

Senate Bill 789

Sponsored by Senator ATKINSON

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**.

Requires seed dealer to maintain bond as condition of licensure. Establishes procedure for seed producer claims against bond of seed dealer.

Applies for seed dealer licenses issued on or after September 1, 2011, and for related seed purchases.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to seed dealer bonding; and declaring an emergency.

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

SECTION 1. Sections 2 to 4 of this 2011 Act are added to and made a part of ORS 633.511 to 633.750.

SECTION 2. As used in sections 2 to 4 of this 2011 Act:

(1)(a) "Dealer" means:

(A) A person that solicits, contracts for or obtains title, possession or control of seed from the producer for purposes of resale or processing the seed; or

(B) A person that buys or agrees to buy seed from the producer for purposes of sale or processing.

(b) "Dealer" does not mean:

(A) A cooperative formed under ORS chapter 62 unless the cooperative is selling agricultural seed grown by a producer that is not a member of the cooperative; or

(B) A producer unless the producer is selling agricultural seed that was not grown by the producer.

(2) "Producer" means a person that grows on a commercial basis in this state seed that the person owns or that the person produces for a person holding title to the seed.

SECTION 3. (1) The State Department of Agriculture may not issue a license to a dealer that applies for a license under ORS 633.700 unless the dealer files with the department a surety bond issued by one or more corporate sureties authorized to do business in this state. The bond required by this section must be continuously on file with the department in the amount required by this section and is for the exclusive purpose of payment of final orders in accordance with section 4 of this 2011 Act.

(2) The department shall determine the required bond amount for a dealer based upon the greater of:

(a) The amount of Oregon-grown seed purchases from producers made by the dealer during the preceding calendar year; or

(b) The expected amount of Oregon-grown seed purchases from producers to be made by the dealer during the license period, determined as provided by the department by rule.

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 **(3) The required bond amount is:**

2 **(a) The lesser of \$20,000 or six percent of the purchase amount for seed purchases from**
3 **producers by the dealer amounting to not more than \$450,000;**

4 **(b) \$40,000 for seed purchases from producers by the dealer amounting to more than**
5 **\$450,000 but not more than \$1 million;**

6 **(c) \$100,000 for seed purchases from producers by the dealer amounting to more than \$1**
7 **million but not more than \$4 million;**

8 **(d) \$200,000 for seed purchases from producers by the dealer amounting to more than \$4**
9 **million but not more than \$8 million;**

10 **(e) \$400,000 for seed purchases from producers by the dealer amounting to more than \$8**
11 **million but not more than \$16 million; or**

12 **(f) \$500,000 for seed purchases from producers by the dealer amounting to more than \$16**
13 **million.**

14 **(4) Notwithstanding subsection (2) of this section, if the department finds that a dealer**
15 **has purchased seed from producers during the license period in amounts that make the bond**
16 **maintained by the dealer substantially inadequate, the department may require the dealer**
17 **to obtain additional bonding to achieve the bonding level described in subsection (3) of this**
18 **section appropriate for the actual amount of seed purchases from producers by the dealer.**

19 **(5) The bond required under this section must be conditioned upon the dealer paying all**
20 **amounts ordered paid by the department under section 4 of this 2011 Act. If the surety pays**
21 **an amount out of the bond of the dealer pursuant to a department final order under section**
22 **4 of this 2011 Act, the department may require the dealer to obtain additional bonding. The**
23 **additional bonding must be in an amount adequate to restore dealer bonding to the appro-**
24 **propriate bonding level described in subsections (2) and (3) of this section unless the department**
25 **requires a higher bond amount as provided in subsection (4) or (9) of this section.**

26 **(6) In lieu of all or part of the bond required under this section, the dealer may file with**
27 **the department, in the same amount and under the same terms and conditions as when a**
28 **bond is filed, an irrevocable letter of credit issued by an insured institution as defined in ORS**
29 **706.008 or a deposit in cash or negotiable securities acceptable to the department. The de-**
30 **partment may charge a dealer a fee to cover any expense incurred by the department in al-**
31 **lowing the dealer to substitute a letter of credit or deposit under this subsection. The issuer**
32 **of a letter of credit described in this section is considered to be a surety for a bond only for**
33 **purposes of receiving payment orders under section 4 of this 2011 Act.**

34 **(7) Bonds filed under this section shall remain in effect for at least one year or until**
35 **depleted by payments ordered under section 4 of this 2011 Act, unless the surety cancels the**
36 **bond sooner. A surety shall give the department written notice not less than 90 days prior**
37 **to canceling the bond and not less than 30 days prior to the expiration of a bond that is not**
38 **being replaced, renewed or continued.**

39 **(8) Upon cancellation or expiration of a bond, the dealer shall immediately:**

40 **(a) File a replacement bond; or**

41 **(b) Surrender the license to the department and cease operating as a dealer.**

42 **(9) If the valid claims filed under section 4 of this 2011 Act exceed the amount of the**
43 **bond, the department may suspend the license issued under ORS 633.700 until all amounts**
44 **determined by the department to be owing on those claims have been paid. The department,**
45 **as a condition of ending the suspension, may require the dealer to file a bond of an amount**

1 up to five times as much as the bond amount that would be required under subsection (3)
2 of this section, but not to exceed \$500,000.

3 **SECTION 4.** (1) A producer may file with the State Department of Agriculture a claim
4 of default against a dealer if the payment due date specified in a written contract between
5 the producer and dealer has passed and any part of the payment amount due for Oregon-
6 grown seed remains unpaid on the claim filing date.

7 (2) If a producer files a claim under subsection (1) of this section, the department shall
8 investigate to determine the validity of the claim and to identify any other producers that
9 may be owed payments by the dealer. If the department determines that the dealer failed to
10 pay the amount described in the claim before the claim was filed, the department shall pre-
11 pare a final order for payment of the claim and shall send notice to the last known address
12 of any other identifiable producers that may be owed payments for Oregon-grown seed by the
13 dealer stating that any claims by a producer against the bond of the dealer should be filed
14 no later than 60 days after the date of the notice. The department is not required to send
15 notice to a producer whose identity and address cannot readily be determined after a good
16 faith effort by the department.

17 (3)(a) The department shall determine the validity of each claim against the bond of the
18 dealer that is timely filed under subsection (2) of this section. If the department finds a claim
19 for payment for Oregon-grown seed to be valid, the department may issue a final order for
20 payment of the claim. If the total amount of valid claims exceeds the amount available from
21 the bond, the department shall order the claims paid on a pro rata basis.

22 (b) The department shall send the surety a written notice that payment from the bond
23 is due. The department shall include with the notice all of the final orders issued by the de-
24 partment for the payment of claims described in this subsection and subsection (1) of this
25 section. All orders for the payment of claims contained in the written notice shall have equal
26 priority for payment from the bond.

27 (4) If the department determines that a claim timely filed under subsection (2) of this
28 section is not valid, the department shall issue a proposed order denying payment of the
29 claim from the bond. A proposed order denying payment is subject to a request for a con-
30 tested case hearing as provided under ORS chapter 183. If the department denies a claim, the
31 department shall include in the written notice described in subsection (3) of this section an
32 instruction for the surety to reserve the amount potentially payable on the claim. If the
33 claim denial is overturned, the department shall send the surety written notice and a final
34 order to pay the reserved amount to the claimant. If the denial becomes final on appeal or
35 by operation of law, the reserved amount may be applied toward the satisfaction of any
36 claims under this section as determined by the department.

37 (5) If an otherwise valid claim is not timely filed with the department under subsection
38 (2) of this section, the department may order the claim paid from any bond amount remain-
39 ing after the payment of claims described in subsection (3) of this section. To the extent
40 moneys are available from the bond, claims described in this subsection shall be paid in full
41 in the order that the claims are filed.

42 (6) A court action may not be commenced against a surety on a bond required under this
43 section until 30 days after the date that the surety receives written notice from the depart-
44 ment that payment is due on the final order.

45 (7) In any action against a surety on a bond under this section that is based on the fail-

1 **ure of the surety to pay an amount due under a final order, the court may award:**

2 **(a) Costs;**

3 **(b) Reasonable attorney fees to the prevailing party as part of the costs; and**

4 **(c) Twice the amount of any damages that the department ordered the surety to pay on**
5 **the complaint, if the surety arbitrarily and capriciously refused to pay upon order of the**
6 **department.**

7 **(8) The remedy provided to producers under this section is in addition to any other**
8 **remedies available to a producer by law. This section does not create any right of action**
9 **against the department or a surety on behalf of a producer that does not receive a notice**
10 **from the department under subsection (2) of this section.**

11 **SECTION 5. Section 3 of this 2011 Act applies to licenses issued under ORS 633.700 on**
12 **or after September 1, 2011.**

13 **SECTION 6. Section 4 of this 2011 Act applies to claims arising from dealer purchases**
14 **made under authority of a license described in ORS 633.700 issued on or after September 1,**
15 **2011.**

16 **SECTION 7. This 2011 Act being necessary for the immediate preservation of the public**
17 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
18 **on its passage.**

19 _____