

Enrolled
House Bill 4062

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Agriculture, Land Use, and Water for Representative Ken Helm)

CHAPTER

AN ACT

Relating to licensing of persons using pesticides; creating new provisions; amending ORS 634.006, 634.045, 634.112, 634.128, 634.306, 634.372, 634.725, 634.730 and 634.750; and prescribing an effective date.

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

SECTION 1. Sections 2 and 3 of this 2022 Act are added to and made a part of ORS chapter 634.

SECTION 2. (1) An applicant for a noncommercial pesticide applicator license must:

- (a) Be at least 18 years of age at the time the license is issued; and
- (b) Demonstrate to the satisfaction of the State Department of Agriculture, on a written examination or any reexamination given by the department, an adequate knowledge of:
 - (A) The characteristics of pesticides and the effect of their application;
 - (B) The practices of application of pesticides;
 - (C) The conditions and times of application of pesticides and the precautions to be taken in connection therewith;
 - (D) The applicable laws and rules relating to pesticides and their application in this state;
 - (E) Integrated pest management techniques, as defined in ORS 634.650, for pest control;
 - (F) Best practices for avoiding adverse effects from pesticides on populations of bees and other pollinating insects; and
 - (G) Other requirements or procedures that will benefit and protect human health and the environment.

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

(3) The fee for a noncommercial pesticide applicator license, including fees for an additional class, shall be the same as the license fee adopted by the department, pursuant to ORS 634.122, for a pesticide applicator's license.

(4) A noncommercial pesticide applicator license shall be:

- (a) Valid and used by the licensee only when applying pesticides as authorized by the noncommercial pesticide applicator license; and
- (b) Renewed, suspended or revoked in the same manner, under the same provisions and at the same time as other pesticide applicator licenses are renewed, suspended or revoked.

(5) The department is authorized to prepare and maintain various types of examinations and types and schedules of reexaminations and to take all other measures deemed necessary

to ensure that persons receiving passing grades have been fairly and reasonably tested as to their ability and that there have been no fraudulent or dishonest means used by the applicants in applying for or in the taking of examinations or reexaminations.

(6) If the department verifies an applicant has received a passing grade on the examination or reexamination and otherwise has complied with the provisions of this chapter, the department shall issue a noncommercial pesticide applicator's license.

(7) A person acting as a noncommercial pesticide applicator shall prepare and maintain records as required by the department.

(8) A noncommercial pesticide license does not authorize a licensee to work for or be employed by a pesticide operator.

(9) The department may adopt rules to administer the provisions of this chapter pertaining to noncommercial pesticide applicators and noncommercial pesticide trainees. In adopting such rules, the department shall consider the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 et seq., or other relevant federal laws or regulations, or relevant provisions of this chapter.

SECTION 3. (1) In accordance with rules adopted by the State Department of Agriculture, as provided in ORS 634.306 (1), the department shall issue or renew a noncommercial pesticide trainee's certificate if the applicant or certificate holder:

(a) Is at least 18 years of age;

(b) Is working under the direct supervision and control of a licensed noncommercial pesticide applicator or, if spraying or otherwise applying pesticides by aircraft, a certified aerial pesticide applicator; and

(c) Is in compliance with the applicable provisions of this chapter and rules adopted under this chapter pertaining to noncommercial pesticide applicators.

(2) The fee for a noncommercial pesticide trainee's certificate, or renewal thereof, shall be the same as the license fee for a pesticide applicator.

SECTION 4. 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) "Noncommercial pesticide applicator" or "noncommercial applicator" means:

(a) An individual who uses or supervises the use of any restricted-use pesticide or highly toxic pesticide on land or property owned or leased by the individual or the employer of the

individual, except for an individual who performs the work, duties or responsibilities of a private applicator or a public applicator; or

(b) An individual who owns or is employed by a private school and who performs or carries out the work, duties or responsibilities of a pesticide applicator at the school's campus, as defined in ORS 634.700.

(8) "Noncommercial pesticide trainee" means an individual who is working and engaged in a training program under a special certificate to qualify as a noncommercial pesticide applicator and who performs or carries out the work, duties or responsibilities of a pesticide trainee.

[7] **(9) "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] **(10) "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*] "**Nematicide**" 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] **(11) "Pesticide applicator" or "applicator" means an individual who:**

- (a)(A) Is using, spraying or applying restricted-use or highly toxic pesticides; 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 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] **(12) "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] **(13) "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] **(14) "Pesticide equipment" means any equipment, machinery or device used in the actual application of pesticides, including aircraft and ground spraying equipment.**

[(13)] (15) "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)] (16) "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)] (17) "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)] (18) "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)] (19) "Protected area" means an area established under the provisions of this chapter to prohibit or restrict the application of pesticides.

[(18)] (20) "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)] (21) "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)] (22) "Registrant" means a person registering any pesticide pursuant to this chapter.

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

[(22)] (24) "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.

(25) "Trainee" means a pesticide trainee, public trainee or noncommercial pesticide trainee.

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

SECTION 5. ORS 634.045 is amended to read:

634.045. (1)(a) Oregon State University, in consultation with the State Department of Agriculture, shall develop educational materials regarding the best practices for avoiding adverse effects from pesticides on populations of bees and other pollinating insects.

(b) The educational materials must include, but need not be limited to, measures that pesticide applicators and pesticide trainees can take to protect honeybees and bumblebees.

(c) The university and the department shall design the requirements to ensure that any pesticide applicator applying or supervising the application of a pesticide is knowledgeable regarding alternatives to, the appropriateness of, and precautions for pesticide use that may be injurious to the health of bees and other pollinating insects.

(d) The department shall make the educational materials described in this section a part of the education required for taking the pesticide applicator licensing examination under ORS 634.122 **and section 2 of this 2022 Act.**

(2)(a) Oregon State University, in consultation with the State Department of Agriculture, the State Forestry Department, the Department of Transportation and the State Department of Fish and Wildlife shall develop and annually revise a pollinator health outreach and education plan to educate the public regarding the best practices for increasing habitat for bees and other pollinating insects and avoiding adverse effects from pesticides on populations of bees and other pollinating insects. The plan shall include:

(A) Educational materials that are appropriate and effective for a broad audience, including, but not limited to, pesticide applicators, consultants, dealers, operators and trainees, **noncommercial pesticide applicators** and private applicators, as those terms are defined in ORS 634.006, and members of the public; and

(B) A communication strategy for dissemination of educational materials using media sources, state agencies, associations and organizations.

(b) Oregon State University, including a representative of the university who specializes in pollinator health, the State Department of Agriculture, the State Forestry Department, the Department of Transportation and the State Department of Fish and Wildlife shall conduct an annual meeting to:

(A) Confer regarding the activities that the university and each agency undertook to promote pollinator health and increases in pollinator habitat in accordance with the plan developed under paragraph (a) of this subsection; and

(B) Review revisions to the plan developed under paragraph (a) of this subsection.

(3) The State Department of Agriculture shall develop a bee incident reporting system to facilitate public reporting of incidents related to pollinator health to the department.

(4) Oregon State University, in consultation with the State Department of Agriculture, shall develop a pesticide use safety plan to educate the public regarding best practices in the use of pesticides. The plan shall include:

(a) Educational materials that are appropriate and effective for a broad audience, including, but not limited to, pesticide applicators, consultants, dealers, operators and trainees and private applicators **and noncommercial applicators**, as those terms are defined in ORS 634.006, and members of the public; and

(b) A communication strategy for dissemination of educational materials using media sources, state agencies, associations and organizations.

SECTION 6. ORS 634.112 is amended to read:

634.112. (1) Except as provided in ORS 634.142 (2), any license or certificate issued or required of a pesticide consultant, dealer, operator, applicator, private applicator, **noncommercial applicator** or trainee by this chapter shall expire on December 31 following issuance or on such date as may be specified by rule of the State Department of Agriculture. At least 30 days prior to the expiration date, the department shall by mail notify each person holding a license or certificate of the expiration date thereof.

(2) Applications for all licenses or certificates required of a pesticide consultant, dealer, operator, applicator, private applicator, **noncommercial applicator** or trainee, or renewal thereof, shall be made to the department on forms prescribed by the department and accompanied by the prescribed fee.

(3) All such licenses or certificates are personal to the applicant and may not be transferred to any other person.

(4) Nothing in this chapter shall be construed as requiring a person, helping or assisting in the application of pesticides by a licensed pesticide applicator, **licensed noncommercial pesticide applicator** or certified private applicator or the pesticide application business through the performance of manual labor only, to obtain a license or certificate, if the actual application of pesticides is made by:

(a) A licensed pesticide applicator, **licensed noncommercial pesticide applicator** or a certified private applicator; or

(b) A person applying pesticides under ORS 634.106.

(5) Failure to pay the renewal license fees when due by a pesticide consultant, dealer, operator, [or] applicator[,] **or noncommercial applicator**, or failure to pay the renewal certificate fees by a trainee, shall forfeit the right to engage in the activities of a pesticide consultant, dealer, operator, applicator, **noncommercial applicator** or trainee, as the case may be. Any person whose pesticide consultant, dealer, operator, [or] applicator **or noncommercial applicator** license, or trainee certificate, has been forfeited, shall not be issued a license, certificate or renewal license

or renewal certificate except upon written application to the department accompanied by a sum of money equal to the license or certificate fee which should have been paid.

(6) If such person is a pesticide consultant, [or] applicator **or noncommercial applicator** and does not pay the license fee during the first month in which the license fee is delinquent, thereafter such pesticide consultant, [or] applicator **or noncommercial applicator** shall not only pay the required license fee but shall also obtain a passing grade in a reexamination given by the department for pesticide applicators as prescribed in ORS 634.122, or otherwise demonstrate knowledge of the subject to the satisfaction of the department.

(7) No penalty reexamination shall be required of a person whose application for renewal of a license or certificate is accompanied by a signed statement that prior to the application the person has not operated or worked as a pesticide consultant, applicator, **noncommercial applicator** or trainee, as the case may be, during the previous six months or since the expiration date of the last license or certificate of the person, whichever time is less. If the department later verifies this signed statement is false, then notwithstanding the provisions of ORS chapter 183, the department may immediately suspend the license or certificate which was issued as a result of such statement. Such suspension shall only be removed after the person has complied with the applicable provisions of subsections (5) and (6) of this section.

SECTION 7. ORS 634.128 is amended to read:

634.128. (1) An individual may not spray or otherwise apply a pesticide by aircraft unless the individual holds a valid aerial pesticide applicator certificate issued by the State Department of Agriculture.

(2) The department may issue an aerial pesticide applicator certificate to an individual who:

(a) Is a licensed pesticide applicator, licensed public applicator, **licensed noncommercial pesticide applicator** or certified private applicator;

(b) Passes a national examination, or other examination approved by the department, testing the knowledge of the individual regarding proper spraying and other application of pesticides by aircraft;

(c) Holds a valid commercial pilot certificate for the type of aircraft to be used by the individual in applying pesticides;

(d) Has 50 or more hours of experience as a licensed pesticide applicator, licensed public applicator, **licensed noncommercial pesticide applicator** or certified private applicator, or as a pesticide trainee, [or] public trainee **or noncommercial pesticide trainee** under the supervision of a certified aerial pesticide applicator, on flights conducted for the purpose of carrying out, or training to carry out, spraying or otherwise applying pesticides by aircraft; and

(e) Pays a certificate fee established by the department by rule.

(3) In determining appropriate examinations for approval under subsection (2)(b) of this section, the department shall give consideration to any examination of aerial pesticide applicator competency developed or approved by a national organization of state agencies that regulate agriculture.

(4)(a) The department shall establish a term for aerial pesticide applicator certificates, not to exceed five years. The department shall suspend or revoke the certificate if the certificate holder fails to maintain a valid pesticide applicator license, public applicator license, **noncommercial pesticide applicator license** or private applicator certificate. Except as provided in paragraph (b) of this subsection, an aerial pesticide applicator certificate may be renewed.

(b) The certificate holder may renew an aerial pesticide applicator certificate only if, during the preceding five years, the holder successfully completed at least 10 credit hours in programs of instruction or educational courses satisfactory to the department and related to the spraying or other application of pesticides by aircraft. In determining whether programs of instruction or educational courses are satisfactory for purposes of this subsection, the department shall consult with professional associations or other organizations serving aerial applicators of pesticides or with a national organization of state agencies that regulate agriculture. The department shall count any credit hours in satisfactory programs of instruction or educational courses described in this subsection

toward any instruction or education requirements imposed by the department for the renewal of a pesticide applicator license **or noncommercial pesticide applicator license**.

(5) If a certificate holder is licensed as a public applicator, the certificate holder may spray or otherwise apply pesticides by aircraft only to properties described in ORS 634.116 (12).

SECTION 8. 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 other use of pesticides as a pesticide trainee **or noncommercial pesticide trainee**. In this regard, the department may take into consideration:

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

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

(c) Work performance records or reports to be maintained by pesticide trainees, **noncommercial 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 **or noncommercial pesticide trainees**.

(e) Forms and types of pesticide trainee certificates **or noncommercial 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 **or noncommercial pesticide trainee** is to assist a pesticide applicator **or noncommercial 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, **noncommercial 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 **or noncommercial 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) **and section 2 (5) of this 2022 Act**.

(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, **noncommercial 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 **or noncommercial 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 9. ORS 634.372 is amended to read:

634.372. A person may not:

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

(2) As a pesticide applicator, **noncommercial applicator**, **public applicator** or **pesticide operator**, intentionally or willfully apply or use a worthless pesticide or any pesticide inconsistent with its labeling, or as a pesticide consultant or dealer, recommend or distribute such pesticides.

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

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

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

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

(7) Operate pesticide applicators' apparatus, machinery or equipment without a licensed pesticide applicator, **licensed noncommercial pesticide applicator** or certified private applicator performing the actual application, or supervising such application if such is performed by a pesticide trainee. This prohibition does not apply to the operation of tractors, trucks or other vehicular equipment used only under the supervision of a certified private applicator.

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

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

(10) As a pesticide trainee, **noncommercial pesticide trainee or public trainee**, work or engage in the application of any class of pesticides without first obtaining and maintaining a pesticide trainee's certificate and [*is*] otherwise **being** in compliance with the provisions of this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 10. ORS 634.725 is amended to read:

634.725. If a school has followed the integrated pest management plan and nonchemical pest control measures were ineffective, subject to ORS 634.730 the integrated pest management plan coordinator may authorize the application of a low-impact pesticide. The low-impact pesticide application must be made by a pesticide applicator, **a noncommercial pesticide applicator** or [*by*] a

public applicator. The use of a pesticide applicator, **noncommercial pesticide applicator** or public applicator to make an application does not cancel, alter or reassign any of the duties imposed under ORS 634.740 or 634.750.

SECTION 11. ORS 634.730 is amended to read:

634.730. (1) Subject to subsection (2) of this section:

(a) If the labeling of a pesticide product specifies a reentry time, a pesticide may not be applied to an area of a campus where the school expects students to be present before expiration of that reentry time.

(b) If the labeling of a pesticide product does not specify a reentry time, a pesticide may not be applied to an area of a campus where the school expects students to be present before expiration of a reentry time that the integrated pest management plan coordinator determines to be appropriate based on the times at which students would normally be expected to be in the area, area ventilation and whether the area will be cleaned before students are present.

(2)(a) The application restrictions described in subsection (1) of this section do not apply if the pesticide is applied outdoors by a pesticide applicator, **a noncommercial pesticide applicator** or **a public applicator** as a component of academic instruction in agriculture.

(b) The application restrictions described in subsection (1)(b) of this section do not apply if the integrated pest management plan coordinator declares a pest emergency under subsection (3) of this section.

(3) An integrated pest management plan coordinator, after consultation with school faculty and administration, may declare the existence of a pest emergency. If necessary, a pesticide other than a low-impact pesticide may be used to mitigate a declared pest emergency. If a pesticide is applied at a campus due to a pest emergency, the plan coordinator shall review the integrated pest management plan to determine whether modification of the plan might prevent future pest emergencies. The plan coordinator shall submit any recommendations for modification of the plan to the governing body. The governing body shall review and take formal action on the recommendations.

SECTION 12. ORS 634.750 is amended to read:

634.750. (1) If a pesticide is applied at a campus, the integrated pest management plan coordinator or a designee of the coordinator shall place the labeling information and material data safety sheet for the pesticide on file at a school on the campus. The plan coordinator or designee shall record and make available the following information:

(a) The brand name or trademark of the pesticide product;

(b) The United States Environmental Protection Agency registration number assigned to the pesticide product;

(c) The pest condition that prompted the application;

(d) A description of the area on campus where the application occurred;

(e) The approximate amount and concentration of pesticide product applied;

(f) The type of application and whether the application proved effective;

(g) The pesticide applicator, **noncommercial pesticide applicator** or public applicator license numbers and pesticide trainee, **noncommercial pesticide trainee** or public trainee certificate numbers of the persons applying the pesticide;

(h) The names of the persons applying the pesticide;

(i) The dates on which the plan coordinator gave any notices required by ORS 634.740; and

(j) The dates and times for the placement and removal of warning signs under ORS 634.740.

(2) Pesticide application records must include copies of all notices given under ORS 634.740.

(3) A school shall retain pesticide application records required by this section for at least four years following the application date.

SECTION 13. This 2022 Act takes effect on the 91st day after the date on which the 2022 regular session of the Eighty-first Legislative Assembly adjourns sine die.

Passed by House February 21, 2022

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Timothy G. Sekerak, Chief Clerk of House

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Dan Rayfield, Speaker of House

Passed by Senate February 28, 2022

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2022

Approved:

.....M,....., 2022

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2022

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Shemia Fagan, Secretary of State