

A-Engrossed
House Bill 2687

Ordered by the House March 13
Including House Amendments dated March 13

Sponsored by Representative OWENS; Representatives HARTMAN, HIEB, LEVY B, MORGAN, SCHARF, WRIGHT
(at the request of Burns Paiute Tribe) (Pre-session filed.)

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.

Authorizes State Department of Agriculture to issue public applicator licenses and public trainee certificates to employees of federally recognized Indian tribes for purposes of pesticide application on *[certain lands adjacent to tribal lands]* **lands other than Indian country**.

[Takes effect on 91st day following adjournment sine die.]

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to public applicators; amending ORS 634.006 and 634.116; and declaring an emergency.

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

4 **SECTION 1.** ORS 634.006, as amended by section 4, chapter 53, Oregon Laws 2022, is amended
5 to read:

6 634.006. As used in this chapter unless the context requires otherwise:

7 (1) "Antidote" means a practical immediate treatment in case of poisoning and includes first-aid
8 treatment.

9 (2) "Brand" or "trademark" means any word, name, symbol or any combination thereof adopted
10 or used by a person to identify pesticides manufactured, compounded, delivered, distributed, sold or
11 offered for sale in this state and to distinguish them from pesticides manufactured, compounded,
12 delivered, distributed, sold or offered for sale by others.

13 (3) "Department" means the State Department of Agriculture.

14 (4) "Device" means any instrument or contrivance containing pesticides or other chemicals in-
15 tended for trapping, destroying, repelling or mitigating insects or rodents or destroying, repelling
16 or mitigating fungi, nematodes or such other pests as may be designated by the department, but does
17 not include equipment used for the application of pesticides or other chemicals when sold separately
18 from such pesticides or chemicals.

19 (5) "Highly toxic" means a pesticide or device determined by the department to be capable of
20 causing severe injury, disease or death to human beings.

21 (6) "**Indian tribe**" means a **federally recognized Indian tribe in Oregon, provided that the**
22 **tribe engages in applicable pesticide use on lands other than Indian country, as defined in**
23 **18 U.S.C. 1151.**

24 [(6)] (7) "Landowner" means a person:

25 (a) Owning three acres or more within a proposed protected area; and

26 (b) In the case of multiple ownership of land:

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) Whose interest is greater than an undivided one-half interest in the land; or

2 (B) Who holds an authorization in writing from one or more of the other owners whose interest,
3 when added to the interest of the person, are greater than an undivided one-half interest in the land.

4 [(7)] (8) "Noncommercial pesticide applicator" or "noncommercial applicator" means:

5 (a) An individual who uses or supervises the use of any restricted-use pesticide or highly toxic
6 pesticide on land or property owned or leased by the individual or the employer of the individual,
7 except for an individual who performs the work, duties or responsibilities of a private applicator or
8 a public applicator; or

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

12 [(8)] (9) "Noncommercial pesticide trainee" means an individual who is working and engaged in
13 a training program under a special certificate to qualify as a noncommercial pesticide applicator and
14 who performs or carries out the work, duties or responsibilities of a pesticide trainee.

15 [(9)] (10) "Person" means:

16 (a) A person as defined in ORS 174.100;

17 (b) A public body as defined in ORS 174.109; *and*

18 (c) The federal government or any of its agencies; **and**

19 **(d) An Indian tribe.**

20 [(10)] (11) "Pesticide" includes:

21 (a) "Defoliant" which means any substance or mixture of substances intended for causing the
22 leaves or foliage to drop from a plant with or without causing abscission;

23 (b) "Desiccant" which means any substance or mixture of substances intended for artificially
24 accelerating the drying of plant tissue;

25 (c) "Fungicide" which means any substance or mixture of substances intended for preventing,
26 destroying, repelling or mitigating any fungus;

27 (d) "Herbicide" which means any substance or mixture of substances intended for preventing,
28 destroying, repelling or mitigating any weed;

29 (e) "Insecticide" which means any substance or mixture of substances intended for preventing,
30 destroying, repelling or mitigating any insects which may be present in any environment whatso-
31 ever;

32 (f) "Nematicide" which means any substance or mixture of substances intended for preventing,
33 destroying, repelling or mitigating nematodes;

34 (g) "Plant regulator" which means any substance or mixture of substances intended, through
35 physiological action, to accelerate or retard the rate of growth or rate of maturation or to otherwise
36 alter the behavior of ornamental or crop plants or the produce thereof, but does not include sub-
37 stances to the extent that they are intended as plant nutrients, trace elements, nutritional chemi-
38 cals, plant inoculants or soil amendments; or

39 (h) Any substance, or mixture of substances intended to be used for defoliating plants or for
40 preventing, destroying, repelling or mitigating all insects, plant fungi, weeds, rodents, predatory
41 animals or any other form of plant or animal life which is, or which the department declares to be
42 a pest, which may infest or be detrimental to vegetation, humans, animals, or be present in any en-
43 vironment thereof.

44 [(11)] (12) "Pesticide applicator" or "applicator" means an individual who:

45 (a)(A) Is using, spraying or applying restricted-use or highly toxic pesticides; or

1 (B) Is spraying or applying pesticides for others;

2 (b) Is authorized to work for and is employed by a pesticide operator; and

3 (c) Is in direct charge of or supervises the spraying or other use of pesticides or operates, uses,
4 drives or physically directs propulsion of equipment, apparatus or machinery during the spraying
5 or other application of pesticides, either on the ground or, if certified under ORS 634.128, by air-
6 craft.

7 [(12)] (13) "Pesticide consultant" means a person who offers or supplies technical advice,
8 supervision, aid or recommendations to the user of pesticides classified by the department as
9 restricted-use or highly toxic pesticides, whether licensed as a pesticide dealer or not.

10 [(13)] (14) "Pesticide dealer" means a person who sells, offers for sale, handles, displays or dis-
11 tributes any pesticide classified by the department as a restricted-use or highly toxic pesticide.

12 [(14)] (15) "Pesticide equipment" means any equipment, machinery or device used in the actual
13 application of pesticides, including aircraft and ground spraying equipment.

14 [(15)] (16) "Pesticide operator" means a person who owns or operates a business engaged in the
15 application of pesticides upon the land or property of another.

16 [(16)] (17) "Pesticide trainee" means an individual who:

17 (a) Is employed by a pesticide operator; and

18 (b) Is working and engaged in a training program under special certificate to qualify as a pes-
19 ticide applicator.

20 [(17)] (18) "Private applicator" means an individual who uses or supervises the use of any pes-
21 ticide, classified by the department as a restricted-use or highly toxic pesticide, for the purpose of
22 producing agricultural commodities or forest crops on land owned or leased by the individual or the
23 employer of the individual.

24 [(18)] (19) "Professed standard of quality" means a plain and true statement of the name and
25 percentage of each active ingredient and the total percentage of all inert ingredients contained in
26 any pesticide.

27 [(19)] (20) "Protected area" means an area established under the provisions of this chapter to
28 prohibit or restrict the application of pesticides.

29 [(20)] (21) "Public applicator" means an individual who is an employee of the State of Oregon
30 or its agencies, counties, cities, municipal corporations, other governmental bodies or subdivisions
31 thereof, irrigation districts, drainage districts and public utilities and telecommunications utilities,
32 **or of an Indian tribe**, and who performs or carries out the work, duties or responsibilities of a
33 pesticide applicator.

34 [(21)] (22) "Public trainee" means an individual who is an employee of the State of Oregon or
35 its agencies, counties, cities, municipal corporations, other governmental bodies or subdivisions
36 thereof, irrigation districts, drainage districts and public utilities and telecommunications [utility]
37 **utilities, or of an Indian tribe**, and who performs or carries out the work, duties or responsibilities
38 of a pesticide trainee.

39 [(22)] (23) "Registrant" means a person registering any pesticide pursuant to this chapter.

40 [(23)] (24) "Restricted area" means an area established under the provisions of this chapter to
41 restrict, but not prohibit, the application of pesticides.

42 [(24)] (25) "Restricted-use pesticide" means any pesticide or device that the department has
43 found and determined to be so injurious or detrimental to humans, pollinating insects, bees, animals,
44 crops, wildlife, land or environment, other than the pests it is intended to prevent, destroy, control
45 or mitigate, that additional restrictions are required.

1 [(25)] (26) "Trainee" means a pesticide trainee, public trainee or noncommercial pesticide
2 trainee.

3 [(26)] (27) "Weed" means any plant that grows where not wanted.

4 **SECTION 2.** ORS 634.116 is amended to read:

5 634.116. (1) A pesticide operator's license, or supplements thereto, shall authorize the licensee
6 to engage in one or more of the classes of pest control or pesticide application business prescribed
7 by the State Department of Agriculture under ORS 634.306 (2). The department may not issue a
8 pesticide operator license to the United States, the State of Oregon or federal, state or local agen-
9 cies, instrumentalities, political subdivisions, counties, cities, towns, municipal corporations, irri-
10 gation, drainage or other districts, [or] other federal, state or local governmental bodies **or an**
11 **Indian tribe.**

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

17 (3)(a) The department shall establish a pesticide operator license fee not to exceed \$90 for the
18 first class of pest control or pesticide application business as prescribed in ORS 634.306 (2) and not
19 to exceed \$15 for each additional class.

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

24 (4) At least one owner or part owner of the pest control or pesticide application business shall
25 also obtain and maintain a pesticide applicator's license if the pesticide operator is a sole
26 proprietorship or a partnership. At least one officer or employee shall obtain and maintain a pesti-
27 cide applicator's license if the pesticide operator is a corporation. If a pesticide operator is found
28 to be in violation of this subsection, the pesticide operator's license, notwithstanding ORS chapter
29 183, is automatically suspended until the pesticide operator is in compliance. If the business is
30 owned by one individual, the department shall make no charge for the pesticide applicator license
31 issued to the individual under ORS 634.122.

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

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

42 (b) If the applicant or licensee is to be engaged in the business of controlling or eradicating
43 structural pests, or pests within a public or private place, or pests within private or public places
44 where food is served, prepared or processed or where persons are regularly housed, the financial
45 responsibility required by this section shall apply to damages or injury to real or personal property

1 being worked upon, as well as all the other real and personal property set forth in this section.

2 (6) The financial responsibility required by subsection (5) of this section must be not less than
3 \$25,000 for bodily injury to one or more persons and not less than \$25,000 for property damage.

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

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

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

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

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

29 (12)(a) The United States, the State of Oregon or federal, state or local agencies, instrument-
30 alities, political subdivisions, counties, cities, towns, municipal corporations, irrigation, drainage or
31 other districts, [or] other federal, state or local governmental bodies **or Indian tribes** are not re-
32 quired to obtain a license as a pesticide operator or to furnish evidence of financial responsibility
33 to the department when:

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

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

37 (C) Applying pesticides to property under the ownership, possession, control or jurisdiction of
38 another federal, state or local agency, instrumentality, political subdivision, county, city, town, mu-
39 nicipal corporation, irrigation, drainage or other district, **of another** [or other] federal, state or local
40 governmental body, **of an Indian tribe** or of a homeowners association as defined under ORS 94.550
41 if:

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

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

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

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

6 (c) In addition to any application allowed under paragraph (a) of this subsection, a vector con-
7 trol district is not required to obtain a license as a pesticide operator or to furnish evidence of fi-
8 nancial responsibility to the department when applying pesticides for the prevention, control or
9 eradication of a public health vector as defined in ORS 452.010 to property under the ownership,
10 possession, control or jurisdiction of another federal, state or local agency, instrumentality, political
11 subdivision, county, city, town, municipal corporation, irrigation, drainage or other district or other
12 federal, state or local governmental body or of a homeowners association as defined under ORS
13 94.550 if the pesticide application is done on a cost recovery, cooperative trade of services or no
14 cost basis, and not as a source of profit.

15 (13) Subject to subsection (15) of this section, the employees of the agencies, instrumentalities,
16 subdivisions, counties, cities, towns, municipal corporations, districts, governmental bodies, **Indian**
17 **tribes** or utilities described in subsection (12) of this section who perform or carry out the work,
18 duties or responsibilities of a pesticide applicator are subject to the provisions of this chapter, ex-
19 cept they shall be issued “public applicator” licenses or, if they carry out the work, duties or re-
20 sponsibilities of a pesticide trainee, shall be issued “public trainee” certificates, if they otherwise
21 comply or qualify with the provisions of this chapter relating thereto.

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

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

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

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

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

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

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

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

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

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

43 **(18) Before issuing any pesticide license or certificate, or the renewal thereof, to an em-**
44 **ployee of an Indian tribe, to a business entity of an Indian tribe or to an employee of a**
45 **business entity of an Indian tribe, the department shall enter into a mutually acceptable**

1 **agreement with the Indian tribe or business entity to enable the department to administer**
2 **and enforce the provisions of this chapter and rules adopted under this chapter with respect**
3 **to the Indian tribe or business entity.**

4 **SECTION 3. This 2023 Act being necessary for the immediate preservation of the public**
5 **peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect**
6 **on its passage.**

7
