitigating any fungus;

22 (d) "Herbicide" which means any substance or mixture of substances intended for preventing,
 23 destroying, repelling or mitigating any weed;

24 (e) "Insecticide" which means any substance or mixture of substances intended for preventing,
 25 destroying, repelling or mitigating any insects which may be present in any environment whatso-
 26 ever;

27 (f) [*Nematocide*] "**Nematicide**" which means any substance or mixture of substances intended
 28 for preventing, destroying, repelling or mitigating nematodes;

29 (g) "Plant regulator" which means any substance or mixture of substances intended, through
 30 physiological action, to accelerate or retard the rate of growth or rate of maturation or to otherwise
 31 alter the behavior of ornamental or crop plants or the produce thereof, but does not include sub-
 32 stances to the extent that they are intended as plant nutrients, trace elements, nutritional chemi-
 33 cals, plant inoculants or soil amendments; or

34 (h) Any substance, or mixture of substances intended to be used for defoliating plants or for
 35 preventing, destroying, repelling or mitigating all insects, plant fungi, weeds, rodents, predatory
 36 animals or any other form of plant or animal life which is, or which the department declares to be
 37 a pest, which may infest or be detrimental to vegetation, humans, animals, or be present in any en-
 38 vironment thereof.

39 (9) "Pesticide applicator" or "applicator" means an individual who:

40 (a) Is spraying or applying pesticides for others;

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

42 (c) Is in direct charge of or supervises the spraying or other application of pesticides or oper-
 43 ates, uses, drives or physically directs propulsion of equipment, apparatus or machinery during the
 44 spraying or other application of pesticides, either on the ground or, if certified under ORS 634.128,
 45 by aircraft.

1 (10) "Pesticide consultant" means a person who offers or supplies technical advice, supervision,
 2 aid or recommendations to the user of pesticides classified by the department as restricted-use or
 3 highly toxic pesticides, whether licensed as a pesticide dealer or not.

4 (11) "Pesticide dealer" means a person who sells, offers for sale, handles, displays or distributes
 5 any pesticide classified by the department as a restricted-use or highly toxic pesticide.

6 (12) "Pesticide equipment" means any equipment, machinery or device used in the actual appli-
 7 cation of pesticides, including aircraft and ground spraying equipment.

8 (13) "Pesticide operator" means a person who owns or operates a business engaged in the ap-
 9 plication of pesticides upon the land or property of another.

10 (14) "Pesticide trainee" means an individual who:

11 (a) Is employed by a pesticide operator; and

12 (b) Is working and engaged in a training program under special certificate to qualify as a pes-
 13 ticide applicator.

14 (15) **"Pesticide use" means activities identified by the department by rule involving pre-
 15 application, application or other pesticide-related conduct. In establishing a definition, the
 16 department shall take into consideration:**

17 (a) **Laws and regulations of the federal government, including the Federal Insecticide,
 18 Fungicide and Rodenticide Act, 7 U.S.C. 136 et seq., as amended, and the Federal Environ-
 19 mental Pesticide Control Act of 1972, 86 Stat. 973;**

20 (b) **Laws and regulations of other states; and**

21 (c) **The advice and counsel of experts in pesticides from industry, universities and col-
 22 leges and other governmental agencies or bodies.**

23 [(15)] (16) "Private applicator" means an individual who uses or supervises the use of any pes-
 24 ticide, classified by the department as a restricted-use or highly toxic pesticide, for the purpose of
 25 producing agricultural commodities or forest crops on land owned or leased by the individual or the
 26 employer of the individual.

27 [(16)] (17) "Professed standard of quality" means a plain and true statement of the name and
 28 percentage of each active ingredient and the total percentage of all inert ingredients contained in
 29 any pesticide.

30 [(17)] (18) "Protected area" means an area established under the provisions of this chapter to
 31 prohibit or restrict the application of pesticides.

32 [(18)] (19) "Public applicator" means an individual who is an employee of the State of Oregon
 33 or its agencies, counties, cities, municipal corporations, other governmental bodies or subdivisions
 34 thereof, irrigation districts, drainage districts and public utilities and telecommunications utilities
 35 and who performs or carries out the work, duties or responsibilities of a pesticide applicator.

36 [(19)] (20) "Public trainee" means an individual who is an employee of the State of Oregon or
 37 its agencies, counties, cities, municipal corporations, other governmental bodies or subdivisions
 38 thereof, irrigation districts, drainage districts and public utilities and telecommunications utility and
 39 who performs or carries out the work, duties or responsibilities of a pesticide trainee.

40 [(20)] (21) "Registrant" means a person registering any pesticide pursuant to this chapter.

41 [(21)] (22) "Restricted area" means an area established under the provisions of this chapter to
 42 restrict, but not prohibit, the application of pesticides.

43 [(22)] (23) "Restricted-use pesticide" means any pesticide or device that the department has
 44 found and determined to be so injurious or detrimental to humans, pollinating insects, bees, animals,
 45 crops, wildlife, land or environment, other than the pests it is intended to prevent, destroy, control

1 or mitigate, that additional restrictions are required.

2 [(23)] (24) "Weed" means any plant that grows where not wanted.

3 **SECTION 3.** ORS 634.106 is amended to read:

4 634.106. ORS 634.112 to 634.126 and 634.146 [shall] **do** not apply [to]:

5 (1) **To** manufacturers of materials engaged in research or experimental work on pesticides.

6 [(2) *Persons engaged in the business of a pesticide operator or applicator only in the application*
7 *of any pollenicide.*]

8 [(3)] (2) **To** persons licensed as veterinarians under ORS chapter 686 who are engaged in the
9 practice of veterinary medicine within the scope of their veterinary medicine practice and employees
10 of licensed veterinarians when acting within the scope of their employment.

11 [(4)] (3) **To** a farmer or forestland owner applying pesticides, other than restricted-use pesticides,
12 by use of equipment of the farmer or forestland owner for others on an occasional basis not
13 amounting to a principal or regular occupation, if the farmer does not publicly hold out as a pesti-
14 cide applicator and if the pesticides that are applied are furnished by the owner of the land on
15 which such pesticides are applied.

16 [(5)] (4) **Except when using restricted-use pesticides, to** persons who do not advertise or
17 publicly hold themselves out as being in the business of applying pesticides but whose main or
18 principal work or business is the maintenance of small or home lawns, shrubs or gardens.

19 [(6)] (5) **Except when using restricted-use pesticides, to** persons who do not advertise or
20 publicly hold themselves out as being in the business of applying pesticides and whose principal
21 activity or business as related to pesticides is selling pesticides or selling or leasing equipment.

22 [(7)] (6) **To** railroads, to the extent that the [application] **use** of pesticides is by their regular
23 employees, on land or property under their ownership, supervision, control or jurisdiction, except
24 that [if power-operated spray equipment is used for applying volatile herbicides, the application shall
25 be under the direct supervision of] a licensed public applicator **shall directly supervise the use if:**

26 (a) **Power-operated spray equipment is used; or**

27 (b) **Restricted-use pesticides are used.**

28 **SECTION 4.** ORS 634.142 is amended to read:

29 634.142. (1) The State Department of Agriculture shall issue or renew a private applicator's
30 certificate if the applicant or certificate holder **is at least 18 years of age and** meets the certi-
31 fication standards established by the department pursuant to ORS 634.306 (14).

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

35 **SECTION 5.** ORS 634.146 is amended to read:

36 634.146. (1) Pesticide operators shall prepare and maintain records on forms approved by the
37 State Department of Agriculture. Such records shall include:

38 (a) The name **and address** of the person for whom the pesticide was applied.

39 (b) The [approximate] location **and size** of the land or property on which the pesticide was ap-
40 plied.

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

42 (d) The person who supplied the [pesticides] **pesticide.**

43 (e) The trade name and the strength of [such pesticides] **the pesticide.**

44 [(f) *The amount or concentration (pounds or gallons per acre of active ingredient or concentration*
45 *per approximately 100 gallons).*]

1 **(f) The total amount of pesticide product applied, including concentration, measured in**
 2 **units established by the department by rule.**

3 **(g) The pesticide registration number assigned by the United States Environmental Pro-**
 4 **tection Agency.**

5 [(g)] **(h)** The specific property, crop or crops to which the pesticide was applied.

6 [(h)] **(i)** The summary information of equipment, device or apparatus used and, if **the pesticide**
 7 **was** applied by aircraft, the Federal Aviation Administration number.

8 [(i) *The names of the pesticide applicator or pesticide trainees who did the actual application or*
 9 *spraying.*]

10 **(j) The full name and license number of each pesticide applicator that made or supervised**
 11 **the application and, if applicable, the name and license number of any trainee that made the**
 12 **application under the supervision of a pesticide applicator.**

13 **(k) Other necessary information, including training records, as determined by the de-**
 14 **partment by rule.**

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

18 (3) Upon receiving a request from any owner of [*field crops*] **a site, crop or stored product** on
 19 which pesticides were applied, the pesticide operator within 40 days after making such application
 20 shall give or forward to the owner a written statement setting forth the information described in
 21 subsection (1)(a), (b), (c), (e), (f), [*and*] (g) **and (h)** of this section.

22 **SECTION 6.** ORS 634.172 is amended to read:

23 634.172. (1) No action against a landowner, person for whom the pesticide was applied or pesti-
 24 cide operator arising out of the [*use or*] application **or other use** of any pesticide [*shall*] **may** be
 25 commenced unless, within 60 days from the occurrence of the loss, within 60 days from the date the
 26 loss is discovered, or, if the loss is alleged to have occurred out of damage to growing crops, before
 27 the time when 50 percent of the crop is harvested, the person commencing the action:

28 (a) Files a report of the alleged loss with the State Department of Agriculture;

29 (b) Mails or personally delivers to the landowner or pesticide operator who is allegedly re-
 30 sponsible for the loss a true copy of the report provided for under paragraph (a) of this subsection;
 31 and

32 (c) Mails or personally delivers to the person for whom the pesticide was applied **or otherwise**
 33 **used** a true copy of the report required under paragraph (a) of this subsection if that person is not
 34 the person commencing the action.

35 (2) Any person who claims to have sustained any loss arising out of the [*use or*] application **or**
 36 **other use** of any pesticide by any state agency, county or municipality may file a report of loss with
 37 the department, and mail or personally deliver a true copy of such report of loss to the state agency,
 38 county or municipality allegedly responsible, within the time provided in subsection (1) of this sec-
 39 tion.

40 (3) Upon receiving a report of loss as provided by this section:

41 (a) The department may investigate, examine and determine the extent and nature of the damage
 42 alleged to have been caused to property or crops. The department shall not determine the source
 43 of the damage, the person who may have caused the damage or the financial extent of the loss or
 44 damage. The department shall prepare and file in its office a report of the investigation, examination
 45 and determination. Copies of the report made by the department may be given upon request to per-

1 sons who are financially interested in the matter.

2 (b) The department at the request of, and without cost to, any persons financially interested in
3 the matter may undertake to mediate an equitable settlement of the controversy.

4 (4) Upon receiving a request from any person, other than a person who may file a report of loss
5 as provided by subsection (1) or (2) of this section, the department may investigate, examine and
6 determine the extent and nature of damage alleged to have been caused to property or crops arising
7 out of the [*use or*] application **or other use** of any pesticide by any other person, provided that the
8 person making such request reimburses the department for its work. The department shall not de-
9 termine the source of the damage, the person who may have caused the damage or the financial
10 extent of the loss or damage. The department shall prepare and file in its office a report of the in-
11 vestigation, examination and determination. Copies of the report made by the department may be
12 given upon request to persons who are financially interested in the matter.

13 (5) Nothing in this section [*shall be construed as*] **constitutes** a waiver by the State of Oregon
14 or any state agency, county or municipality of any immunity against suit that otherwise may exist.

15 (6) Notwithstanding ORS 634.006, as used in this section, "landowner" includes any person
16 shown by records of the county to be the owner of land or having such land under contract for
17 purchase.

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

19 634.212. (1) Upon receiving a petition of any 25 or more landowners, representing at least 70
20 percent of the acres of land, situated within the territory proposed to be a protected area, the State
21 Department of Agriculture may establish a protected area, in accordance with the provisions of ORS
22 561.510 to 561.590 governing the procedures for the declaration of quarantines.

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

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

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

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

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

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

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

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

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

38 (4) Each petition, described in subsection (1) of this section, shall be accompanied by a filing fee
39 of \$125. Upon receipt of such petition and payment of such fee, the department shall prepare and
40 submit to the petitioners an estimated budget of the costs of establishing such proposed protected
41 area, including cost of preparation of the estimated budget, of the hearing and of the preparation
42 of required documents. Within 15 days of the receipt of the estimated budget, the petitioners shall
43 remit to the department the difference between the filing fee and total estimated budget. If the
44 petitioners fail to remit such difference, the department shall retain the filing fee and terminate the
45 procedure for establishment of a proposed protected area. If, upon completion of the procedure for

1 establishment of a proposed protected area, there remains an unexpended and unencumbered balance
 2 of funds received by the department under this section, such balance shall be refunded to the
 3 petitioners through their designated attorney in fact.

4 (5) When determining whether to amend or revoke a rule or order declaring a protected area,
 5 the Director of Agriculture shall consider, among other factors, the following:

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

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

10 (c) The characteristics and properties of pesticides [*used or applied and proposed to be restricted*
 11 *or prohibited*] **applied or otherwise used that are proposed for restriction or prohibition.**

12 **SECTION 8.** ORS 634.226 is amended to read:

13 634.226. (1) A protected area, established pursuant to the provisions of this chapter, shall be
 14 governed and administered by an area committee consisting of five members. The term of office of
 15 each member, except as provided in paragraphs (b) and (c) of this subsection, shall be three years.
 16 Such area committee shall be established in accordance with the following:

17 (a) Within 30 days after the establishment of a protected area, as provided in ORS 634.216, the
 18 State Department of Agriculture shall give notice that petitions to nominate candidates for three
 19 positions on such committee shall be accepted by the department. Such notice shall be given by
 20 publication at least once in a newspaper of general circulation in the protected area and by delivery
 21 of a copy of the notice to the county clerk of the county in which the protected area is situated,
 22 who thereafter shall post the same in a conspicuous public place. Such notice shall contain:

23 (A) The address of the department;

24 (B) The time within which the petition to nominate is to be filed;

25 (C) The fact that 25 or more electors, or two-thirds of the electors then registered, if there are
 26 less than 25, residing within the protected area must subscribe such petition;

27 (D) The fact that such electors may subscribe the nominating petition of more than one candi-
 28 date for a position on said committee; and

29 (E) The fact that a candidate must reside within the protected area.

30 (b) Upon receipt of any nominating petitions described in **paragraph (a) of this** subsection
 31 [*(1)(a) of this section*], the department shall prepare ballots containing the names of the candidates,
 32 in alphabetical order of surnames, and a space for at least one write-in candidate. If no nominating
 33 petitions are received by the department, this fact shall be stated upon the ballot and at least three
 34 spaces provided thereon for write-in candidates. Such ballots shall also state the time within which
 35 the ballots are to be returned to the department and the address of the department. All electors
 36 within the boundaries of the territory as determined by the department are eligible to vote in the
 37 referendum. The department shall determine the results of such election and shall file with the
 38 Secretary of State a declaration of the results of such election, which declaration shall be main-
 39 tained as a public record in the office of the Secretary of State. The three candidates receiving the
 40 largest number of the votes cast in such election shall be the three elected members of the area
 41 commission, whose terms of office, to be determined by lot, shall be one, two and three years re-
 42 spectively.

43 (c) Upon determining the results of the election provided in paragraph (b) of this subsection, the
 44 department shall appoint two members to the area committee, which appointments shall be subject
 45 to the approval of the majority of the three elected members of said committee. Such appointed

1 members shall be residents of the protected area and have knowledge of pesticides, pesticide appli-
2 cation and existing conditions, affecting pesticide application. The terms of office, to be determined
3 by lot, shall be one and two years respectively, and the department shall thereafter appoint the
4 successors in office of such members, as well as those of elected members whose office is vacated
5 prior to the expiration of a term.

6 (2)(a) Upon the establishment of the area committee, the members thereof shall designate a
7 chairperson, secretary and treasurer, which designations may, from time to time, be changed. A
8 majority of the area committee shall constitute a quorum and an act by a majority of such quorum
9 shall constitute an official act of the area committee.

10 (b) The area committee shall:

11 (A) Provide for surety bonds for all persons entrusted with funds or property of the protected
12 area;

13 (B) Prepare and maintain accurate and complete records of all activities, meetings, orders and
14 regulations of the protected area;

15 (C) Employ, as deemed necessary, persons to assist the area committee in its administration and
16 enforcement activities, including issuance of permits to applicators;

17 (D) Not engage in the business of buying or selling pesticides;

18 (E) Promulgate, in consultation with the department, regulations as provided in subsection (4)
19 of this section;

20 (F) Carry out the procedures for the establishment of a restricted area as provided in ORS
21 634.232;

22 (G) Prepare and make public at annual meetings to be called by the area committee chairperson,
23 annual reports and audits; and

24 (H) Be authorized to receive funds from any source and use the same to carry out and enforce
25 ORS 634.212 to 634.242.

26 (3) Each year after the establishment of a protected area and at least 15 days prior to the an-
27 nual meeting called pursuant to subsection (2)(b)(G) of this section, the area committee shall notify
28 the department of the annual meeting time. Upon receipt of such notice, the department shall initi-
29 ate and carry out the procedures for election of members to vacancies on the area committee and
30 shall follow the procedures for elections provided in subsection (1) of this section. The candidates
31 shall be elected and take office as provided in subsection (1) of this section.

32 (4)(a) In accordance with the provisions of ORS chapter 183, the area committee shall
33 promulgate regulations governing or prohibiting the application of pesticides within the protected
34 area, by aircraft or otherwise, which relate to the time, place, method of pesticide application and
35 other matters necessary to prevent damage or injury to susceptible crops, insects, wildlife or forests.

36 (b) In promulgating such regulation, the area committee shall consider, among other things, the:

37 (A) Topography and climate, including temperature, humidity and prevailing winds;

38 (B) Characteristics and properties of pesticides [*used or*] applied **or otherwise used**; and

39 (C) Location of susceptible crops, insects, wildlife or forests.

40 (c) Any interested person may petition to enlarge or restrict the regulation of pesticide appli-
41 cation by filing a petition to amend the regulations of the protected area with the area committee
42 which, in consultation with the department and in accordance with the provisions of ORS chapter
43 183, shall allow or deny such petition and amend the regulations of the protected area accordingly.

44 **SECTION 9.** ORS 634.306 is amended to read:

45 634.306. In accordance with the provisions of ORS chapter 183, the State Department of Agri-

1 culture may adopt rules to carry out the purposes and intent of this chapter, including but not
 2 limited to rules that:

3 (1) Establish and maintain a program required for an individual to work or engage in the ap-
 4 plication or spraying of pesticides as a pesticide trainee. In this regard, the department may take
 5 into consideration:

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

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

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

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

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

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

17 (g) Special requirements if the pesticide trainee is to assist a pesticide applicator in the spraying
 18 or other application of pesticides by aircraft, and the advisability of allowing participation in federal
 19 flight training programs to be substituted, all or in part, for training requirements under this chap-
 20 ter.

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

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

26 (b) Various methods of application of the pesticides.

27 (c) Precautions required for safe and effective application of the pesticides.

28 (3) Designate pesticides authorized to be *[used or]* applied **or otherwise used**, or prohibited from
 29 *[use or]* application **or other use**, by persons in order to qualify for an exemption under ORS
 30 634.106.

31 (4) Establish and maintain classifications of pesticides and devices that are deemed to be highly
 32 toxic or restricted-use pesticides or devices. In this regard, the department shall take into consid-
 33 eration:

34 (a) Laws and regulations of the federal government, including the provisions of the Federal
 35 Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 et seq., as amended, and the Federal Envi-
 36 ronmental Pesticide Control Act of 1972, 86 Stat. 973.

37 (b) Laws and regulations of other states.

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

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

43 (6) Designate the conditions under which pesticide operators that are or that employ pesticide
 44 applicators to spray or otherwise apply pesticides by aircraft may reduce, suspend or terminate the
 45 liability insurance required by ORS 634.116, and the periods of time for a reduction, suspension or

1 termination. In this regard, the department may take into consideration:

2 (a) Changes in climate or seasons.

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

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

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

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

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

13 (9) Prepare and distribute a manual, or other form of publication, containing information helpful
14 and beneficial to individuals engaged in pesticide application or **other** use or to persons preparing
15 to qualify for licensing as a pesticide operator, consultant or applicator and establish charges
16 therefor.

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

21 (11) Establish registration fees for pesticide brands and formulae or formulations under those
22 pesticide brands.

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

25 (13) Establish restrictions, methods and procedures in the storage, transportation[, *use*] or ap-
26 plication **or other use** of restricted-use pesticides or highly toxic pesticides in order to protect hu-
27 mans, pollinating insects, bees, animals, crops, wildlife, land or environment.

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

30 (a) Laws and regulations of the federal government, including the provisions of the Federal En-
31 vironmental Pesticide Control Act of 1972, 86 Stat. 973, and the Federal Insecticide, Fungicide and
32 Rodenticide Act, 7 U.S.C. 136 et seq., as amended thereby, and regulations thereunder.

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

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

38 **SECTION 10.** ORS 634.312 is amended to read:

39 634.312. The increasing formulation, distribution, application and **other** use of pesticides and
40 other synthetic chemicals have created serious problems with storage, disposition and transportation
41 of pesticides and other synthetic chemicals [*which*] **that** cannot or should not be distributed[,] **or**
42 **be** applied or **otherwise** used. Such problems include but are not limited to the recall and storage
43 of pesticides and other synthetic chemicals prohibited from distribution[,] **or** application or **other**
44 use because of a violation of or noncompliance with a law or regulation. The State Department of
45 Agriculture shall review scientific information relating to such problems and develop immediate and

1 long-range programs or plans for solutions to such problems, and for these purposes seek the advice
 2 of governmental agencies or bodies.

3 **SECTION 11.** ORS 634.322 is amended to read:

4 634.322. In carrying out and enforcing the provisions of this chapter, the State Department of
 5 Agriculture is authorized:

6 (1) To collect samples of pesticides from any source, for analysis to determine compliance with
 7 this chapter.

8 (2) In accordance with the provisions of ORS 561.605 to 561.630, to seize or embargo any pesti-
 9 cide or device which is misbranded, adulterated or otherwise in violation of this chapter.

10 (3) Notwithstanding the provisions of ORS 561.605 to 561.630, whenever the department has
 11 reasonable cause to believe a pesticide or device is being formulated, distributed, stored or trans-
 12 ported in violation of any of the provisions of this chapter, to issue and serve a written “stop sale,
 13 use or removal” order to and upon the owner or person in custody of any such pesticide or device.
 14 In the event the owner or person in custody is not available for service of the order, the department
 15 may attach a copy of the order to the pesticide or device. Upon issuance of the order, the pesticide
 16 or device shall not be sold, used or removed until the provisions of this chapter have been complied
 17 with and the pesticide or device has been released, by written notice of the department, under
 18 conditions specified by the department.

19 (4) In accordance with the provisions of ORS chapter 183, to revoke, suspend or refuse to issue
 20 or renew any license or certificate if *[it]* **the department** determines that an applicant, licensee or
 21 certificate holder has violated *[any of the provisions of this chapter.]*:

22 (a) **A provision of this chapter;**

23 (b) **A department rule for the administration or enforcement of this chapter;**

24 (c) **A provision of federal law set forth in 7 U.S.C. 136 to 136y, as amended and in effect**
 25 **on July 1, 2019; or**

26 (d) **A federal regulation set forth in 40 C.F.R. 152.1 to 180.2020, as amended and in effect**
 27 **on July 1, 2019.**

28 (5) In accordance with the provisions of ORS chapter 183, to amend, suspend or revoke the
 29 registration of a pesticide for violation of any of the provisions of this chapter.

30 (6) To establish limitations and procedures deemed necessary and proper for the protection of
 31 persons, pollinating insects, bees, animals, crops, wildlife, land or environment, on the following:

32 (a) Quantities of packages;

33 (b) Quantities of sales;

34 (c) *[Uses or]* **Applications or other uses;**

35 (d) Methods of sale, including prescription or permit requirements; or

36 (e) Persons to whom sold.

37 (7) To inspect any records required to be maintained by persons formulating, distributing, using
 38 or selling the pesticides described in ORS 634.306 (4), and to cause monitoring of the effects of such
 39 pesticides on human or animal life in any area where *[it is used or]* **they are applied or otherwise**
 40 **used** by a recognized and qualified person or agency.

41 (8) To enter into cooperative and reciprocal agreements with the federal government, or any of
 42 its agencies, for the purpose of enforcement of the provisions of this chapter or federal laws and
 43 regulations on the same subject matters, and to receive and expend funds pursuant to such agree-
 44 ments in furtherance of such purpose.

45 (9) To cooperate with, and request the assistance of, Oregon State University, governmental

1 agencies or other persons for the purpose of enforcement of the provisions of this chapter.

2 (10)(a) To act jointly in, and with the concurrence of the State Forester and a research specialist
 3 designated by Oregon State University, the issuance of permits for the use of isopropyl ester of 2,4-D
 4 or any other ester of equal or higher volatility with regard to plant damage. Each such permit shall
 5 specify:

6 (A) The particular ester allowed;

7 (B) The boundaries of the area in which it may be used; and

8 (C) The prescribed time limit and condition under which it may be applied.

9 (b) Such permits shall only be issued when the issuing authority determines that the use of the
 10 ester will not damage agricultural and forest products and susceptible crops. In making such deter-
 11 mination, the issuing authority shall consider research data, topography, climate, temperature, hu-
 12 midity, prevailing winds, characteristics of the ester and location of agricultural and forest products
 13 and susceptible crops. Such permits may be issued subject to conditions prescribed by the issuing
 14 authority. Issuance of such permit shall not be construed as a waiver of any of the provisions of
 15 this chapter.

16 **SECTION 12.** ORS 634.372 is amended to read:

17 634.372. A person may not:

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

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

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

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

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

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

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

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

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

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

1 the provisions of this chapter.

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

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

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

9 (14) As a person described in ORS 634.106 [(5)] **(4)**, use power-driven pesticide application
10 equipment or devices [(use hand or backpack types only)], or [use or] apply **or otherwise use** any
11 pesticide other than those prescribed by the department. **As used in this subsection, "power-**
12 **driven" means other than hand or backpack types.**

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

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

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

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

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

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

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

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

30 **SECTION 13.** ORS 12.272 is amended to read:

31 12.272. (1) Notwithstanding any other provision of this chapter, no action against a landowner,
32 person for whom the pesticide was applied or pesticide operator arising out of the [use or] applica-
33 tion **or other use** of any pesticide shall be commenced unless the person commencing the action,
34 within the time specified by ORS 634.172, files the report required by ORS 634.172 and mails or
35 personally delivers true copies of that report to:

36 (a) The landowner or pesticide operator who is allegedly responsible for the loss; and

37 (b) The person for whom the pesticide was applied if that person is not the person commencing
38 the action.

39 (2) For the purposes of this section:

40 (a) "Landowner" includes **the state or any county, municipality**, [any] person, firm[,] **or**
41 corporation[, the state, any county within the state, or municipality,] shown by records of the county
42 to be the owner of land or having such land under contract for purchase.

43 (b) "Pesticide operator" has the meaning given **that term** in ORS 634.006.