

A-Engrossed
House Bill 3353

Ordered by the House April 11
Including House Amendments dated April 11

Sponsored by COMMITTEE ON CONSUMER PROTECTION (at the request of Oregon Landscape Contractors Association)

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.

Eliminates pesticide applicator licensing exemption for persons engaged in maintenance of lawns, shrubs or gardens. Allows fee for pesticide trainee certificate to be less than fee for pesticide applicator license. *[Eliminates State Department of Agriculture authority to establish maximum periods of work or training for pesticide trainee.]*

A BILL FOR AN ACT

Relating to persons applying pesticides; amending ORS 634.106, 634.126 and 634.372.

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

SECTION 1. ORS 634.106 is amended to read:

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

(1) Manufacturers of materials engaged in research or experimental work on pesticides.

(2) Persons engaged in the business of a pesticide operator or applicator only in the application of any pollenicide.

(3) Persons licensed as veterinarians under ORS chapter 686 who are engaged in the practice of veterinary medicine within the scope of their veterinary medicine practice and employees of licensed veterinarians when acting within the scope of their employment.

(4) A farmer or forestland owner applying pesticides, other than restricted-use pesticides, by use of equipment of the farmer or forestland owner for others on an occasional basis not amounting to a principal or regular occupation, if the farmer does not publicly hold out as a pesticide applicator and if the pesticides that are applied are furnished by the owner of the land on which such pesticides are applied.

[(5) Persons who do not advertise or publicly hold themselves out as being in the business of applying pesticides but whose main or principal work or business is the maintenance of small or home lawns, shrubs or gardens.]

[(6)] **(5)** Persons who do not advertise or publicly hold themselves out as being in the business of applying pesticides and whose principal activity or business as related to pesticides is selling pesticides or selling or leasing equipment.

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

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 **SECTION 2.** ORS 634.126 is amended to read:

2 634.126. (1) In accordance with regulations promulgated by the State Department of Agriculture,
3 as provided in ORS 634.306 (1), the department shall issue or renew *[its]* a pesticide trainee's cer-
4 tificate if the applicant or certificate holder:

- 5 (a) Is at least 18 years of age;
- 6 (b) Is employed by a licensed pesticide operator;
- 7 (c) Is working under the direct supervision and control of a licensed applicator; and
- 8 (d) Is in compliance with the applicable provisions of this chapter and regulations *[promulgated*
9 *thereunder]* **adopted under this chapter.**

10 (2) The fees for a pesticide trainee's certificate, or renewal *[thereof]* **of a pesticide trainee's**
11 **certificate**, *[shall be the same as]* **may not exceed** the license fee for a pesticide applicator.

12 **SECTION 3.** ORS 634.372 is amended to read:

13 634.372. A person may not:

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

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

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

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

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

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

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

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

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

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

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

45 (12) Act as, or purport to be, a pesticide consultant without first obtaining and maintaining a

1 pesticide consultant's license.

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

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

8 [(15)] (14) Deliver, distribute, sell or offer for sale any pesticide that is misbranded.

9 [(16)] (15) Formulate, deliver, distribute, sell or offer for sale any pesticide that is adulterated.

10 [(17)] (16) Formulate, deliver, distribute, sell or offer for sale any pesticide that has not been
11 registered as required by ORS 634.016.

12 [(18)] (17) Formulate, deliver, distribute, sell or offer for sale any powdered pesticide containing
13 arsenic or any highly toxic fluoride that is not distinctly colored.

14 [(19)] (18) Distribute, sell or offer for sale any pesticide except in the manufacturer's original
15 unbroken package.

16 [(20)] (19) Make application of pesticides, by aircraft or otherwise, within a protected or re-
17 stricted area without first obtaining a permit for such application from the committee of the pro-
18 tected or restricted area in which the application is to be made. The person also may not make such
19 application contrary to the conditions or terms of the permit so issued.

20 [(21)] (20) Use isopropyl ester of 2,4-D, or any other ester of equal or higher volatility with re-
21 gard to plant damage as determined by the department, without first obtaining a permit for such use
22 as provided in ORS 634.322 (10).

23 [(22)] (21) Sell, use or remove any pesticide or device subjected to a "stop sale, use or
24 removal" order until the pesticide or device has been released therefrom as provided in ORS 634.322
25 (3).

26 [(23)] (22) Fail to comply with any provision or requirement of sections 2 to 9, chapter 1059,
27 Oregon Laws 1999, or rules adopted thereunder.

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

30 634.372. A person may not:

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

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

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

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

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

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

43 (7) Operate pesticide applicators' apparatus, machinery or equipment without a licensed pesti-
44 cide applicator or certified private applicator performing the actual application, or supervising such
45 application if such is performed by a pesticide trainee. This prohibition does not apply to the oper-

1 ation of tractors, trucks or other vehicular equipment used only under the supervision of a certified
2 private applicator.

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

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

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

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

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

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

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

25 *[(15)]* (14) Deliver, distribute, sell or offer for sale any pesticide that is misbranded.

26 *[(16)]* (15) Formulate, deliver, distribute, sell or offer for sale any pesticide that is adulterated.

27 *[(17)]* (16) Formulate, deliver, distribute, sell or offer for sale any pesticide that has not been
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29 *[(18)]* (17) Formulate, deliver, distribute, sell or offer for sale any powdered pesticide containing
30 arsenic or any highly toxic fluoride that is not distinctly colored.

31 *[(19)]* (18) Distribute, sell or offer for sale any pesticide except in the manufacturer's original
32 unbroken package.

33 *[(20)]* (19) Make application of pesticides, by aircraft or otherwise, within a protected or re-
34 stricted area without first obtaining a permit for such application from the committee of the pro-
35 tected or restricted area in which the application is to be made. The person also may not make such
36 application contrary to the conditions or terms of the permit so issued.

37 *[(21)]* (20) Use isopropyl ester of 2,4-D, or any other ester of equal or higher volatility with re-
38 gard to plant damage as determined by the department, without first obtaining a permit for such use
39 as provided in ORS 634.322 (10).

40 *[(22)]* (21) Sell, use or remove any pesticide or device subjected to a "stop sale, use or
41 removal" order until the pesticide or device has been released therefrom as provided in ORS 634.322
42 (3).

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