

**Enrolled**  
**Senate Bill 637**

Sponsored by Senator BONAMICI; Senators DINGFELDER, HASS, MONNES ANDERSON, MORRISETTE, WALKER, Representatives BARKER, BRUUN, CANNON, C EDWARDS, GREENLICK, HARKER, KOMP, WITT

CHAPTER .....

AN ACT

Relating to pest management for schools; creating new provisions; and amending ORS 634.116.

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

**SECTION 1. Sections 2 to 9 of this 2009 Act are added to and made a part of ORS chapter 634.**

**SECTION 2. As used in sections 2 to 9 of this 2009 Act:**

**(1) "Campus" means the buildings, other structures, playgrounds, athletic fields and parking lots of a school and any other areas on the school property that are accessed by students on a regular basis.**

**(2) "Governing body" means a board of directors, agency or other body or person having policymaking and general oversight responsibility for a community college district, education service district, school district, other unit of education governance, private school or other educational entity.**

**(3) "Integrated pest management plan" means a proactive strategy that:**

**(a) Focuses on the long-term prevention or suppression of pest problems through economically sound measures that:**

- (A) Protect the health and safety of students, staff and faculty;**
- (B) Protect the integrity of campus buildings and grounds;**
- (C) Maintain a productive learning environment; and**
- (D) Protect local ecosystem health;**

**(b) Focuses on the prevention of pest problems by working to reduce or eliminate conditions of property construction, operation and maintenance that promote or allow for the establishment, feeding, breeding and proliferation of pest populations or other conditions that are conducive to pests or that create harborage for pests;**

**(c) Incorporates the use of sanitation, structural remediation or habitat manipulation or of mechanical, biological and chemical pest control measures that present a reduced risk or have a low impact and, for the purpose of mitigating a declared pest emergency, the application of pesticides that are not low-impact pesticides;**

**(d) Includes regular monitoring and inspections to detect pests, pest damage and unsanctioned pesticide usage;**

**(e) Evaluates the need for pest control by identifying acceptable pest population density levels;**

**(f) Monitors and evaluates the effectiveness of pest control measures;**

(g) Excludes the application of pesticides on a routine schedule for purely preventive purposes, other than applications of pesticides designed to attract or be consumed by pests;

(h) Excludes the application of pesticides for purely aesthetic purposes;

(i) Includes school staff education about sanitation, monitoring and inspection and about pest control measures;

(j) Gives preference to the use of nonchemical pest control measures;

(k) Allows the use of low-impact pesticides if nonchemical pest control measures are ineffective; and

(L) Allows the application of a pesticide that is not a low-impact pesticide only to mitigate a declared pest emergency or if the application is by, or at the direction or order of, a public health official.

(4) "Low-impact pesticide" means a product that does not contain a pesticide product or active ingredient described in section 3 (5) of this 2009 Act.

(5) "Pest" means:

(a) An insect or other arthropod;

(b) A weed, moss, slime or mildew or a plant disease caused by a fungus, bacterium or virus;

(c) A nematode, snail, slug, rodent or predatory animal;

(d) A bacteria, spore, virus, fungus or other microorganism that is harmful to human health; or

(e) Other forms of plant or animal life that may infest or be detrimental to vegetation, humans, animals, structures, managed landscapes or other human environments.

(6) "Pest emergency" means an urgent need to eliminate or mitigate a pest situation that threatens:

(a) The health or safety of students, staff, faculty members or members of the public using the campus; or

(b) The structural integrity of campus facilities.

(7) "Registration number" means the pesticide registration number assigned by the United States Environmental Protection Agency.

(8) "School" means:

(a) A facility operating an Oregon prekindergarten or a federal Head Start program;

(b) A public or private educational institution offering education in all or part of kindergarten through grade 12;

(c) An education service district as defined in ORS 334.003;

(d) A community college as defined in ORS 341.005;

(e) The Oregon School for the Blind;

(f) The Oregon School for the Deaf; and

(g) A regional residential academy operated by the Oregon Youth Authority.

**SECTION 3.** (1) The governing body responsible for a school shall adopt an integrated pest management plan for use on the campuses of the school. The governing body shall also adopt provisions for:

(a) Designating an integrated pest management plan coordinator;

(b) Identifying plan coordinator responsibilities;

(c) Giving notices under section 7 of this 2009 Act;

(d) Retaining pesticide application records under section 8 of this 2009 Act;

(e) Providing a process for responding to inquiries and complaints about noncompliance with the integrated pest management plan; and

(f) Conducting outreach to the school community about the school's integrated pest management plan.

(2) If a governing body has control over only part of a building, a structure or property where a campus is located, the governing body may limit an integrated pest management

plan to those parts of the building, structure or property over which the governing body exerts substantial control.

(3) A governing body is not required to adopt an integrated pest management plan for off-campus buildings, structures or property, notwithstanding any incidental use for instruction.

(4) Unless a governing body expressly provides otherwise, the application of a germicide, disinfectant, sanitizer, deodorizer, antimicrobial agent or insecticidal soap at a campus is not subject to the requirements for a pesticide application under an integrated pest management plan. However, this subsection does not permit the application at a campus of a germicide, disinfectant, sanitizer, deodorizer, antimicrobial agent or insecticidal soap that is a pesticide in a manner that is inconsistent with the goal of the integrated pest management plan.

(5) A governing body shall adopt a list of low-impact pesticides for use with the integrated pest management plan. The governing body may include any product on the list except products that:

(a) Contain a pesticide product or active ingredient that has the signal words “warning” or “danger” on the label;

(b) Contain a pesticide product classified as a human carcinogen or probable human carcinogen under the United States Environmental Protection Agency 1986 Guidelines for Carcinogen Risk Assessment; or

(c) Contain a pesticide product classified as carcinogenic to humans or likely to be carcinogenic to humans under the United States Environmental Protection Agency 2003 Draft Final Guidelines for Carcinogen Risk Assessment.

**SECTION 4.** (1) The governing body shall provide for the designation of one or more persons as integrated pest management plan coordinators for the governed schools. A plan coordinator must be an employee of the governed district, unit, school or entity, unless the governing body delegates pest management duties to an independent contractor. Each school shall have the services of at least one integrated pest management plan coordinator. A plan coordinator may serve more than one school. The responsibilities of the plan coordinator shall include, but need not be limited to:

(a) Giving notice and posting warnings under section 7 of this 2009 Act;

(b) Overseeing pest prevention efforts;

(c) Providing for the identification and evaluation of pest situations;

(d) Determining the means of appropriately managing pest damage that will cause the least possible hazard to people, property and the environment;

(e) Ensuring the proper and lawful performance of pesticide applications;

(f) Evaluating pest management results; and

(g) Keeping records as required by section 8 of this 2009 Act.

(2) A plan coordinator shall complete not less than six hours of training each year. The training shall include at least a general review of integrated pest management principles and the requirements of sections 2 to 9 of this 2009 Act.

**SECTION 5.** If a school has followed the integrated pest management plan and non-chemical pest control measures were ineffective, subject to section 6 of this 2009 Act 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 or by a public applicator. The use of a pesticide applicator or public applicator to make an application does not cancel, alter or reassign any of the duties imposed under section 7 or 8 of this 2009 Act.

**SECTION 6.** (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 or 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 7.** (1) The governing body responsible for a school shall adopt policies and processes for ensuring that the integrated pest management plan coordinator for the school, or a designee of the coordinator, gives written notice of a proposed pesticide application at the campus to, at a minimum, parents and guardians of minor students, adult students, school administrators, faculty members and staff members. The plan coordinator or designee may give a written notice described in this subsection by any reasonable means, including but not limited to, electronic mail.

(2) In adopting policies and processes under subsection (1) of this section, the governing body shall consider the age of the students attending the school and consider which methods for transmitting notice are most likely to reach the intended recipients.

(3) Except as provided in this subsection, the plan coordinator or designee must give a pesticide application notice in a manner reasonably calculated to reach the intended recipient at least 24 hours before the pesticide application occurs. A notice must identify the name, trademark or type of pesticide products, the registration number assigned to each of the pesticide products, the expected area of application, the expected date of application and the reason for the application. If a pest emergency makes it impracticable to give a pesticide application notice at least 24 hours before the pesticide application occurs, the plan coordinator or designee shall send the notice no later than 24 hours after the application occurs.

(4) Except as provided in this subsection, if a pesticide is applied at a campus, the plan coordinator or a designee of the coordinator shall place warning signs around pesticide application areas beginning no later than 24 hours before the application occurs and ending no earlier than 72 hours after the application occurs. A warning sign must bear the words "Warning: pesticide-treated area," give the expected or actual date and time for the application and provide the telephone number of a contact person. If a pest emergency makes it impracticable to place the warning signs at least 24 hours before the pesticide application, the plan coordinator or designee shall place the signs as soon as practicable but no later than at the time the application occurs.

(5) Failure to give notice or post warnings as required by this section does not create a cause of action for damages and may not be asserted as the basis for a per se negligence claim.

**SECTION 8.** (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 or public applicator license numbers and 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 section 7 of this 2009 Act; and
- (j) The dates and times for the placement and removal of warning signs under section 7 of this 2009 Act.

(2) Pesticide application records must include copies of all notices given under section 7 of this 2009 Act.

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

**SECTION 9.** A governing body may adopt, improve or continue any integrated pest management plan that provides protection against pesticide exposure equal to or greater than the protection against pesticide exposure required by sections 2 to 9 of this 2009 Act.

**SECTION 10.** ORS 634.116 is amended to read:

634.116. (1) A pesticide operator's license, or supplements thereto, shall authorize the licensee to engage in one or more of the classes of pest control or pesticide application business prescribed by the State Department of Agriculture under ORS 634.306 (2). The department may not issue a pesticide operator license to the United States, the State of Oregon or federal, state or local agencies, instrumentalities, political subdivisions, counties, cities, towns, municipal corporations, irrigation, drainage or other districts or other federal, state or local governmental bodies.

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

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

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

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

(5) The department shall not issue or renew a pesticide operator's license until the applicant or licensee has furnished evidence to the department, in the form of a public liability policy issued

by an insurance company qualified to do business in Oregon, protecting the applicant or licensee against liability for injury or death to persons and loss of or damage to property resulting from the application of pesticides, or in lieu of a policy, has furnished a deposit of cash, surety bond or other evidence of financial responsibility acceptable to the department that may be applied by the department to the payment of damages resulting from operator liability. However:

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

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

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

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

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

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

(10) If the pesticide operator is to spray by aircraft, then the department, in addition to other provisions of this section relating to financial responsibility, may by rule allow aircraft pesticide operators to reduce, suspend or terminate the liability insurance, applicable to spraying by aircraft, and required by subsections (5) and (6) of this section during certain periods of the year.

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

(12)(a) The United States, the State of Oregon or federal, state or local agencies, instrumentalities, political subdivisions, counties, cities, towns, municipal corporations, irrigation, drainage or other districts or other federal, state or local governmental bodies are not required to obtain a license as a pesticide operator or to furnish evidence of financial responsibility to the department when:

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

(B) Applying pesticides pursuant to an order issued by the department for purposes of controlling or eradicating noxious weeds or pests; or

(C) Applying pesticides to property under the ownership, possession, control or jurisdiction of another federal, state or local agency, instrumentality, political subdivision, county, city, town, municipal corporation, irrigation, drainage or other district or other federal, state or local governmental body or of a homeowners association as defined under ORS 94.550 if:

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

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

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

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

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

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

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

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

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

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

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

(a) The application of restricted-use pesticides; [or]

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

**(c) The application of any pesticide at the campus of a school, as defined in section 2 of this 2009 Act, by an employee of the school.**

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

(17) A federal, state or local agency, instrumentality, political subdivision, county, city, town, municipal corporation, irrigation, drainage or other district or other federal, state or local governmental body may not solicit or advertise for pesticide application business in areas outside its jurisdiction.

**SECTION 11. (1) Notwithstanding section 9 of this 2009 Act, the Oregon State University Extension Service, in cooperation with the Department of Human Services, shall develop one or more model integrated pest management plans for use in schools subject to sections 2 to 9 of this 2009 Act. The extension service shall make the model plans available to school governing bodies no later than July 1, 2011. However, a school governing body may adopt any**

integrated pest management plan that complies with the requirements of sections 2 to 9 of this 2009 Act.

(2) Except as provided in subsection (3) of this section, a governing body required under section 3 of this 2009 Act to adopt one or more integrated pest management plans shall implement the plans on or before July 1, 2012.

(3) The deadline established in subsection (2) of this section does not apply to a school established after the effective date of this 2009 Act.

**SECTION 12.** Section 11 of this 2009 Act is repealed January 2, 2014.

**SECTION 13.** The amendments to ORS 634.116 by section 10 of this 2009 Act become operative on July 1, 2012.

Passed by Senate May 13, 2009

Received by Governor:

Repassed by Senate June 12, 2009

.....M.,....., 2009

Approved:

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Secretary of Senate

.....M.,....., 2009

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President of Senate

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Governor

Passed by House June 10, 2009

Filed in Office of Secretary of State:

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Speaker of House

.....M.,....., 2009

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Secretary of State