

# House Bill 3353

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 **as introduced**.

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

1 Relating to persons applying pesticides; amending ORS 634.106, 634.126, 634.306 and 634.372.

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

3 **SECTION 1.** 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) 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) Persons licensed as veterinarians under ORS chapter 686 who are engaged in the practice  
9 of veterinary medicine within the scope of their veterinary medicine practice and employees of li-  
10 censed veterinarians when acting within the scope of their employment.

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

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

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

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

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

27 634.126. (1) In accordance with regulations promulgated by the State Department of Agriculture,  
28 as provided in ORS 634.306 (1), the department shall issue or renew [*its*] **a** pesticide trainee's cer-  
29 tificate if the applicant or certificate holder:  
30

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

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

8 **SECTION 3.** ORS 634.306 is amended to read:

9 634.306. In accordance with the provisions of ORS chapter 183, the State Department of Agri-  
 10 culture is authorized to promulgate regulations necessary to carry out the purposes and intent of  
 11 this chapter, including but not limited to the following:

12 (1) Establish and maintain a program required for a person to work or engage in the application  
 13 or spraying of pesticides as a pesticide trainee. In this regard, the department may take into con-  
 14 sideration:

- 15 (a) Requirements for submission of applications by pesticide trainees.
- 16 (b) Minimum [*and maximum*] periods of work or experience required for pesticide trainees.
- 17 (c) Work performance records or reports to be maintained by pesticide trainees or their em-  
 18 ployers.
- 19 (d) Acceptance of educational qualifications, applicable work or experience in similar or other  
 20 fields in lieu of, or as a part of, periods of employment or work by pesticide trainees.

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

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

26 (g) Special requirements if the pesticide trainee is to apply pesticides by the use of aircraft, and  
 27 the advisability of allowing participation in federal flight training programs to be substituted, all  
 28 or in part, for training requirements under this chapter.

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

- 33 (a) Various types, formulations and characteristics of pesticides used and their purposes.
- 34 (b) Various methods of application of such pesticides.
- 35 (c) Precautions required for safe and effective application of such pesticides.

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

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

41 (a) Laws and regulations of the federal government, including the provisions of the Federal  
 42 Insecticide, Fungicide and Rodenticide Act, as amended, and the Federal Environmental Pesticide  
 43 Control Act.

44 (b) Laws and regulations of other states.

45 (c) Advice and counsel of experts in pesticides from industry, universities and colleges and other

1 governmental agencies or bodies.

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

5 (6) Designate the conditions under which pesticide operators spraying by aircraft may reduce,  
 6 suspend or terminate the liability insurance required by ORS 634.116, and the periods of time  
 7 therefor. In this regard, the department may take into consideration:

- 8 (a) Changes in climate or seasons.
- 9 (b) Periods when certain crops are or have been harvested.
- 10 (c) Restricted or limited use of various types or classes of pesticides.
- 11 (d) Possibilities of injury or death to persons and loss or damage to real or personal property.

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

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

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

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

26 (11) Establish registration fees for pesticide brands and formulae or formulations thereunder.

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

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

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

34 (a) Laws and regulations of the federal government, including the provisions of the Federal En-  
 35 vironmental Pesticide Control Act of 1972, 86 Stat. 973, and the Federal Insecticide, Fungicide and  
 36 Rodenticide Act, 7 U.S.C. 135 et seq., as amended thereby, and regulations thereunder.

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

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

42 (15) Establish requirements for the reporting of pesticide sales, distribution or use by any per-  
 43 son.

44 **SECTION 4.** ORS 634.306, as amended by section 17, chapter 1059, Oregon Laws 1999, is  
 45 amended to read:

1       634.306. In accordance with the provisions of ORS chapter 183, the State Department of Agri-  
 2 culture is authorized to promulgate regulations necessary to carry out the purposes and intent of  
 3 this chapter, including but not limited to the following:

4       (1) Establish and maintain a program required for a person to work or engage in the application  
 5 or spraying of pesticides as a pesticide trainee. In this regard, the department may take into con-  
 6 sideration:

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

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

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

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

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

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

18          (g) Special requirements if the pesticide trainee is to apply pesticides by the use of aircraft, and  
 19 the advisability of allowing participation in federal flight training programs to be substituted, all  
 20 or in part, for training requirements under this chapter.

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 such pesticides.

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

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

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

33           (a) Laws and regulations of the federal government, including the provisions of the Federal  
 34 Insecticide, Fungicide and Rodenticide Act, as amended, and the Federal Environmental Pesticide  
 35 Control Act.

36           (b) Laws and regulations of other states.

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

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

42       (6) Designate the conditions under which pesticide operators spraying by aircraft may reduce,  
 43 suspend or terminate the liability insurance required by ORS 634.116, and the periods of time  
 44 therefor. In this regard, the department may take into consideration:

45           (a) Changes in climate or seasons.

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

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

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

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

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

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

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

18 (11) Establish registration fees for pesticide brands and formulae or formulations thereunder.

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

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

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

26 (a) Laws and regulations of the federal government, including the provisions of the Federal En-  
27 vironmental Pesticide Control Act of 1972, 86 Stat. 973, and the Federal Insecticide, Fungicide and  
28 Rodenticide Act, 7 U.S.C. 135 et seq., as amended thereby, and regulations thereunder.

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

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

34 **SECTION 5.** ORS 634.372 is amended to read:

35 634.372. A person may not:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 *[(15)]* (14) Deliver, distribute, sell or offer for sale any pesticide that is misbranded.

31 *[(16)]* (15) Formulate, deliver, distribute, sell or offer for sale any pesticide that is adulterated.

32 *[(17)]* (16) Formulate, deliver, distribute, sell or offer for sale any pesticide that has not been  
 33 registered as required by ORS 634.016.

34 *[(18)]* (17) Formulate, deliver, distribute, sell or offer for sale any powdered pesticide containing  
 35 arsenic or any highly toxic fluoride that is not distinctly colored.

36 *[(19)]* (18) Distribute, sell or offer for sale any pesticide except in the manufacturer's original  
 37 unbroken package.

38 *[(20)]* (19) Make application of pesticides, by aircraft or otherwise, within a protected or re-  
 39 stricted area without first obtaining a permit for such application from the committee of the pro-  
 40 tected or restricted area in which the application is to be made. The person also may not make such  
 41 application contrary to the conditions or terms of the permit so issued.

42 *[(21)]* (20) Use isopropyl ester of 2,4-D, or any other ester of equal or higher volatility with re-  
 43 gard to plant damage as determined by the department, without first obtaining a permit for such use  
 44 as provided in ORS 634.322 (10).

45 *[(22)]* (21) Sell, use or remove any pesticide or device subjected to a "stop sale, use or

1 removal” order until the pesticide or device has been released therefrom as provided in ORS 634.322  
 2 (3).

3 [(23)] (22) Fail to comply with any provision or requirement of sections 2 to 9, chapter 1059,  
 4 Oregon Laws 1999, or rules adopted thereunder.

5 **SECTION 6.** ORS 634.372, as amended by section 18, chapter 1059, Oregon Laws 1999, and  
 6 section 4, chapter 307, Oregon Laws 2001, is amended to read:

7 634.372. A person may not:

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

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

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

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

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

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

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

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

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

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

37 (11) Act as, or purport to be, a pesticide dealer or advertise as such without first obtaining and  
 38 maintaining a pesticide dealer’s license.

39 (12) Act as, or purport to be, a pesticide consultant without first obtaining and maintaining a  
 40 pesticide consultant’s license.

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

44 [(14) As a person described in ORS 634.106 (5), use power-driven pesticide application equipment  
 45 or devices (use hand or backpack types only), or use or apply any pesticide other than those prescribed

1 *by the department.]*

2 [(15)] (14) Deliver, distribute, sell or offer for sale any pesticide that is misbranded.

3 [(16)] (15) Formulate, deliver, distribute, sell or offer for sale any pesticide that is adulterated.

4 [(17)] (16) Formulate, deliver, distribute, sell or offer for sale any pesticide that has not been  
5 registered as required by ORS 634.016.

6 [(18)] (17) Formulate, deliver, distribute, sell or offer for sale any powdered pesticide containing  
7 arsenic or any highly toxic fluoride that is not distinctly colored.

8 [(19)] (18) Distribute, sell or offer for sale any pesticide except in the manufacturer's original  
9 unbroken package.

10 [(20)] (19) Make application of pesticides, by aircraft or otherwise, within a protected or re-  
11 stricted area without first obtaining a permit for such application from the committee of the pro-  
12 tected or restricted area in which the application is to be made. The person also may not make such  
13 application contrary to the conditions or terms of the permit so issued.

14 [(21)] (20) Use isopropyl ester of 2,4-D, or any other ester of equal or higher volatility with re-  
15 gard to plant damage as determined by the department, without first obtaining a permit for such use  
16 as provided in ORS 634.322 (10).

17 [(22)] (21) Sell, use or remove any pesticide or device subjected to a "stop sale, use or  
18 removal" order until the pesticide or device has been released therefrom as provided in ORS 634.322  
19 (3).

20