

## LEGISLATIVE BILL 93

Approved by the Governor February 26, 2015

Introduced by Johnson, 23.

A BILL FOR AN ACT relating to the Nebraska Commercial Fertilizer and Soil Conditioner Act; to amend sections 81-2,162.02, 81-2,162.04, 81-2,162.05, 81-2,162.06, 81-2,162.07, 81-2,162.08, 81-2,162.11, 81-2,162.23, and 81-2,162.27, Reissue Revised Statutes of Nebraska; to define and redefine terms; to change labeling requirements; to change penalties; to change requirements for publishing sales information; to remove a license application requirement; to change provisions relating to a fund; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 81-2,162.02, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,162.02 For purposes of the Nebraska Commercial Fertilizer and Soil Conditioner Act, unless the context otherwise requires:

(1) Director means ~~shall mean~~ the Director of Agriculture or his or her duly authorized agent;

(2) Department means ~~shall mean~~ the Department of Agriculture;

(3) Commercial fertilizer means ~~shall mean~~ any formula or product distributed for further distribution or ultimate use as a plant nutrient, intended to promote plant growth, containing one or more plant nutrients recognized by the Association of American Plant Food Control Officials in its official publication. The term commercial fertilizer shall not be deemed to include unmanipulated animal and vegetable manures but shall be deemed to include both finished products and fertilizer ingredients capable of being used in the formulation of a finished product;

(4) Bulk means ~~shall mean~~ nonpackaged;

(5) Custom-blended product means ~~shall mean~~ any individually compounded commercial fertilizer or soil conditioner mixed, blended, offered for sale, or sold in Nebraska to a person's specifications, when such person is the ultimate consumer, if the ingredients used in such product which are subject to the registration requirements of section 81-2,162.03 have been so registered;

(6) Distribute means ~~shall mean~~ to offer for sale, sell, barter, or otherwise supply commercial fertilizers or soil conditioners;

(7) Fineness means ~~shall mean~~ the percentage of weight of the material which will pass United States standard sieves of specified sizes;

(8) Grade means the percentage of total nitrogen, available phosphate, and soluble potash;

(9) ~~8~~ Label means ~~shall mean~~ a display of written, printed, or other graphic matter upon the container in which a commercial fertilizer or soil conditioner is distributed, or a statement accompanying such product;

(10) ~~9~~ Labeling means ~~shall mean~~ the label and all other written, printed, or graphic matter accompanying the commercial fertilizer or soil conditioner at any time or to which reference is made on the label;

(11) ~~10~~ Official sample means ~~shall mean~~ any sample of commercial fertilizer or soil conditioner taken by the director or his or her agent;

(12) ~~11~~ Product means ~~shall mean~~ both commercial fertilizers and soil conditioners;

(13) ~~12~~ Ton means ~~shall mean~~ a net weight of two thousand pounds avoirdupois;

(14) ~~13~~ Percent or percentage means ~~shall mean~~ the percentage by weight;

(15) ~~14~~ Person includes ~~shall include~~ individual, cooperative, partnership, limited liability company, association, firm, and corporation;

(16) ~~15~~ Sell or sale includes ~~shall include~~ exchange;

(17) ~~16~~ Soil conditioner means ~~shall mean~~ any formula or product distributed, except unmanipulated animal and vegetable manures, which, when added to the soil, is intended to (a) change the physical condition of the soil or (b) produce a favorable growth, yield, or quality of crops or other soil characteristics but shall not mean a commercial fertilizer, a pesticide as defined in the Pesticide Act, or an agricultural liming material as defined in the Agricultural Liming Materials Act; and

(18) ~~17~~ Specialty product means ~~shall mean~~ a product for nonfarm use.

Sec. 2. Section 81-2,162.04, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,162.04 (1) Any packaged soil conditioner distributed in this state, except custom-blended products, shall have placed on or affixed to the package a label stating clearly and conspicuously (a) the net weight or measure of the product, (b) the information required by subdivisions (1)(c) and (d) of section 81-2,162.03, (c) the total percentage of all the active ingredients in the soil conditioner, (d) the identification and percentage of each individual active ingredient, (e) the total percentage of the inactive ingredients, (f) the identification and percentage of each individual inactive ingredient which comprises more than two percent of the entire soil conditioner, and (g) under a category entitled other inactive ingredients, the total percentage of the

remaining inactive ingredients which individually do not comprise two percent or more of the soil conditioner.

(2) If any soil conditioner is distributed in bulk, a written or printed statement of the weight and the information required by subdivisions (1)(c) and (d) of section 81-2,162.03 and by subdivisions (1)(c) through (g) of this section shall accompany delivery and be supplied to the purchaser.

(3) Whenever a soil conditioner is so comprised as to be recognized by a name commonly understood by ordinary individuals, such name shall be prominently and conspicuously displayed on the label.

(4) Notwithstanding any other provision of the Nebraska Commercial Fertilizer and Soil Conditioner Act, any soil conditioner which is also a pesticide, labeled in conformance with the Pesticide Act, shall be deemed to be labeled in conformance with the Nebraska Commercial Fertilizer and Soil Conditioner Act.

Sec. 3. Section 81-2,162.05, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,162.05 (1) Any packaged commercial fertilizer distributed in this state, except custom-blended products, shall have placed on or affixed to the package a label stating clearly and conspicuously:

- (a) The net weight or measure of the product;
- (b) The name and principal address of the manufacturer or distributor;
- (c) The name of the product, including any term, design, trademark, or chemical designation used in connection with the product;
- (d) The guaranteed analysis showing the minimum percentage of plant nutrients claimed in the following order and form:

Total Nitrogen.....percent  
Ammoniacal Nitrogen  
(Specialty products only).....percent  
Nitrate Nitrogen  
(Specialty products only).....percent  
Water Insoluble Nitrogen  
(Specialty products only).....percent  
Available Phosphate Phosphoric Acid (P2O5).....percent  
Soluble Potash (K2O).....percent

Unacidulated mineral phosphatic materials and basic slag shall be guaranteed as to both total available phosphate phosphoric acid and the degree of fineness. Plant nutrients, other than nitrogen, phosphorus, and potassium, shall be guaranteed when present in significant quantities as determined by the director, which guarantees shall be expressed in elemental form. The director may also request that the sources of such nutrients be included on the label. Other beneficial substances, determinable by chemical methods, may be guaranteed only by permission of the director by and with the advice of the University of Nebraska Institute of Agriculture and Natural Resources. ~~The director may permit or require the potential basicity or acidity, expressed in terms of calcium carbonate equivalent in multiples of one hundred pounds per ton, to be guaranteed; and~~

(e) The sources from which the nitrogen, available phosphate phosphoric acid (P2O5), and potash (K2O) are derived; and -

(f) The grade stated in whole numbers in the same terms, order, and percentages as in the guaranteed analysis, except as follows:

- (i) Speciality products may be guaranteed in fractional units of less than one percent of the total nitrogen, available phosphate, and soluble potash; and
- (ii) The director may allow types of fertilizer materials, bone meal, or manures to be guaranteed in fractional units.

(2) If distributed in bulk, a written or printed statement of the information required by subdivisions (a), (b), (c), and (d) of subsection (1) of this section shall accompany delivery and be supplied to the purchaser.

(3) Whenever a commercial fertilizer is so comprised as to be recognized by a name commonly understood by ordinary individuals, such name shall be prominently and conspicuously displayed on the label.

(4) Custom-blended products shall bear a tag or invoice stating the name and principal address of the manufacturer, the name and address of the purchaser, and the net weight or measure and the composition of the product by weight or percentage of ingredients used. A duplicate copy of such information shall be kept by the manufacturer for use by the department for sampling and inspection purposes.

Sec. 4. Section 81-2,162.06, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,162.06 (1) There shall be paid to the director, for all commercial fertilizers and soil conditioners distributed in this state to the ultimate user, except custom-blended products, an inspection fee at the rate fixed by the director but not exceeding ten cents per ton. The fee shall be paid by the person distributing the product to the ultimate user.

(2) Payment of the inspection fee shall be evidenced by a statement made with documents showing that fees corresponding to the tonnage were received by the director.

(3) Every person who distributes commercial fertilizer or soil conditioners to the ultimate user in this state shall file, not later than the last day of January and July of each year, a semiannual tonnage report on forms provided by the department setting forth the number of net tons of commercial fertilizer and soil conditioners distributed in this state during the preceding six-month period, which report shall cover the periods from July 1 to December 31 and January 1 to June 30, and such other information as the director shall

deem necessary. All persons required to be licensed pursuant to the Nebraska Commercial Fertilizer and Soil Conditioner Act shall file such report regardless of whether any inspection fee is due. Upon filing the report, such person shall pay the inspection fee at the rate prescribed pursuant to subsection (1) of this section. The minimum inspection fee required pursuant to this section shall be five dollars, and no inspection fee shall be paid more than once for any one product.

(4) If a person fails to report and pay the fee required by subsection (3) of this section by January 31 and July 31, the fee shall be considered delinquent and the person owing the fee shall pay an additional administrative fee of twenty-five percent of the delinquent amount for each month it remains unpaid, not to exceed one hundred percent of the original amount due. The department may waive the additional administrative fee based upon the existence and extent of any mitigating circumstances that have resulted in the late payment of such fee. The purpose of the additional administrative fee is to cover the administrative costs associated with collecting fees and all money collected as an additional administrative fee shall be remitted to the State Treasurer for credit to the Fertilizers and Soil Conditioners Administrative Fund he or she may be required by the department to pay a penalty of up to twenty-five percent in addition to the fee due if paid during the period of February 1 to February 28 or August 1 to August 31 for the respective delinquency and an additional twenty-five percent penalty thereafter. Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided in this subsection shall constitute sufficient cause for the cancellation of all product registrations, licenses, or both on file for such person.

(5) No information furnished to the department under this section shall be disclosed in such a way as to reveal the operation of any person.

Sec. 5. Section 81-2,162.07, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,162.07 (1) To enforce the Nebraska Commercial Fertilizer and Soil Conditioner Act or the rules and regulations adopted pursuant to the act, the director may:

(a) For purposes of inspection, enter any location, vehicle, or both in which commercial fertilizers and soil conditioners are manufactured, processed, packed, transported, or held for distribution during normal business hours, except that in the event such locations and vehicles are not open to the public, the director shall present his or her credentials and obtain consent before making entry thereto unless a search warrant has previously been obtained. Credentials shall not be required for each entry made during the period covered by the inspection. The person in charge of the location or vehicle shall be notified of the completion of the inspection. If the owner of such location or vehicle or his or her agent refuses to admit the director to inspect pursuant to this section, the director may obtain a search warrant from a court of competent jurisdiction directing such owner or agent to submit the location, vehicle, or both as described in such search warrant to inspection;

(b) Inspect any location or vehicle described in this subsection, all pertinent equipment, finished and unfinished materials, containers and labeling, all records, books, papers, and documents relating to the distribution and production of commercial fertilizers and soil conditioners, and other information necessary for the enforcement of the act;

(c) Obtain samples of commercial fertilizers and soil conditioners. The owner, operator, or agent in charge shall be given a receipt describing the samples obtained; and

(d) Make analyses of and test samples obtained pursuant to subdivision (c) of this subsection to determine whether such commercial fertilizers and soil conditioners are in compliance with the act.

For purposes of this subsection, location shall include a factory, warehouse, or establishment.

(2) Sampling and analysis shall be conducted in accordance with methods published by the AOAC International or in accordance with other generally recognized methods.

(3) The director, in determining for administrative purposes whether any product is deficient in plant nutrients, shall be guided solely by the official sample as defined in subdivision (11 10) of section 81-2,162.02 and obtained and analyzed as provided for in subsection (2) of this section.

(4) The results of official analysis of any official sample shall be forwarded by the director to the person named on the label when the official sample is not in compliance with the act or the rules and regulations adopted pursuant to the act. Upon request made within ninety days of the analysis, the director shall furnish to the person named on the label a portion of the official sample. Following expiration of the ninety-day period, the director may dispose of such sample.

Sec. 6. Section 81-2,162.08, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,162.08 No superphosphate containing less than eighteen percent available phosphate phosphoric acid nor any commercial fertilizer in which the sum of the guarantees for the nitrogen, available phosphate phosphoric acid, and soluble potash totals less than twenty percent shall be distributed in this state except for fertilizers containing twenty-five percent or more of their nitrogen in water-insoluble form of plant or animal origin, in which case the total nitrogen, available phosphate phosphoric acid, and soluble potash shall not total less than eighteen percent. This section shall not apply to specialty

fertilizers.

Sec. 7. Section 81-2,162.11, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,162.11 The director shall ~~publish at least annually~~ make available, in such ~~form~~ forms as he or she may deem proper, information concerning the sales of commercial fertilizers and soil conditioners, ~~together with such data on their production and use as he or she may consider advisable~~, and a report of the results of the analysis based on official samples of commercial fertilizers and soil conditioners distributed within the state as compared with the analyses guaranteed under the provisions of the Nebraska Commercial Fertilizer and Soil Conditioner Act.

Sec. 8. Section 81-2,162.23, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,162.23 (1) No person shall manufacture or distribute commercial fertilizers or soil conditioners in this state unless such person holds a valid license for each manufacturing and distribution facility in this state. Any out-of-state manufacturer or distributor who has no distribution facility within this state shall obtain a license for his or her principal out-of-state office if he or she markets or distributes commercial fertilizer or soil conditioners in the State of Nebraska.

(2) An applicant for a license shall make application to the department on forms furnished by the department. ~~If the applicant is an individual, the application shall include the applicant's social security number.~~ Application forms shall be submitted to the department accompanied by an annual license fee of fifteen dollars. Licenses shall be renewed on or before January 1 of each year.

(3) A copy of the valid license shall be posted in a conspicuous place in each manufacturing or distribution facility.

(4) Persons distributing custom-blended products shall maintain records of purchase orders received for custom-blended products from the date such orders are received until such products are distributed, which records shall be sufficient to show the product ordered, date of such order, purchaser, and quantity of product ordered.

(5) The provisions of this section shall not apply to any retail store which sells or offers for sale less than a five-ton volume of commercial fertilizer or soil conditioners annually.

Sec. 9. Section 81-2,162.27, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,162.27 (1) All money received under the Nebraska Commercial Fertilizer and Soil Conditioner Act and the Agricultural Liming Materials Act shall be remitted to the State Treasurer for credit to the Fertilizers and Soil Conditioners Administrative Fund, which fund is hereby created. All money so received shall be used by the department for defraying the expenses of administering the Nebraska Commercial Fertilizer and Soil Conditioner Act and the Agricultural Liming Materials Act.

(2) Any unexpended balance in the Fertilizers and Soil Conditioners Administrative Fund at the close of any biennium shall, when reappropriated, be available for the uses and purposes of the fund for the succeeding biennium. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 10. Original sections 81-2,162.02, 81-2,162.04, 81-2,162.05, 81-2,162.06, 81-2,162.07, 81-2,162.08, 81-2,162.11, 81-2,162.23, and 81-2,162.27, Reissue Revised Statutes of Nebraska, are repealed.