

CHAPTER 903

H.B. No. 1896

AN ACT

relating to requiring certain agricultural employers to provide agricultural laborers with information concerning hazardous chemicals to which they may be exposed during their employment, and to powers and duties of the Department of Agriculture concerning the provision of that information; providing civil and criminal penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Title 5, Agriculture Code, is amended by adding Subtitle G to read as follows:

SUBTITLE G. WORKPLACE CHEMICALS

CHAPTER 125. AGRICULTURAL HAZARD COMMUNICATION ACT

Sec. 125.001. DECLARATION OF PURPOSE. The legislature finds that the health and safety of persons living and working in agricultural areas in the state may be

improved by providing access to information regarding certain hazardous chemicals to which they may be exposed either during their normal employment activities, during emergency situations, or as a result of proximity to the use of those chemicals. The legislature also finds that, because of the conditions of agricultural employment, there is a unique situation regarding certain agricultural laborers that makes it necessary to establish formal procedures to provide access to information regarding certain hazardous chemicals and to assure those laborers that there will be no retaliation by the employer for the exercise of rights under this chapter. This chapter is intended to assure that accessibility to information regarding chemicals covered by this chapter be provided to agricultural laborers who may be exposed to those chemicals in agricultural workplaces, to certain emergency service organizations responsible for dealing with chemical hazards during emergency situations when those chemicals are in close proximity to residential areas, and to the department to make the information available to the general public through specific procedures.

Sec. 125.002. DEFINITIONS. In this chapter:

(1) *“Agricultural laborer” means a person who plants, cultivates, harvests, or handles an agricultural or horticultural commodity in its unmanufactured state as determined by rule of the department, and includes an agricultural laborer who handles a chemical covered by this chapter. Office workers, cooks, maintenance workers, security personnel, and nonresident management are not agricultural laborers, except for purposes of a gross annual payroll determination, unless their job performance routinely involves potential exposure to chemicals covered under this chapter. Farm and ranch laborers working solely with livestock and persons working solely in the retail sales component of a business are not agricultural laborers for purposes of this chapter.*

(2) *“Chemical name” means the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS) rules of nomenclature, or a name that will clearly identify the chemical for the purpose of conducting a hazard evaluation.*

(3) *“Common name” means any designation of identification such as code name, code number, trade name, brand name, or generic name used to identify a chemical other than by its chemical name.*

(4) *“Chemical manufacturer” means an employer in Standard Industrial Classification (SIC) Codes 20 through 39.*

(5) *“Designated representative” means the individual or organization to whom an agricultural laborer gives written authorization to exercise the laborer’s rights under this chapter. A designated representative is not required to reveal the name of the agricultural laborer he represents if the department has reviewed the laborer’s written authorization, certifies that the representative has that authorization, and determines that the agricultural laborer would be entitled to the information the designated representative is seeking to obtain. A recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written authorization from a laborer.*

(6) *“Distributor” means any business, other than a chemical manufacturer or importer, that supplies chemicals covered by this chapter to other distributors or to purchasers.*

(7) *“Expose” or “exposure” means that an agricultural laborer is subjected to a chemical covered by this chapter in the course of employment through any route of entry, including inhalation, ingestion, skin contact, or absorption, and includes potential, possible, or accidental exposure.*

(8) *“Fire chief” means the elected or paid administrative head of a fire department as defined in Chapter 125, Acts of the 45th Legislature, Regular Session, 1937 (Article 6243e, Vernon’s Texas Civil Statutes).*

(9) *“Label” means any written, printed, or graphic material displayed on or affixed to containers of chemicals covered by this chapter.*

(10) "Material safety data sheet" ("MSDS") means a document containing chemical hazard and safe handling information that is prepared in accordance with the requirements of the Occupational Safety and Health Administration (OSHA) standard for that document or, in the case of a chemical labeled under the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136 et seq.) for which an MSDS is both unavailable and not required under the federal OSHA's hazard communication standard, a product label or other equivalent document with precautionary statements, such as hazards to humans and domestic animals, and environmental, physical, or chemical hazards, including warning statements.

(11) "Work area" means a room, defined space, or field where chemicals covered by this chapter are stored or used and where agricultural laborers may be present.

(12) "Workplace" means a geographical location containing one or more work areas.

Sec. 125.003. APPLICATION. (a) This chapter applies only to the following employers who annually use or store any one of the chemicals covered by this chapter in excess of 55 gallons or 500 pounds or an amount that the department determines by rule for certain highly toxic or dangerous chemicals covered by this chapter:

(1) employers who themselves or through labor agents hire agricultural laborers to perform seasonal or migrant work and whose gross annual payroll for those laborers is \$15,000 or more; and

(2) employers who themselves or through labor agents hire agricultural laborers for purposes other than seasonal or migrant work and whose gross annual payroll for those laborers is \$50,000 or more.

(b) This chapter applies only to the following chemicals:

(1) chemicals labeled under the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136 et seq.); and

(2) fertilizers with chemicals that are listed or defined as hazardous chemicals in 29 CFR Section 1910.1200(c) or 1910.1200(d)(3), including those listed or defined in subsequent comparable regulations.

Sec. 125.004. WORKPLACE CHEMICAL LIST. (a) An employer covered by this chapter shall compile and maintain a workplace chemical list on a form prescribed by the department that contains the following information by crop for each chemical covered by this chapter that is actually used or stored annually in the workplace in excess of 55 gallons or 500 pounds or an amount that the department determines by rule for certain highly toxic or dangerous chemicals covered by this chapter:

(1) the product name used on the MSDS and container label and the Environmental Protection Agency registration number, if applicable;

(2) the date and crop on which the chemical was applied or used; and

(3) the work area in which the chemical is actually stored or used.

(b) The employer shall update the workplace chemical list as necessary but not less frequently than annually.

(c) The workplace chemical list may be prepared for the workplace as a whole or for each work area and must be readily available to agricultural laborers and their designated representatives. New or newly assigned agricultural laborers shall be made aware of the workplace chemical list before working with chemicals covered by this chapter or in a work area containing those chemicals.

Sec. 125.005. WORKPLACE CHEMICAL LIST FORM, MAINTENANCE, AND ACCESS. (a) The department shall prescribe forms for workplace chemical lists required by this chapter with places to indicate the crop, the product name of the chemical that is applied to the crop or that is stored, and the location and date of its application, use, or storage, as appropriate.

(b) An employer covered by this chapter shall maintain one form for each crop, work area, or workplace as a whole, as appropriate, and shall add information to the form as different chemicals are applied, used, or stored.

(c) *The employer shall attach relevant information to the form, including MSDSs.*

(d) *The employer shall keep the forms and attachments accessible and available for copying and shall store them in a location suitable to preserve their physical integrity.*

(e) *The employer shall keep the forms and attachments under this chapter for 30 years. However, the department shall provide by rule that an employer may file with the department annually the forms and attachments, including an estimate of the total amount of each chemical listed on the form that was used. The department shall categorize and cross-reference the data on the forms in a manner to preserve the data for future medical use. An employer who files the forms and attachments with the department under rules adopted under this section is not required to preserve the forms.*

(f) *After January 1, 1989, if the department determines after a hearing that an employer has repeatedly failed to maintain the forms and attachments as required, the department may require the employer to file the documents with the department. In addition, the person may be subject to any applicable penalties provided by this chapter.*

(g) *If agricultural activities for which forms and attachments are maintained cease at a workplace, the forms and attachments shall be filed with the department, and the department shall retain the information for 30 years. If an employer covered by this chapter is succeeded or replaced in that function by another person, the person who succeeds or replaces the employer shall retain the forms as provided by Subsection (e) of this section but is not liable for violations committed by the former employer under this chapter or rules adopted under this chapter, including violations relating to the retention and preservation of forms and attachments.*

(h) *Except as otherwise provided by this section, the employer shall show the forms and attachments, on request, to an employee, designated representative, treating medical personnel, or a member of the community. The designated representative or treating medical personnel are not required to identify the employee represented or treated. If the employer has filed the forms and attachments with the department, the employer shall inform the requestor of that fact.*

(i) *If a designated representative or member of the community desires a copy of a form and attachments and the employer refuses to provide a copy, that person shall notify the department of the request and the employer's refusal. Within two working days, the department shall request that the employer provide the department with all pertinent copies. The employer shall provide copies of the form and attachments to the department within 24 hours after the department's request if a designated representative desires the copies, and within 14 days after the department's request if a member of the community desires the copies.*

(j) *The employer may not refuse to provide the forms and attachments to an employee or treating medical personnel.*

Sec. 125.006. MATERIAL SAFETY DATA SHEETS. (a) Chemical manufacturers and distributors shall provide appropriate MSDSs to purchasers in this state of chemicals covered by this chapter.

(b) Employers covered by this chapter shall maintain the most current MSDS received from manufacturers or distributors for each purchased chemical covered by this chapter. If an MSDS has not been provided by the manufacturer or distributor for chemicals on the workplace chemical list at the time the chemicals are received at the workplace, the employer shall request one in writing from the manufacturer or distributor in a timely manner. This chapter does not require an employer who is not a chemical manufacturer to create an MSDS.

(c) The department may require any person who has or obtains a registration for a pesticide under Sections 76.041–76.048 of this code to provide with the registration a copy of the most current and complete MSDS for that pesticide.

(d) *The department by rule may require chemical manufacturers to submit MSDSs for chemicals covered by this chapter, excluding chemicals covered by Subsection (c) of this section.*

(e) *All MSDSs in the files of the department are public records.*

Sec. 125.007. LABELS. (a) Existing labels on incoming containers of chemicals covered by this chapter may not be removed or defaced.

(b) *Agricultural laborers may not be required to work with a chemical covered by this chapter from an unlabeled container except for a portable container intended for the immediate use of the laborer who performs the transfer.*

Sec. 125.008. EMERGENCY INFORMATION. (a) Employers covered by this chapter and other entities who normally store products labeled under the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136 et seq.) in an amount in excess of 55 gallons or 500 pounds or an amount the department determines by rule for certain highly toxic or dangerous chemicals covered by this chapter within one-quarter mile of a residential area composed of three or more private dwellings shall provide to the fire chief of the fire department having jurisdiction over the storage place, in writing, the names and telephone numbers of knowledgeable representatives of the employer or other entity storing the product who can be contacted for further information or contacted in case of an emergency.

(b) *Each employer, on request, shall provide a copy of the workplace chemical list to the fire chief having jurisdiction over the storage place. The employer shall notify the fire chief of any significant changes that occur in the workplace chemical list.*

(c) *The fire chief having jurisdiction over the storage place or his representative, on request, shall be permitted to conduct on-site inspections of the chemicals on the workplace chemical list for the sole purpose of preparing fire department activities in case of an emergency.*

(d) *Employers shall provide to the fire chief having jurisdiction over the storage place, on request, a copy of the MSDS for any chemical on the workplace chemical list.*

(e) *On request, the fire chief having jurisdiction over the storage place shall make the workplace chemical list and MSDSs available to members of the fire department having jurisdiction over the workplace and to other personnel outside the fire department who are responsible for preplanning emergency activities, but may not otherwise distribute the information without approval of the employer.*

Sec. 125.009. TRAINING PROGRAM PROVIDED BY DEPARTMENT. (a) The department in conjunction with the Texas Agricultural Extension Service shall develop an on-going training program for agricultural laborers. The program must provide information the department considers appropriate, and must include:

(1) *information on interpreting labels and MSDSs and the relationship between those two methods of hazard communication;*

(2) *information on the proper storage, acute and chronic effects, and safe handling of chemicals covered by this chapter;*

(3) *information on protective clothing and equipment and first aid treatment to be used with respect to the chemicals covered by this chapter; and*

(4) *general safety instructions on the handling, cleanup procedures, and disposal of chemicals covered by this chapter.*

(b) *The department shall provide the training program in counties with a hired farm labor work force of 2,000 or more, according to the most recent United States Census of Agriculture. The department by rule may determine to provide the training program in additional counties with a significant farm labor work force or based on other relevant factors. In all other counties, the county office of the Texas Agricultural Extension Service shall provide the training program.*

(c) *The department or the county office of the Texas Agricultural Extension Service, as appropriate, shall notify agricultural laborers on a regular basis of the training program by public service announcements given by the media and shall*

contact in writing charitable, public, religious, and health care provider organizations to announce the training program to agricultural laborers in the county served by the organization.

(d) In addition to the Texas Agricultural Extension Service, the department may develop the training program in conjunction with the Texas Department of Health, other appropriate state agencies, clinics, hospitals, and other health care providers in counties in which the training program will be conducted, and organizations representing employers, organizations representing employees, and organizations representing manufacturers of chemicals covered by this chapter.

(e) The department shall prepare and make available to employers appropriate training materials for employers covered by this chapter and their managers and labor contractors.

(f) To help cover production costs, the department may charge not more than \$10 plus the cost of a blank videotape from a person desiring to purchase the videotaped training program.

(g) The department or the county office of the Texas Agricultural Extension Service, as appropriate, shall provide to each agricultural laborer who completes the training program a card evidencing participation in the program. An employer may not refuse to hire an agricultural laborer solely because the laborer does not have a card issued under this subsection. An employer who refuses to hire an agricultural laborer for that reason is not entitled to the 14 days' written notice provided by Section 125.016(d) of this code.

Sec. 125.010. CROP SHEET DEVELOPED BY DEPARTMENT. (a) The department shall develop crop sheets that contain the following information:

- (1) the kinds of chemicals typically used on a particular crop;
- (2) the typical time a chemical is applied to a particular crop;
- (3) general safety information, including information on general hygiene, clothing, contact with chemicals, medical symptoms, pregnancy, and other relevant safety data;
- (4) a notice of the training programs and the counties in which the programs will be conducted;
- (5) the availability of MSDSs for chemicals used on a particular crop;
- (6) the means of locating emergency medical information;
- (7) agricultural laborers' rights under this chapter;
- (8) the name and telephone number of the person to contact for information under this chapter;
- (9) the appropriate telephone number for emergency information; and
- (10) any other safety or health-related information the department considers relevant.

(b) The information on the crop sheet must be printed in English and Spanish, except that the information required by Subsections (a)(1) and (a)(2) of this section is required to be printed only in English. The department may provide crop sheets printed in other languages commonly used by agricultural laborers who work with a particular crop.

(c) The department shall develop the crop sheets in conjunction with the Texas Department of Health, the Texas Agricultural Extension Service, other appropriate state agencies, and clinics, hospitals, and other health care providers in counties in which training programs are provided by the department under Section 125.009 of this code.

(d) Annually, the department shall:

- (1) provide appropriate crop sheets to clinics, hospitals, and other health care providers that serve agricultural laborers and that are located in counties in which the training program is provided; and

(2) provide to an employer covered by this chapter one crop sheet for each crop grown by that employer.

(e) The director of the Texas Feed and Fertilizer Control Service under Section 63.003 of this code shall provide to the department the information that is needed by the department under Subsection (a) of this section for the fertilizers that are covered by this chapter.

(f) For purposes of developing crop sheets under this chapter and complying with other provisions of this chapter, nursery stock, stored grain, and other logical groupings may be considered a single crop as determined by rules adopted by the department.

Sec. 125.011. CROP SHEET PROVIDED BY EMPLOYER. (a) An employer covered by this chapter shall provide crop sheets to each agricultural laborer pertaining to the crops that laborer will be working with if:

(1) the laborer does not have a card issued under Section 125.009(g) of this code; or

(2) the laborer requests the crop sheets.

(b) An employer who is required under Subsection (a) of this section to provide crop sheets to an agricultural laborer shall ensure that the information on a crop sheet required by Sections 125.010(a)(3), (a)(4), and (a)(10) of this code that pertains to the crops with which the laborer will be working is read to the laborer at least once each work season. When the crop sheet is read, the employer or the employer's agent shall inform the laborer of the date on which chemicals covered by this chapter were last applied or are scheduled to be applied to the field or to other areas in which the laborer will be working and shall inform the laborer of the time on which the reentry period, if any, expired for chemicals covered by this chapter that have been applied.

(c) If an employer is required under Subsection (b) of this section to read a crop sheet to an agricultural laborer, the employer or a person designated by the employer shall read the appropriate crop sheets on the first day of each work season or on the day the laborer begins employment with that employer, whichever is later.

(d) In addition to the crop sheet, the department shall require an employer to offer to the agricultural laborer, on the day on which the laborer is given his first pay for that work season, basic safety and health-related information approved by the department. That information shall be available to the employers free of charge.

(e) An employer who does not provide or read the crop sheets as required by this section is not entitled to the 14 days' written notice provided by Section 125.016(d) of this code.

Sec. 125.012. PROTECTIVE CLOTHING. An employer covered by this chapter shall provide any protective clothing or device that is recommended by the MSDS, crop sheet, or department rule and that is in addition to the standard long-sleeved shirt, long pants, boots or shoes, and socks normally provided by the agricultural laborer.

Sec. 125.013. RIGHTS OF AGRICULTURAL LABORERS. (a) Agricultural laborers employed by employers covered by this chapter who may be exposed to chemicals covered by this chapter shall be informed of the exposure and shall have access to the workplace chemical list and MSDSs for those chemicals. Laborers, on request, shall be provided a copy of a specific MSDS. In addition, laborers shall receive training on the hazards of the chemicals and on measures they can take to protect themselves from those hazards and shall be provided with appropriate personal protective equipment as required by this chapter. These rights are guaranteed on January 1, 1988.

(b) An employer covered by this chapter may not discharge, cause to be discharged, otherwise discipline, or in any manner discriminate against an agricultural laborer because the laborer has made an inquiry, filed a complaint, assisted an inspector of the department who may make or is making an inspection under Section 125.016 of this code, instituted or caused to be instituted any proceeding under or related to this

chapter, testified or is about to testify in such a proceeding, or exercised any rights afforded under this chapter on behalf of the laborer or on behalf of others. Pay, position, seniority, or other benefits may not be lost as the result of the exercise of any right provided by this chapter.

(c) Any waiver by an agricultural laborer of the benefits or requirements of this chapter is against public policy and is void. Any employer's request or requirement that a laborer waive any rights under this chapter as a condition of employment is a violation of this chapter.

Sec. 125.014. DEPARTMENT RULES; OUTREACH PROGRAM. (a) The department may adopt rules and administrative procedures reasonably necessary to carry out the purposes of this chapter.

(b) The department shall develop and provide to each employer covered by this chapter a suitable form of notice providing agricultural laborers with information regarding their rights under this chapter.

(c) As part of an outreach program, the department shall develop and distribute a supply of informational leaflets on employers' duties, agricultural laborers' rights, the public's ability to obtain information under this chapter, the outreach program, and the effects of chemicals covered by this chapter.

(d) The department may contract with a public institution of higher education or other public or private organizations to develop and implement the outreach program.

(e) The department shall publicize the availability of information to answer inquiries from agricultural laborers, employers, or the public in this state concerning the effects of chemicals covered by this chapter.

(f) In cooperation with the department, an employer covered by this chapter may provide an outreach program in the community.

Sec. 125.015. LIABILITY UNDER OTHER LAWS. (a) The provision of information to an agricultural laborer does not in any way affect the liability of an employer with regard to the health and safety of a laborer or other person exposed to chemicals, nor does it affect the employer's responsibility to take any action to prevent the occurrence of occupational disease as required under any other provision of law.

(b) The provision of information to an agricultural laborer does not affect any other duty or responsibility of a manufacturer, producer, or formulator to warn ultimate users of a chemical under any other provision of law.

Sec. 125.016. COMPLAINTS, INVESTIGATIONS, AND PENALTIES. (a) Complaints received in writing from agricultural laborers or their designated representatives relating to alleged violations of this chapter by employers covered by this chapter shall be investigated in a timely manner by the department as provided by this section.

(b) Officers or representatives of the department, on presentation of appropriate credentials, have the right of entry into any workplace at reasonable times to inspect and investigate complaints for purposes of determining compliance with this chapter.

(c) The department shall complete an investigation of a complaint not later than 90 days after the date on which the complaint is filed. The department shall conduct a hearing and issue an enforcement order, if appropriate, not later than 90 days after the date on which the investigation is completed. If it is necessary to commence an action relating to an alleged violation, the action must be commenced not later than 60 days after the date on which the investigation is completed.

(d) After providing at least 14 days' written notice and an opportunity for a public hearing, the department may issue an enforcement order requiring any employer or chemical manufacturer covered by this chapter to comply with this chapter or rules adopted under this chapter. In addition, if the employer or chemical manufacturer fails to comply with this chapter or rules adopted under this chapter within 14 days after receiving the written notice under this subsection, or fails at any time to comply with an enforcement order issued under this chapter, the department may require the

employer or chemical manufacturer to pay an administrative penalty of not more than \$500 for each act that is a violation of this chapter or a rule adopted or enforcement order issued under this chapter. A public hearing held under this subsection is a contested case under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and may be appealed under that Act. In the case of a medical emergency, the department may issue an enforcement order immediately and shall provide the opportunity for a hearing on the order within 10 days after the date on which the order is issued.

(e) In the case of a medical emergency, the department may sue in the name of the State of Texas to enjoin any violation of this chapter or a rule adopted or enforcement order issued by the department under this chapter.

(f) If required under this chapter, employers who knowingly disclose false information or negligently fail to disclose a hazard are subject to a civil penalty of not more than \$5,000 per violation. This section does not affect any other right of an agricultural laborer or any other person to receive compensation for damages under other law.

(g) If required under this chapter, employers who proximately cause an injury to an individual by knowingly disclosing false hazard information or knowingly failing to disclose hazard information are subject to a criminal fine of not more than \$25,000. This section does not affect any other right of an agricultural laborer or any other person to receive compensation for damages under other law.

(h) The department may request the attorney general to represent the department in any legal proceeding authorized under this chapter. An action for penalties or injunctive relief shall be brought in the county in which the alleged violation occurred or is occurring.

(i) Each violation of this chapter or a rule adopted under this chapter constitutes a separate offense.

Sec. 125.017. COMPLIANCE WITH HAZARD COMMUNICATION ACT. (a) If an employer is required to comply with the Hazard Communication Act (Article 5182b, Vernon's Texas Civil Statutes) and with this chapter, the employer is required to comply with only the Hazard Communication Act. However, if an agricultural laborer is not covered under the Hazard Communication Act, the employer shall comply with this chapter for those laborers not covered by the Hazard Communication Act.

(b) If an employer is covered by both the Hazard Communication Act and this chapter, the employer is required to furnish a workplace chemical list under only one of those laws.

SECTION 2. This Act takes effect January 1, 1988, except that Section 125.006(c), Agriculture Code, as added by this Act, takes effect September 1, 1987.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 7, 1987, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 1896 on May 30, 1987, by a non-record vote. Passed by the Senate, with amendments, on May 29, 1987, by a viva-voce vote.

Approved June 19, 1987.

Effective Jan. 1, 1988, except as provided in § 2.