

House Bill 3457

Sponsored by Representative CAMERON

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**.

Revises conditions for exemption of persons from pesticide licensing and certification laws.

A BILL FOR AN ACT

Relating to pesticide law exemptions; amending ORS 634.106, 634.306 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*] **if** 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*] **not advertising or publicly holding** out as **being** 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.*]

(5) Persons whose principal work or business is the maintenance of lawns, shrubs or gardens, applying pesticides other than restricted-use pesticides to commercial properties not more than two acres in size or to residential properties having single-family or multi-family housing, if not advertising or publicly holding out as being in the business of applying pesticides.

(6) 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, **if not advertising or publicly holding out as being in the business of applying pesticides.**

(7) 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.

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 is authorized to promulgate regulations necessary to carry out the purposes and intent of this chapter, including but not limited to the following:

(1) Establish and maintain a program required for a person to work or engage in the application or spraying 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 apply pesticides by the use of 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 such pesticides.

(c) Precautions required for safe and effective application of such 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*] **that a person may use or apply, or is prohibited from using or applying, under an exemption granted under ORS 634.106. If an exemption under ORS 634.106 identifies the pesticide classifications for which the exemption does not apply, except as provided under ORS 634.372 the department shall authorize a person covered by the exemption to use or apply any pesticides that are in other classifications.**

(4) Establish and maintain classifications of pesticides and devices which 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, as amended, and the Federal Environmental Pesticide Control Act.

(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 reex-

1 aminations, schedules for required reexaminations and other measures deemed necessary for fair and
 2 reasonable testing of applicants as provided in ORS 634.122 (5).

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

6 (a) Changes in climate or seasons.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 **SECTION 3.** ORS 634.306, as amended by section 17, chapter 1059, Oregon Laws 1999, is
 43 amended to read:

44 634.306. In accordance with the provisions of ORS chapter 183, the State Department of Agri-
 45 culture is authorized to promulgate regulations necessary to carry out the purposes and intent of

1 this chapter, including but not limited to the following:

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

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

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

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

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

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

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

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

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

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

24 (b) Various methods of application of such pesticides.

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

26 (3) Designate pesticides [*authorized to be used or applied, or prohibited from use or application,*
 27 *by persons in order to qualify for an exemption under ORS 634.106*] **that a person may use or apply,**
 28 **or is prohibited from using or applying, under an exemption granted under ORS 634.106. If**
 29 **an exemption under ORS 634.106 identifies the pesticide classifications for which the ex-**
 30 **emption does not apply, except as provided under ORS 634.372 the department shall authorize**
 31 **a person covered by the exemption to use or apply any pesticides that are in other classi-**
 32 **fications.**

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

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

39 (b) Laws and regulations of other states.

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

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

45 (6) Designate the conditions under which pesticide operators spraying by aircraft may reduce,

1 suspend or terminate the liability insurance required by ORS 634.116, and the periods of time
 2 therefor. In this regard, the department may take into consideration:

3 (a) Changes in climate or seasons.

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

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

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

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

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

14 (9) Prepare and distribute a manual, or other form of publication, containing information helpful
 15 and beneficial to persons engaged in pesticide application or use or to persons preparing to qualify
 16 for licensing as a pesticide operator, consultants or applicator and establish charges 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 which shall be charged to the department.

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

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

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

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

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

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

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

37 **SECTION 4.** ORS 634.372 is amended to read:

38 634.372. A person may not:

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

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

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

- 1 (4) Perform pesticide application activities in a faulty, careless or negligent manner.
- 2 (5) Refuse or neglect to prepare and maintain records required to be kept by the provisions of
3 this chapter.
- 4 (6) Make false, misleading or fraudulent records, reports or application forms required by the
5 provisions of this chapter.
- 6 (7) Operate pesticide applicators' apparatus, machinery or equipment without a licensed pesti-
7 cide applicator or certified private applicator performing the actual application, or supervising such
8 application if such is performed by a pesticide trainee. This prohibition does not apply to the oper-
9 ation of tractors, trucks or other vehicular equipment used only under the supervision of a certified
10 private applicator.
- 11 (8) As a pesticide applicator, work or engage in the application of any classes of pesticides
12 without first obtaining and maintaining a pesticide applicator's license, or apply pesticides that are
13 not specifically authorized by such license.
- 14 (9) As a pesticide operator, engage in the business of, or represent or advertise as being in the
15 business of, applying pesticides upon the land or property of another, without first obtaining and
16 maintaining a pesticide operator's license. The operator also may not engage in a class of pesticide
17 application business that is not specifically authorized by license issued by the State Department
18 of Agriculture. The operator also may not employ or use any person to apply or spray pesticides
19 who is not a licensed pesticide applicator or pesticide trainee.
- 20 (10) As a pesticide trainee, work or engage in the application of any class of pesticides without
21 first obtaining and maintaining a pesticide trainee's certificate and is otherwise in compliance with
22 the provisions of this chapter.
- 23 (11) Act as, or purport to be, a pesticide dealer or advertise as such without first obtaining and
24 maintaining a pesticide dealer's license.
- 25 (12) Act as, or purport to be, a pesticide consultant without first obtaining and maintaining a
26 pesticide consultant's license.
- 27 (13) Apply any pesticide classified as a restricted-use or highly toxic pesticide to agricultural,
28 horticultural or forest crops on land owned or leased by the person without first obtaining and
29 maintaining a private applicator certificate.
- 30 (14) As a person described in ORS 634.106 (5), use power-driven pesticide application equipment
31 or devices [(use hand or backpack types only), or use or] to apply any pesticide other than those
32 prescribed by the department.
- 33 (15) Deliver, distribute, sell or offer for sale any pesticide that is misbranded.
- 34 (16) Formulate, deliver, distribute, sell or offer for sale any pesticide that is adulterated.
- 35 (17) Formulate, deliver, distribute, sell or offer for sale any pesticide that has not been regis-
36 tered as required by ORS 634.016.
- 37 (18) Formulate, deliver, distribute, sell or offer for sale any powdered pesticide containing
38 arsenic or any highly toxic fluoride that is not distinctly colored.
- 39 (19) Distribute, sell or offer for sale any pesticide except in the manufacturer's original unbroke-
40 ken package.
- 41 (20) Make application of pesticides, by aircraft or otherwise, within a protected or restricted
42 area without first obtaining a permit for such application from the committee of the protected or
43 restricted area in which the application is to be made. The person also may not make such appli-
44 cation contrary to the conditions or terms of the permit so issued.
- 45 (21) Use isopropyl ester of 2,4-D, or any other ester of equal or higher volatility with regard to

1 plant damage as determined by the department, without first obtaining a permit for such use as
 2 provided in ORS 634.322 (10).

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

5 (23) Fail to comply with any provision or requirement of sections 2 to 9, chapter 1059, Oregon
 6 Laws 1999, or rules adopted thereunder.

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

9 634.372. A person may not:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21