

House Bill 2687

Sponsored by Representative OWENS; Representatives 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 **as introduced**.

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.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1 Relating to public applicators; amending ORS 634.006 and 634.116; and prescribing an effective date.

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

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

5 634.006. As used in this chapter unless the context requires otherwise:

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

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

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

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

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

20 (6) "Landowner" means a person:

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

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

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

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

26 (7) "Noncommercial pesticide applicator" or "noncommercial applicator" means:

27 (a) An individual who uses or supervises the use of any restricted-use pesticide or highly toxic
28 pesticide on land or property owned or leased by the individual or the employer of the individual,
29 except for an individual who performs the work, duties or responsibilities of a private applicator or
30

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 a public applicator; or

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

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

8 (9) "Person" means:

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

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

11 (c) The federal government or any of its agencies.

12 (10) "Pesticide" includes:

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

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

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

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

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

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

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

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

36 (11) "Pesticide applicator" or "applicator" means an individual who:

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

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

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

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

44 (12) "Pesticide consultant" means a person who offers or supplies technical advice, supervision,
 45 aid or recommendations to the user of pesticides classified by the department as restricted-use or

1 highly toxic pesticides, whether licensed as a pesticide dealer or not.

2 (13) "Pesticide dealer" means a person who sells, offers for sale, handles, displays or distributes
3 any pesticide classified by the department as a restricted-use or highly toxic pesticide.

4 (14) "Pesticide equipment" means any equipment, machinery or device used in the actual appli-
5 cation of pesticides, including aircraft and ground spraying equipment.

6 (15) "Pesticide operator" means a person who owns or operates a business engaged in the ap-
7 plication of pesticides upon the land or property of another.

8 (16) "Pesticide trainee" means an individual who:

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

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

12 (17) "Private applicator" means an individual who uses or supervises the use of any pesticide,
13 classified by the department as a restricted-use or highly toxic pesticide, for the purpose of
14 producing agricultural commodities or forest crops on land owned or leased by the individual or the
15 employer of the individual.

16 (18) "Professed standard of quality" means a plain and true statement of the name and per-
17 centage of each active ingredient and the total percentage of all inert ingredients contained in any
18 pesticide.

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

21 (20) "Public applicator" means an individual who is an employee of the State of Oregon or its
22 agencies, counties, cities, municipal corporations, other governmental bodies or subdivisions thereof,
23 irrigation districts, drainage districts and public utilities and telecommunications utilities, **or a**
24 **federally recognized Indian tribe**, and who performs or carries out the work, duties or responsi-
25 bilities of a pesticide applicator.

26 (21) "Public trainee" means an individual who is an employee of the State of Oregon or its
27 agencies, counties, cities, municipal corporations, other governmental bodies or subdivisions thereof,
28 irrigation districts, drainage districts and public utilities and telecommunications [utility] **utilities**,
29 **or a federally recognized Indian tribe**, and who performs or carries out the work, duties or re-
30 sponsibilities of a pesticide trainee.

31 (22) "Registrant" means a person registering any pesticide pursuant to this chapter.

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

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

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

39 (26) "Weed" means any plant that grows where not wanted.

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

41 634.116. (1) A pesticide operator's license, or supplements thereto, shall authorize the licensee
42 to engage in one or more of the classes of pest control or pesticide application business prescribed
43 by the State Department of Agriculture under ORS 634.306 (2). The department may not issue a
44 pesticide operator license to the United States, the State of Oregon or federal, state or local agen-
45 cies, instrumentalities, political subdivisions, counties, cities, towns, municipal corporations, irri-

1 gation, drainage or other districts or other federal, state or local governmental bodies.

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

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

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

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

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

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

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

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

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

45 (8) Notwithstanding the provisions of ORS 105.810 and 105.815 or other laws to the contrary, the

1 amount of damages for which a pesticide operator or pesticide applicator is liable as a result of use
 2 of pesticides, or financial responsibility for the same is limited to actual damages only.

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

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

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

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

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

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

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

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

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

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

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

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

1 federal, state or local governmental body or of a homeowners association as defined under ORS
 2 94.550 if the pesticide application is done on a cost recovery, cooperative trade of services or no
 3 cost basis, and not as a source of profit.

4 **(d) A federally recognized Indian tribe is not required to obtain a license as a pesticide**
 5 **operator or to furnish evidence of financial responsibility to the department when applying**
 6 **pesticides to property under the ownership, possession, control or jurisdiction of a federal,**
 7 **state or local agency, instrumentality, political subdivision, county, city, town, municipal**
 8 **corporation, irrigation district, drainage district or other district or other federal, state or**
 9 **local governmental body or of a homeowners association as defined under ORS 94.550 if:**

10 **(A) The land is in a jurisdiction adjacent to property under the ownership, possession,**
 11 **control or jurisdiction of the federally recognized Indian tribe;**

12 **(B) The application is done in conjunction with, or as an extension of, an application of**
 13 **pesticides to property under the federally recognized Indian tribe’s ownership, possession,**
 14 **control or jurisdiction; and**

15 **(C) The pesticide application is done on a cost recovery, cooperative trade of services or**
 16 **no cost basis, and not as a source of profit.**

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

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

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

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

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

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

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

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

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

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

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

45 **SECTION 3. This 2023 Act takes effect on the 91st day after the date on which the 2023**

1 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**

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