

Enrolled
House Bill 2031

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CHAPTER

AN ACT

Relating to regulation of the use of pesticides by the State Department of Agriculture; amending ORS 634.006, 634.306, 634.322, 634.900 and 634.992.

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

SECTION 1. ORS 634.006 is amended to read:

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

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

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

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

(4) "Device" means any instrument or contrivance containing pesticides or other chemicals intended for trapping, destroying, repelling or mitigating insects or rodents or destroying, repelling or mitigating fungi, nematodes or such other pests as may be designated by the department, but does not include equipment used for the application of pesticides or other chemicals when sold separately from such pesticides or chemicals.

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

(6) "Landowner" means a person:

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

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

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

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

(7) "Person" means:

(a) A person as defined in ORS 174.100;

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

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

(8) "Pesticide" includes:

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

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

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

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

(e) “Insecticide” which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any insects which may be present in any environment whatsoever;

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

(g) “Plant regulator” which means any substance or mixture of substances intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation or to otherwise alter the behavior of ornamental or crop plants or the produce thereof, but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants or soil amendments; or

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

(9) “Pesticide applicator” or “applicator” means an individual who:

(a)(A) Is **using**, spraying or applying **restricted-use or highly toxic** pesticides [*for others*]; or

(B) Is spraying or applying pesticides for others;

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

(c) Is in direct charge of or supervises the spraying or other [*application*] **use** of pesticides or operates, uses, drives or physically directs propulsion of equipment, apparatus or machinery during the spraying or other application of pesticides, either on the ground or, if certified under ORS 634.128, by aircraft.

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

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

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

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

(14) “Pesticide trainee” means an individual who:

(a) Is employed by a pesticide operator; and

(b) Is working and engaged in a training program under special certificate to qualify as a pesticide applicator.

(15) “Private applicator” means an individual who uses or supervises the use of any pesticide, classified by the department as a restricted-use or highly toxic pesticide, for the purpose of producing agricultural commodities or forest crops on land owned or leased by the individual or the employer of the individual.

(16) “Professed standard of quality” means a plain and true statement of the name and percentage of each active ingredient and the total percentage of all inert ingredients contained in any pesticide.

(17) “Protected area” means an area established under the provisions of this chapter to prohibit or restrict the application of pesticides.

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

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

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

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

(22) "Restricted-use pesticide" means any pesticide or device that the department has found and determined to be so injurious or detrimental to humans, pollinating insects, bees, animals, crops, wildlife, land or environment, other than the pests it is intended to prevent, destroy, control or mitigate, that additional restrictions are required.

(23) "Weed" means any plant that grows where not wanted.

SECTION 2. ORS 634.306 is amended to read:

634.306. In accordance with the provisions of ORS chapter 183, the State Department of Agriculture may adopt rules to carry out the purposes and intent of this chapter, including but not limited to rules that:

(1) Establish and maintain a program required for an individual to work or engage in the application or [*spraying*] **other use** of pesticides as a pesticide trainee. In this regard, the department may take into consideration:

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

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

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

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

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

(f) Laws and requirements relating to other professional, trade or industry trainee or apprenticeship programs in this or other states.

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

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

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

(b) Various methods of application of the pesticides.

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

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

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

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

(b) Laws and regulations of other states.

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

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

(6) Designate the conditions under which pesticide operators that are or that employ pesticide applicators to spray or otherwise apply pesticides by aircraft may reduce, suspend or terminate the liability insurance required by ORS 634.116, and the periods of time for a reduction, suspension or termination. In this regard, the department may take into consideration:

(a) Changes in climate or seasons.

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

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

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

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

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

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

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

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

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

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

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

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

(b) Minimum periods of experience required and types of experience, education or work acceptable.

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

SECTION 3. ORS 634.322 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

(a) Quantities of packages;

(b) Quantities of sales;

(c) Uses or applications;

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

(e) Persons to whom sold.

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

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

(9) To cooperate with, and request the assistance of, Oregon State University, governmental agencies or other persons for the purpose of enforcement of the provisions of this chapter.

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

(A) The particular ester allowed;

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

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

(b) Such permits shall only be issued when the issuing authority determines that the use of the ester will not damage agricultural and forest products and susceptible crops. In making such determination, the issuing authority shall consider research data, topography, climate, temperature, hu-

midity, prevailing winds, characteristics of the ester and location of agricultural and forest products and susceptible crops. Such permits may be issued subject to conditions prescribed by the issuing authority. Issuance of such permit shall not be construed as a waiver of any of the provisions of this chapter.

SECTION 4. ORS 634.900 is amended to read:

634.900. (1) In addition to any other liability or penalty provided by law, the Director of Agriculture may impose a civil penalty on a person for violation of any of the provisions of this chapter relating to pesticide application, sale or labeling. The civil penalty for a first violation shall be not more than \$2,000. For a subsequent violation, the director may impose a civil penalty of not more than \$4,000.

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

(3) A civil penalty may not be imposed under this section for violations other than those involving pesticide application, sale or labeling violation under this chapter.

(4) Notwithstanding subsections (1) to (3) of this section, the director may impose a civil penalty on a person for violation of any of the provisions of this chapter related to restricted-use pesticides or for violation of any rule adopted pursuant to this chapter related to restricted-use pesticides.

SECTION 5. ORS 634.992 is amended to read:

634.992. Violation of any of the provisions of this chapter, **or any rules adopted by the State Department of Agriculture related to restricted-use pesticides,** is a Class A misdemeanor.

Passed by House April 15, 2021

Received by Governor:

Repassed by House May 26, 2021

.....M.,....., 2021

Approved:

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Timothy G. Sekerak, Chief Clerk of House

.....M.,....., 2021

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Tina Kotek, Speaker of House

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Kate Brown, Governor

Passed by Senate May 24, 2021

Filed in Office of Secretary of State:

.....M.,....., 2021

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Peter Courtney, President of Senate

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Shemia Fagan, Secretary of State