

Senate Bill 853

Sponsored by Senators DEMBROW, MANNING JR, FAGAN, GOLDEN, PROZANSKI, Representatives HERNANDEZ, KENY-GUYER, NERON; Senators BURDICK, MONNES ANDERSON, STEINER HAYWARD, TAYLOR, WAGNER, Representatives ALONSO LEON, HELM, HOLVEY, MARSH, PRUSAK, SALINAS, SANCHEZ, WILDE

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**.

Prohibits sale, purchase or use of pesticide chlorpyrifos.
Requires State Department of Agriculture to place pesticide products containing neonicotinoid on list of restricted-use pesticides.
Amends pesticide product registration fee provision.
Reduces maximum fee for certain occupational licenses related to pesticides.

A BILL FOR AN ACT

1
2 Relating to pesticides; creating new provisions; and amending ORS 634.016, 634.116, 634.122, 634.132,
3 634.136 and 634.142.

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

5 **SECTION 1. Sections 2 to 4 of this 2019 Act are added to and made a part of ORS chapter**
6 **634.**

7 **SECTION 2. A person may not sell, purchase or use a pesticide product containing**
8 **chlorpyrifos in this state.**

9 **SECTION 3. On the effective date of this 2019 Act, the State Department of Agriculture**
10 **shall immediately revoke any registration issued under ORS 634.016 prior to the effective**
11 **date of this 2019 Act for a pesticide product containing chlorpyrifos.**

12 **SECTION 4. (1) As used in this section, "neonicotinoid" means:**

13 **(a) Acetamiprid;**

14 **(b) Clothianidin;**

15 **(c) Dinotefuran;**

16 **(d) Imidacloprid;**

17 **(e) Nithiazine;**

18 **(f) Thiacloprid;**

19 **(g) Thiamethoxam; or**

20 **(h) Any other chemical the State Department of Agriculture determines by rule to belong**
21 **to the neonicotinoid class of chemical compounds.**

22 **(2) The department shall list a pesticide product that contains a neonicotinoid as a**
23 **restricted-use pesticide under ORS 634.316.**

24 **SECTION 5. ORS 634.016 is amended to read:**

25 634.016. (1) Every pesticide, including each formula or formulation, manufactured, compounded,
26 delivered, distributed, sold, offered or exposed for sale in this state shall be registered each year
27 with the State Department of Agriculture.

28 (2) Every device manufactured, delivered, distributed, sold, offered or exposed for sale in this

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 state shall be registered each year with the department.

2 (3) The registration shall be made by the manufacturer or a distributor of the pesticide.

3 (4) The application for registration shall include:

4 (a) The name and address of the registrant.

5 (b) The name and address of the manufacturer if different than the registrant.

6 (c) The brand name or trademark of the pesticide.

7 (d) A specimen or facsimile of the label of each pesticide, and each formula or formulation, for
8 which registration is sought, except for annual renewals of the registration when the label remains
9 unchanged.

10 (e) The correct name and total percentage of each active ingredient.

11 (f) The total percentage of inert ingredients.

12 (5) The application for registration shall be accompanied by a registration fee to be established
13 by the department for each pesticide and each formula or formulation. The registration fee may not
14 exceed [\$400] \$_____ for each such pesticide, or each formula or formulation.

15 (6) The department, at the time of application for registration of any pesticide or after a decla-
16 ration of a ground water management area under ORS 468B.180 may:

17 (a) Restrict or limit the manufacture, delivery, distribution, sale or use of any pesticide in this
18 state.

19 (b) Refuse to register any pesticide that is highly toxic for which there is no effective antidote
20 under the conditions of use for which such pesticide is intended or recommended.

21 (c) Refuse to register any pesticide for use on a crop for which no finite tolerances for residues
22 of such pesticide have been established by either the department or the federal government.

23 (d) In restricting the purposes for which pesticides may be manufactured, delivered, distributed,
24 sold or used, or in refusing to register any pesticide, give consideration to:

25 (A) The damage to health or life of humans or animals, or detriment to the environment, that
26 might result from the distribution and use of such pesticide.

27 (B) Authoritative findings and recommendations of agencies of the federal government and of
28 any advisory committee or group established under ORS 634.306 (10).

29 (C) The existence of an effective antidote under known conditions of use for which the material
30 is intended or recommended.

31 (D) Residual or delayed toxicity of the material.

32 (E) The extent to which a pesticide or its carrying agent simulates by appearance and may be
33 mistaken for human food or animal feed.

34 (7) The provisions of this section shall not, except as provided herein, apply to:

35 (a) The use and purchase of pesticides by the federal government or its agencies.

36 (b) The sale or exchange of pesticides between manufacturers and distributors.

37 (c) Drugs, chemicals or other preparations sold or intended for medicinal or toilet purposes or
38 for use in the arts or sciences.

39 (d) Common carriers, contract carriers or public warehousemen delivering or storing pesticides,
40 except as provided in ORS 634.322.

41 **SECTION 6.** ORS 634.116 is amended to read:

42 634.116. (1) A pesticide operator's license, or supplements thereto, shall authorize the licensee
43 to engage in one or more of the classes of pest control or pesticide application business prescribed
44 by the State Department of Agriculture under ORS 634.306 (2). The department may not issue a
45 pesticide operator license to the United States, the State of Oregon or federal, state or local agen-

1 cies, instrumentalities, political subdivisions, counties, cities, towns, municipal corporations, irri-
2 gation, drainage or other districts or other federal, state or local governmental bodies.

3 (2) During a license period, and after a person has been issued a license to engage in certain
4 classes of pest control or pesticide application business during a license period, the department upon
5 receiving an additional application and applicable fees, may authorize the licensee to engage in ad-
6 ditional classes of pest control or pesticide application business for the remainder of the license
7 period as prescribed in ORS 634.306 (2).

8 (3)(a) The department shall establish a pesticide operator license fee not to exceed [~~\$90~~] **\$45** for
9 the first class of pest control or pesticide application business as prescribed in ORS 634.306 (2) and
10 not to exceed \$15 for each additional class.

11 (b) After a person makes first application for a specific license period, if later during the same
12 license period the person desires to engage in additional classes of pest control or pesticide appli-
13 cation businesses, such person shall pay the fee for each additional class established by the depart-
14 ment not to exceed \$20.

15 (4) At least one owner or part owner of the pest control or pesticide application business shall
16 also obtain and maintain a pesticide applicator's license if the pesticide operator is a sole
17 proprietorship or a partnership. At least one officer or employee shall obtain and maintain a pesti-
18 cide applicator's license if the pesticide operator is a corporation. If a pesticide operator is found
19 to be in violation of this subsection, the pesticide operator's license, notwithstanding ORS chapter
20 183, is automatically suspended until the pesticide operator is in compliance. If the business is
21 owned by one individual, the department shall make no charge for the pesticide applicator license
22 issued to the individual under ORS 634.122.

23 (5) The department shall not issue or renew a pesticide operator's license until the applicant
24 or licensee has furnished evidence to the department, in the form of a public liability policy issued
25 by an insurance company qualified to do business in Oregon, protecting the applicant or licensee
26 against liability for injury or death to persons and loss of or damage to property resulting from the
27 application of pesticides, or in lieu of a policy, has furnished a deposit of cash, surety bond or other
28 evidence of financial responsibility acceptable to the department that may be applied by the de-
29 partment to the payment of damages resulting from operator liability. However:

30 (a) Except as required under paragraph (b) of this subsection, the financial responsibility re-
31 quired by this section shall not apply to damages or injury to crops, real or personal property being
32 worked upon by the applicant.

33 (b) If the applicant or licensee is to be engaged in the business of controlling or eradicating
34 structural pests, or pests within a public or private place, or pests within private or public places
35 where food is served, prepared or processed or where persons are regularly housed, the financial
36 responsibility required by this section shall apply to damages or injury to real or personal property
37 being worked upon, as well as all the other real and personal property set forth in this section.

38 (6) The financial responsibility required by subsection (5) of this section must be not less than
39 \$25,000 for bodily injury to one or more persons and not less than \$25,000 for property damage.

40 (7) Notwithstanding the provisions of ORS chapter 183, if the licensed pesticide operator fails
41 to maintain the financial responsibility required by subsections (5) and (6) of this section, the license
42 is automatically suspended until the department again verifies the pesticide operator is in compli-
43 ance with subsections (5) and (6) of this section. The liability insurance company shall notify the
44 department in writing at least 30 days prior to any cancellation of an insurance policy required by
45 this section.

1 (8) Notwithstanding the provisions of ORS 105.810 and 105.815 or other laws to the contrary, the
2 amount of damages for which a pesticide operator or pesticide applicator is liable as a result of use
3 of pesticides, or financial responsibility for the same is limited to actual damages only.

4 (9) The department shall return the deposit required by subsection (5) of this section to the
5 pesticide operator if the pesticide operator at any time establishes exemption from the financial re-
6 sponsibility requirements under this chapter. After the expiration of two years from the date of an
7 injury, death, loss or damage, the department shall return any deposit remaining to the pesticide
8 operator or to the personal representative of the pesticide operator except that the department shall
9 not make a return if the department has received notice that an action for damages arising out of
10 the provisions of this section has been filed against the pesticide operator for whom the deposit was
11 made, and the department has determined that the action is pending or that any judgment resulting
12 from the action remains unpaid.

13 (10) If the pesticide operator is or employs a pesticide applicator to spray or otherwise apply
14 pesticides by aircraft, in addition to other provisions of this section relating to financial responsi-
15 bility, the department may by rule allow the pesticide operator to reduce, suspend or terminate the
16 liability insurance, applicable to spraying or otherwise applying pesticides by aircraft, and required
17 by subsections (5) and (6) of this section during certain periods of the year.

18 (11) The department may by rule allow liability insurance policies required by subsections (5)
19 and (6) of this section to include deductible clauses of amounts to be determined by the department.

20 (12)(a) The United States, the State of Oregon or federal, state or local agencies, instrument-
21 alities, political subdivisions, counties, cities, towns, municipal corporations, irrigation, drainage or
22 other districts or other federal, state or local governmental bodies are not required to obtain a li-
23 cense as a pesticide operator or to furnish evidence of financial responsibility to the department
24 when:

25 (A) Applying pesticides to property under their ownership, possession, control or jurisdiction;

26 (B) Applying pesticides pursuant to an order issued by the department for purposes of control-
27 ling or eradicating noxious weeds or pests; or

28 (C) Applying pesticides to property under the ownership, possession, control or jurisdiction of
29 another federal, state or local agency, instrumentality, political subdivision, county, city, town, mu-
30 nicipal corporation, irrigation, drainage or other district or other federal, state or local govern-
31 mental body or of a homeowners association as defined under ORS 94.550 if:

32 (i) The land is in a jurisdiction adjacent to property under their ownership, possession, control
33 or jurisdiction;

34 (ii) The application is done in conjunction with, or as an extension of, an application of pesti-
35 cides to property under their ownership, possession, control or jurisdiction; and

36 (iii) The pesticide application is done on a cost recovery, cooperative trade of services or no
37 cost basis, and not as a source for profit.

38 (b) A public utility or telecommunications utility is not required to obtain a license as a pesti-
39 cide operator or to furnish evidence of financial responsibility to the department when applying
40 pesticides to property under the ownership, possession or control of the utility.

41 (c) In addition to any application allowed under paragraph (a) of this subsection, a vector con-
42 trol district is not required to obtain a license as a pesticide operator or to furnish evidence of fi-
43 nancial responsibility to the department when applying pesticides for the prevention, control or
44 eradication of a public health vector as defined in ORS 452.010 to property under the ownership,
45 possession, control or jurisdiction of another federal, state or local agency, instrumentality, political

1 subdivision, county, city, town, municipal corporation, irrigation, drainage or other district or other
 2 federal, state or local governmental body or of a homeowners association as defined under ORS
 3 94.550 if the pesticide application is done on a cost recovery, cooperative trade of services or no
 4 cost basis, and not as a source of profit.

5 (13) Subject to subsection (15) of this section, the employees of the agencies, instrumentalities,
 6 subdivisions, counties, cities, towns, municipal corporations, districts, governmental bodies or utili-
 7 ties described in subsection (12) of this section who perform or carry out the work, duties or re-
 8 sponsibilities of a pesticide applicator are subject to the provisions of this chapter, except they shall
 9 be issued "public applicator" licenses or, if they carry out the work, duties or responsibilities of a
 10 pesticide trainee, shall be issued "public trainee" certificates, if they otherwise comply or qualify
 11 with the provisions of this chapter relating thereto.

12 (14) The public applicator license or public trainee certificate shall be:

13 (a) Issued by the department upon payment of the fee for the pesticide applicator license or
 14 pesticide trainee certificate.

15 (b) Valid and used by the licensee or certificate holder only when applying pesticides as de-
 16 scribed in subsection (12) of this section.

17 (c) Renewed, suspended or revoked each year in the same manner, under the same provisions
 18 and at the same time as other pesticide applicator licenses and trainee certificates are renewed,
 19 suspended or revoked.

20 (15) The provisions of subsection (13) of this section apply only to:

21 (a) The application of restricted-use pesticides;

22 (b) The application of any pesticide by using a machine-powered device; or

23 (c) The application of any pesticide at the campus of a school, as defined in ORS 634.700, by an
 24 employee of the school.

25 (16) Prior to applying pesticides to land described in subsection (12)(a)(C) of this section, a
 26 public applicator shall inform the person requesting pesticide application of the possible availability
 27 of alternative sources of assistance, including sources in the private sector that are registered with
 28 the department or with industry trade or professional organizations.

29 (17) A federal, state or local agency, instrumentality, political subdivision, county, city, town,
 30 municipal corporation, irrigation, drainage or other district or other federal, state or local govern-
 31 mental body may not solicit or advertise for pesticide application business in areas outside its ju-
 32 risdiction.

33 **SECTION 7.** ORS 634.122 is amended to read:

34 634.122. (1) An applicant for a pesticide applicator's license is entitled to be examined for or to
 35 be issued a license or supplements thereto by the State Department of Agriculture, if the applicant:

36 (a) Is at least 18 years of age; and

37 (b) Proves to the satisfaction of the department that the applicant:

38 (A) Has had experience as a pesticide trainee for the minimum period and in the manner pre-
 39 scribed by the department;

40 (B) Has educational qualifications, experience or training which is equal to the minimum stan-
 41 dards and requirements established by the department; or

42 (C) Has been licensed in Oregon as a pesticide applicator and actively engaged in such work
 43 during the prior license period, as shall be prescribed by the department.

44 (2) An applicant for a pesticide applicator's license shall be required to demonstrate satisfac-
 45 torily by written examination or any reexamination given by the department, an adequate knowledge

1 of:

2 (a) The characteristics of pesticides and the effect of their application to particular crops.

3 (b) The practices of application of pesticides.

4 (c) The conditions and times of application of pesticides and the precautions to be taken in
5 connection therewith.

6 (d) The applicable laws and rules relating to pesticides and their application in this state.

7 (e) Integrated pest management techniques, as defined in ORS 634.650, for pest control.

8 (f) Other requirements or procedures which will be of benefit to and protect the pesticide
9 applicator, the persons who use the services of the pesticide applicator and the property of others.

10 (3) Based upon the license application and the request of the applicant, the department may
11 examine the applicant only in any one or more of the classes of pest control or pesticide application
12 businesses established by the department under ORS 634.306 (2).

13 (4)(a) A pesticide applicator license fee shall be established by the department not to exceed
14 [~~\$50~~] **\$25** for the first class of pest control or pesticide application business as prescribed in ORS
15 634.306 (2) and not to exceed \$7.50 for each additional class.

16 (b) After a person makes first application for a license or renewal thereof for a specific license
17 period, if later during the same license period such person desires to engage in additional classes
18 of pest control or pesticide application business as prescribed in ORS 634.306 (2), such person shall
19 pay the fee for each additional class established by the department not to exceed \$12.50.

20 (5) Examinations or reexaminations for pesticide applicator's licenses shall be given by the de-
21 partment at such time and in any of its branch offices or other locations it deems expedient, and
22 shall be under the supervision of its employees or appointees. The department is authorized to:

23 (a) Appoint without pay or reimbursement, employees of other state agencies who are authorized
24 to give examinations.

25 (b) Prepare and maintain various types of examinations and types and schedules of reexamina-
26 tions and to take all other measures deemed necessary to insure that persons receiving passing
27 grades thereto have been fairly and reasonably tested as to their ability and that there have been
28 no fraudulent or dishonest means used by the applicants in applying for or in the taking of exam-
29 inations or reexaminations.

30 (6) If it verifies an applicant has received a passing grade on the examination or reexamination
31 and otherwise has complied with the provisions of this chapter, the department shall issue a pesti-
32 cide applicator's license.

33 (7) Each person who has failed to receive a passing grade or for other reasons was not issued
34 a license as a result of an examination or reexamination given by the department, shall pay \$5 to
35 partially reimburse the department for its costs to administer each reexamination to the applicant.

36 **SECTION 8.** ORS 634.132 is amended to read:

37 634.132. (1) The annual license fee for a pesticide consultant shall be established by the State
38 Department of Agriculture not to exceed [~~\$40~~] **\$20**.

39 (2) An applicant for a pesticide consultant's license shall be required to demonstrate satisfac-
40 torily by written examination or any reexamination given by the department, an adequate knowledge
41 of:

42 (a) The characteristics of pesticides and the effect of their application to particular crops.

43 (b) The practices of application of pesticides.

44 (c) The conditions and times of application of pesticides and the precautions to be taken in
45 connection therewith.

1 (d) The applicable laws and rules relating to pesticides and their application in this state.

2 (e) Other requirements or procedures which will be of benefit to and protect the pesticide
3 applicators, the persons who use the services of the pesticide applicator and the property of others.

4 (3) Based upon the license application and the request of the applicant, the department may
5 examine the applicant only in any one or more of the classes of pesticides established by the de-
6 partment under ORS 634.306 (2).

7 (4) Examinations or reexaminations for pesticide consultant's licenses shall be subject to ORS
8 634.122 (5) to (7).

9 (5) This section shall not apply to licensed pesticide applicators or operators.

10 **SECTION 9.** ORS 634.136 is amended to read:

11 634.136. (1) The annual license fee for a pesticide dealer shall be established by the State De-
12 partment of Agriculture not to exceed [~~\$75~~] **\$37.50**. A separate license shall be required for each
13 sales outlet or location.

14 (2) This section shall not apply to:

15 (a) Any licensed pesticide operator who sells restricted-use or highly toxic pesticides as a part
16 of services, or through licensed employees, through the use of the equipment of the licensed pesti-
17 cide operator.

18 (b) Any state, federal or governmental agency providing restricted-use or highly toxic pesticides
19 to its own employees for use in its own programs.

20 (c) Any person who sells, offers for sale, handles or distributes pesticide-fertilizer mixtures only
21 in packages of 25 pounds or less in size.

22 **SECTION 10.** ORS 634.142 is amended to read:

23 634.142. (1) The State Department of Agriculture shall issue or renew a private applicator's
24 certificate if the applicant or certificate holder meets the certification standards established by the
25 department pursuant to ORS 634.306 (14).

26 (2) A fee, established by the department, shall be assessed for a private applicator's certificate
27 or renewal thereof. The fee may not exceed [~~\$25~~] **\$12.50**. The time for which a certificate is valid
28 shall be five years.

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