

CHAPTER 223

S.B. No. 1216

AN ACT

relating to financial responsibility requirements for applicators of herbicides and pesticides.

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

SECTION 1. Section 75.014, Agriculture Code, is amended to read as follows:

Sec. 75.014. [~~CUSTOM APPLIER'S BOND;~~] CROP DAMAGE *PROTECTION* [~~INSURANCE~~]. (a) *Except as otherwise provided by this section, each* [~~Each~~] custom applier shall:

(1) deposit with the department a surety bond approved by the department in the amount of \$20,000 plus \$2,000 for each piece of spraying equipment licensed for use by the custom applier; or

(2) subscribe for and hold a policy of crop damage insurance approved by the department with coverage in the amount described by Subdivision (1) of this subsection.

(b) If a custom applier cannot reasonably obtain insurance coverage or a bond as specified by Subsection (a) of this section, the department shall accept a certificate of deposit or a letter of credit that meets the requirements of Subsection (c)(1) and rules adopted under Subsection (e) of this section.

(c) If the State Board of Insurance determines after giving notice to the department that the crop damage insurance required by Subsection (a)(2) of this section is not generally and reasonably available to custom appliers, then in lieu of the requirements of Subsection (a) of this section, a custom applier may:

(1) tender from a state or federal financial institution whose deposits are insured by the Federal Deposit Insurance Corporation or by the Federal Savings and Loan Insurance Corporation a certificate of deposit or letter of credit in the amounts prescribed by Subsection (a) of this section, made payable to the department and issued for the purpose of crop damage protection;

(2) *subscribe for and hold crop damage insurance that is generally and reasonably available as determined by the State Board of Insurance; or*

(3) *comply with other proof of financial responsibility requirements adopted by rule of the department under this chapter.*

(d) [(b)] A custom applicator shall increase the amount of [~~a bond or the amount of coverage of~~] crop damage coverage [insurance] by \$2,000 for each piece of spraying equipment used by the custom applicator.

(e) [(e)] A surety bond, *certificate of deposit, letter of credit, or other type of financial security* must be conditioned on compliance with this chapter and rules adopted under this chapter.

(f) [(d)] Failure to perform the conditions of a bond, *certificate of deposit, letter of credit, or other type of financial security that results* [resulting] in injury to any crop or valuable plants is grounds for forfeiture of the *financial security* [bond] to the person owning the crop or plants in a suit brought by the department or an interested party.

(g) [(e)] *Except as otherwise provided by this section, the* [The] department shall prescribe by rule requirements of crop damage insurance policies, surety bonds, *certificates of deposit, letters of credit, or other types of financial security.* The department may adopt rules governing the conditions and handling of certificates of deposit and letters of credit, but may not disburse funds or release a certificate or letter except by consent of the custom applicator or pursuant to court order.

(h) [(f)] The furnishing of a surety bond, [~~or~~] crop damage insurance, *or other proof of financial responsibility* does not limit any civil or criminal liability incurred because of the negligent or unlawful use of a herbicide.

SECTION 2. Section 76.111, Agriculture Code, is amended to read as follows:

Sec. 76.111. COMMERCIAL APPLICATOR PROOF OF FINANCIAL RESPONSIBILITY. (a) *Except as otherwise provided by this section, each* [Each] applicant for a commercial applicator license shall file with the regulatory agency issuing the license:

(1) a bond executed by the applicant as principal and by a corporate surety licensed to do business in Texas as surety; or

(2) a liability insurance policy, or certification of a policy, protecting persons who may suffer damages as a result of the operations of the applicant.

(b) *If an applicant cannot reasonably obtain insurance coverage or a bond as specified by Subsection (f) of this section, the regulatory agency shall accept a certificate of deposit or a letter of credit that meets the requirements of Subsection (c)(1) and rules adopted under Subsection (e) of this section.*

(c) *If the State Board of Insurance determines after giving notice to the regulatory agency that the liability insurance policy required by Subsection (a)(2) of this section is not generally and reasonably available to commercial pesticide applicators, then in lieu of the requirements of Subsection (a) of this section, an applicant for a commercial license may:*

(1) *tender from a state or federal financial institution whose deposits are insured by the Federal Deposit Insurance Corporation or by the Federal Savings and Loan Insurance Corporation a certificate of deposit or letter of credit in the amount prescribed by Subsection (f) of this section, made payable to the regulatory agency and issued for the purpose of protecting persons who may suffer damages as a result of the operations of the applicant;*

(2) *file property damage and personal injury insurance or certification of such insurance that is generally and reasonably available as determined by the State Board of Insurance; or*

(3) *comply with other proof of financial responsibility requirements adopted by rule of the regulatory agency under this subchapter.*

(d) [(b)] The proof of financial responsibility required by this section [~~bond or liability insurance policy~~] is not required to apply to damages or injury to agricultural crops, plants, or land being worked on by the applicant.

(e) ~~[(e)]~~ The *proof of financial responsibility required by this section* ~~[bond or liability insurance policy]~~ must be approved by the regulatory agency and conditioned on compliance with the requirements of this chapter and rules adopted under this chapter.

(f) ~~[(d)]~~ *Except as otherwise provided by this section, the* ~~[The]~~ amount of the *proof of financial responsibility* ~~[bond or liability insurance required by a regulatory agency]~~ may not be less than \$5,000 nor more than \$100,000 for property damage ~~[insurance]~~ and may not be less than \$5,000 for bodily injury ~~[insurance]~~. The head of a regulatory agency by rule may require different amounts of ~~[bond or insurance]~~ coverage for different classifications of operations under this chapter. At all times during the license period, the *coverage* ~~[bond or liability insurance]~~ must be maintained at not less than the amount set by the agency head *or the State Board of Insurance, as applicable.*

(g) ~~[(e)]~~ At least 10 days before a reduction requested by a licensee or a cancellation of a bond or liability insurance policy, the party taking the action shall notify the head of the appropriate regulatory agency. If the party does not give that notice, the liability of the surety or insurer is limited to the bond or liability insurance policy.

(h) ~~[(f)]~~ The head of a regulatory agency may accept a bond or liability insurance policy in the proper sum which has a deductible clause in an amount of not more than \$1,000 for the total amount of the bond or liability insurance policy required by this section. If the applicant has not satisfied the requirement of the deductible amount in any prior legal claim, an agency head may not accept a bond or policy with a deductible clause unless the applicant furnishes the agency with a surety bond that satisfies the amount of the deductible clause as to all claims that may arise as a result of the applicant's operation.

(i) ~~[(g)]~~ Should the surety furnished under this section become insufficient or otherwise unsatisfactory, a licensee shall, on notice of the insufficiency or other defect, immediately file a new bond, ~~or~~ liability insurance policy, *or any other proof of financial responsibility as authorized by rule of the regulatory agency.* A licensee may not operate as a commercial applicator during an *uncovered* ~~[uninsured]~~ period. Failure to file a bond, ~~or~~ liability insurance policy, *or other proof of authorized financial responsibility* or failure to maintain the surety in the required amount is a ground for suspension or revocation of a commercial applicator license.

(j) *The regulatory agency by rule may prescribe acceptable proof of financial responsibility and appropriate procedures to carry out the purposes of this section. The regulatory agency may adopt rules governing the conditions and handling of certificates of deposit and letters of credit, but may not disburse funds or release a certificate or letter except by consent of the commercial applicator or pursuant to court order.*

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, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on April 30, 1987, by the following vote: Yeas 29, Nays 0. Passed the House on May 15, 1987, by the following vote: Yeas 144, Nays 0, one present not voting.

Approved May 28, 1987.

Effective May 28, 1987.