

LEGISLATIVE BILL 333

Approved by the Governor May 23, 1975

Introduced by Agriculture and Environment Committee,
Schmit, 23, Chmn.; Dickinson, 31; Burrows, 30;
R. Maresh, 32; Rumery, 42; Kennedy, 21;
DeCamp, 40

AN ACT to amend sections 81-2,162.01, 81-2,162.02, 81-2,162.03, 81-2,162.05, 81-2,162.06, 81-2,162.07, 81-2,162.08, 81-2,162.11 to 81-2,162.18, 81-2,162.20, 81-2,162.21, and 81-2,162.22, Reissue Revised Statutes of Nebraska, 1943, relating to commercial fertilizers; to redefine terms; to provide for registration of manufacturers and distributors; to provide fees; to provide for analysis of soil conditioners; to change registration and labeling requirements; to change penalty provisions; to retitile the act; to provide an operative date; and to repeal the original sections, and also sections 81-2,162.04, 81-2,162.09, and 81-2,162.10, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. That section 81-2,162.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-2,162.01. The provisions of sections ~~81-2,162.04 to 81-2,162.22~~ this act shall be administered by the Director of Agriculture.

Sec. 2. That section 81-2,162.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-2,162.02. When used in sections ~~81-2,162.04 to 81-2,162.22~~ this act, unless the context otherwise requires:

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

(2) Fertilizer-material shall mean any substance containing nitrogen, phosphoric acid, potash, or any recognized plant food element or compound which is used for its plant food content or for compounding mixed fertilizers except unmanipulated animal and vegetable manures Department shall mean the Department of

Agriculture:

(3) Mixed fertilizer shall mean any combination or mixture of fertilizer materials;

(4) (3) Commercial fertilizer shall include mixed fertilizer and fertilizer materials; or either of such materials mean any formula or product distributed, except unmanipulated animal and vegetable manures, which contains one or more plant nutrients recognized by the Association of American Plant Food Control Officials in its official publication, which nutrients are used for their plant nutrient content and are intended to promote plant growth;

(5) Specialty fertilizer shall mean any packaged fertilizer, distributed primarily for use on crops grown for noncommercial purposes such as home gardens and lawns; and may include fertilizers used for research or experimental purposes; and dealer in specialty fertilizer shall mean a person who sells only specialty fertilizers and who does not hold himself out as being in the business of selling fertilizer in quantity for commercial application and does not engage in the business of selling fertilizer on such basis;

(6) (4) Bulk fertilizer shall mean commercial fertilizer delivered to the purchaser in the solid or liquid state, in a nonpackaged form to which a label cannot be attached;

(5) Custom blended shall mean individually compounded to a buyer's specifications, when such buyer is the ultimate consumer;

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

(7) Brand shall mean a term design or trade mark used in connection with one or several grades of fertilizer Fineness shall mean the percentage of weight of the material which will pass United States standard sieves of specified sizes;

(8) Grade shall mean the minimum percentage of total nitrogen; available phosphoric acid (P2O5); and soluble potash (K2O) stated in the order given in this definition and, when applied to mixed fertilizers, shall be in whole numbers only Label 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;

(9) Labeling 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;

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

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

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

(13) Per cent or percentage shall mean the percentage by weight;

(14) Person shall include individual, cooperative, partnership, association, firm, and corporation;

(15) Distributor shall mean any person who offers for sale, sells, barter, or otherwise supplies commercial fertilizers; and

(16) Sell or sale shall include exchange;

(17) Soil conditioner shall mean any formula or product distributed, except unmanipulated animal and vegetable manures, which, when added to the soil, or applied to plants, 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 or agricultural liming material; and

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

Sec. 3. (1) No person shall manufacture or distribute commercial fertilizers or soil conditioners in this state unless such person holds a valid registration 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 registration for his principal outlet used for distributing products in this state.

(2) Applicants for registrations shall make application to the department on forms furnished by the

department. Application forms shall be submitted to the department accompanied by an annual registration fee of five dollars. Registrations shall be renewed on or before January 1 of each year.

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

(4) Registered 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.

Sec. 4. That section 81-2,162.03, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-2,162.03. (1) Each grade---of commercial fertilizer and soil conditioner shall be registered before being offered for sale, sold, or distributed in this state. The application for registration shall be submitted to the director on forms furnished by the director, and shall be accompanied by a fee of one dollar per grade two copies of the labeling for such product. Upon approval by the director, a copy of the registration shall be furnished to the applicant. All registrations shall expire at the end of a five-year period from the date of registration on December 31 of each year. The application shall include the following information: in the following order:

(1) (a) The name and principal address of the person guaranteeing the fertilizer product;

(2) The brand and grade;

(b) The name and principal address of the person manufacturing the product;

(c) The name and principal address of the person whose name appears on the label;

(d) The name of the product, including any term, design, trademark, or chemical designation used in connection with the product;

(3) (e) The guaranteed analysis showing the minimum percentage of plant food nutrients claimed in the following order and form:

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

The registrant shall submit with the application the label, tag, bag, and certificate of guarantee, or a facsimile thereof, under which the material will be sold.

Unacidulated mineral phosphatic materials and basic slag shall be guaranteed as to both total and available phosphoric acid and the degree of fineness, and the percentage of available phosphoric acid shall be given in larger print than the total phosphoric acid, in the case of bone, tankage, and other natural organic phosphate materials, only the total phosphoric acid need be guaranteed. 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 stated in the application and included on the label. Additional plant food elements Other beneficial substances, determinable by chemical methods, may be guaranteed only by permission of the director by and with the advice of the Director of the Agricultural Experiment Station Institute of Agriculture and Natural Resources. When any such additional plant foods are claimed, they shall be included in the guarantee, and shall be subject to inspection and analysis in accordance with the methods and regulations that may be prescribed by the director. 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 registered and guaranteed; and

(4) (f) The sources from which the nitrogen, phosphoric acid (P2O5), and potash (K2O) are derived; and

(g) The percentage of every ingredient present in each soil conditioner.

(2) Custom blended products shall be exempt from the requirements of this section; Provided, that such products shall bear a tag or invoice stating the name and principal address of the manufacturer, 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, and a duplicate copy of such information shall be kept by the manufacturer for use by the department for sampling and inspection purposes. All ingredients shall be subject to the inspection fee requirements of section 81-2,162.06, except those ingredients brought to the manufacturer by the ultimate consumer for custom blending.

(3) A product shall not be required to be registered under this section when the director knows, or has reason to know, that such product is currently registered pursuant to this section.

Sec. 5. That section 81-2,162.05, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-2,162.05. (1) Any packaged commercial fertilizer or soil conditioner offered for sale or sold or distributed in this state, except custom blended products, in bags, barrels, or other containers shall have placed on or affixed to the container in written or printed form package a label stating clearly and conspicuously the net weight or measure of the product and the information required by subdivisions (1), (2), and (3) (c), (d), (e), and (g) of subsection (1) of section 81-2,162.03, either (a) on tags affixed to the end of the package between the ears or the sewed end or (b) directly on the package.

(2) If distributed in bulk, a written or printed statement of the weight and the information required by subdivisions (1), (2), and (3) (c), (d), (e), and (g) of subsection (1) of section 81-2,162.03, shall accompany delivery and be supplied to the purchaser.

(3) Whenever a commercial fertilizer or 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 this act, any commercial fertilizer or soil conditioner which is also a pesticide, labeled in conformance with the Nebraska Pesticides and Devices Act, shall be deemed to be labeled in conformance with this act.

Sec. 6. That section 81-2,162.06, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-2,162.06. (1) There shall be paid to the director, for all commercial fertilizer and soil conditioners sold, distributed in this state, an inspection fee at the rate fixed by the director but not exceeding ten cents per ton; Provided, that sales to manufacturers or exchanges between them are hereby exempted. Fees so collected shall be remitted by the director to the state treasury and by the State Treasurer placed in a fund for the payment of the costs of inspection, sampling, and analysis, and other expenses necessary for the administration of the provisions of sections 81-2,162.04 to 81-2,162.22.

(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 sells distributes commercial fertilizer or soil conditioners to the consumer in this state shall file, not later than the last day of January and July of each year, a semiannual statement tonnage report on forms provided by the department setting forth the number of net tons of commercial fertilizer and soil conditioners sold distributed in this state during the preceding six months' 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; and upon filing such statement report shall pay the inspection fee at the rate stated in 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) When more than one person distributes a commercial fertilizer or soil conditioner in this state, the person who registers the product shall be responsible for the requirements of subsection (3) of this section.

(4) (5) If a person fails to report and pay the fees, as required by subsection (3) of this section, by January 31 and July 31, he shall pay a penalty of twenty twenty-five per cent in addition to the fees 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 per cent penalty thereafter. Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided herein shall constitute sufficient cause for the cancellation of the permit all registrations on file for such person.

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

Sec. 7. (1) Every person required to obtain a registration, pursuant to section 3 of this act, shall furnish the director a confidential written statement on forms provided by the department of the tonnage of each commercial fertilizer or soil conditioner distributed by such person in this state during the preceding six-month period. Any person who distributes in this state, solely for further distribution, products that have been previously registered by another person in accordance with section 81-2,162.03 shall be exempted from the requirements of this section.

(2) The statement shall include all products distributed for the periods of July 1 to December 31 and of January 1 to June 30 of each year.

(3) The director may cancel the registration of any person failing to comply with this section if the above statement is not received by the director within one calendar month from the date of the close of each period. The director in his discretion may grant a reasonable extension of time.

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

Sec. 8. That section 81-2,162.07, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-2,162.07. (1) It shall be the duty of the director, ~~who may act through his authorized agent;~~ to sample, inspect, make analyses of and test commercial fertilizers and soil conditioners distributed within this state at such time and place and to such an extent as he may deem necessary to determine whether such **commercial**

fertilizers products are in compliance with the provisions of sections--81-2,162.01--to--81-2,162.22 this act. The director, ~~individually or through his agent,~~ is authorized to enter upon any public or private premises or any carriers during regular business hours in order to have access to commercial-fertilizers products subject to the provisions of sections--81-2,162.01--to--81-2,162.22 this act and the rules and regulations pertaining thereto.

(2) The methods of sampling and analysis shall be those adopted by the director similar to those of the Association of Official Agricultural Chemists or other recognized sources as shall be adopted through rules and regulations of the department.

(3) The director, in determining for administrative purposes whether any commercial-fertilizer product is deficient in plant food nutrients, shall be guided solely by the official sample as defined in subdivision-(9) subdivision (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 commercial-fertilizer product, which has been found to be subject to penalty or other legal action, shall be forwarded by the director to the registrant at least ten days before the report is submitted to the purchaser. If during that period no adequate evidence to the contrary is made available to the director, the report shall become official. Upon request made within ninety days of the analysis, the director shall furnish to the registrant a portion of any sample found subject to penalty or other legal action. Following expiration of the ninety-day period, the director may dispose of such sample or samples.

Sec. 9. That section 81-2,162.08, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

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

specialty fertilizers, as defined in subdivision (5) of section 04-2,462,02.

Sec. 10. No person shall distribute misbranded commercial fertilizers or soil conditioners. A commercial fertilizer or soil conditioner shall be deemed to be misbranded if:

(1) Its labeling is false or misleading in any particular;

(2) It is distributed under the name of another commercial fertilizer or soil conditioner;

(3) It is not labeled as required by this act or the regulations promulgated hereunder;

(4) It purports to be or is represented as a commercial fertilizer or soil conditioner or as containing an ingredient, for which a definition of identity or standard of quality has been prescribed by regulation of the department, unless it conforms to such definition and standard; or

(5) Any word, statement, or other information required by this act or the regulations promulgated under this act to appear on the label is not prominently displayed with such conspicuousness, as compared with other words, statements, designs, or devices, on the label, and in such terms as to render it likely to be read and understood by an individual under customary conditions of purchase and use.

Sec. 11. No person shall distribute adulterated commercial fertilizers or soil conditioners. A commercial fertilizer or soil conditioner shall be deemed to be adulterated if:

(1) It contains any toxic materials, other than pesticides registered pursuant to the Nebraska Pesticides and Devices Act, in quantities injurious to plant or animal health;

(2) Any valuable constituent has been in whole or in part omitted or subtracted therefrom or any less valuable substance substituted therefor;

(3) Its composition or quality falls below or differs from that which it is purported or is represented to possess by its label;

(4) Warning statements or directions for use, as prescribed by the director to be shown on the label, are

not displayed thereon:

(5) It contains amounts of crop seed, weed seed, or other foreign materials in excess of tolerances as may be established by rules and regulations of the department.

Sec. 12. That section 81-2,162.11, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-2,162.11. The director shall publish at least annually, in such forms as he may deem proper, information concerning the sales of commercial fertilizers and soil conditioners, together with such data on their production and use as he may consider advisable, and a report of the results of the analysis based on official samples of commercial fertilizers and soil conditioners sold distributed within the state as compared with the analyses guaranteed under the provisions of sections section 81-2,162.03. and 81-2,162.04; ~~Provided, that the information concerning production and use of commercial fertilizers shall be shown separately for the periods July 4 to December 31 and January 4 to June 30 of each year; and that no disclosure shall be made of the operations of any person.~~

Sec. 13. That section 81-2,162.12, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-2,162.12. For the enforcement of sections 81-2,162.01 to 81-2,162.22 this act, the director is authorized to prescribe rules and regulations, after public hearing following due public notice, relating to the distribution of commercial fertilizers and soil conditioners as he may find necessary to carry into effect the full intent and meaning of sections 81-2,162.01 to 81-2,162.22 this act.

Sec. 14. That section 81-2,162.13, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-2,162.13. The director is authorized and empowered to cancel the registration of any ~~grade of any brand of~~ commercial fertilizer or soil conditioner or to refuse to register any ~~brand of~~ commercial fertilizer or soil conditioner as herein provided, upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in the evasions or attempted evasions of the provisions of sections 81-2,162.01 to 81-2,162.22 this act or any rules and regulations promulgated

thereunder; provided, that no registration shall be revoked or refused until the registrant shall have been given the opportunity to appear for a hearing before the director.

Sec. 15. That section 81-2,162.14, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-2,162.14. The director may issue and enforce a written or printed stop sale, use, or removal order to the owner or custodian of any lot of commercial fertilizer or soil conditioner and to hold at a designated place when the director has reason to believe said commercial-fertilizer product is being offered or exposed for sale in violation of any of the provisions of sections-81-2,162:01-to-81-2,162:22 this act until the law has been complied with and said-commercial-fertilizer such product is released in writing by the director or said violation has been otherwise legally disposed of by written authority. The director shall release the commercial--fertilizer product so withdrawn when the requirements of the provisions of sections-81-2,162:01-to 81-2,162:22 this act have been complied with and all costs and expenses incurred in connection with the withdrawal have been paid.

Sec. 16. That section 81-2,162.15, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-2,162.15. Any lot of commercial fertilizer or soil conditioner not in compliance with the provisions of sections-81-2,162:01-to-81-2,162:22 this act shall be subject to seizure or on complaint of the director to a court of competent jurisdiction in the area in which said commercial-fertilizer such product is located. In the event the court finds the-said-commercial-fertilizer such product to be in violation of the provisions of sections 81-2,162:01--to--81-2,162:22 this act and orders the condemnation of said-commercial-fertilizer such product, it shall be disposed of in any manner consistent with the quality of the commercial-fertilizer product and the laws of the state; provided, that in no instance shall the disposition of said-commercial-fertilizer such product be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial-fertilizer such product or for permission to process or relabel said-commercial--fertilizer such product to bring it into compliance with the provisions of sections-81-2,162:01-to-81-2,162:22 this act.

Sec. 17. That section 81-2,162.16, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-2,162.16. If it shall appear from the examination of any commercial fertilizer or soil conditioner that any of the provisions of sections 81-2,162;81-to-81-2,162:22 this act or the rules and regulations issued thereunder have been violated, the director shall cause notice of the violations to be given to the registrant, distributor, or possessor person from whom said sample was taken. Any person so notified shall be given opportunity to be heard under such rules and regulations as may be prescribed by the director. If it appears after such hearing, either in the presence or absence of the person so notified, that any of the provisions of sections 81-2,162;81--to--81-2,162:22 this act or rules and regulations issued thereunder have been violated, the director may certify the facts to the county attorney of the county in which the violation occurred or to the Attorney General, as the case may be.

Sec. 18. That section 81-2,162.17, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-2,162.17. Any person violating any provisions of sections 81-2,162;81-to-81-2,162:22 this act or the rules and regulations issued thereunder, or who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent the director in the performance of his duty pursuant to this act, shall be guilty of a misdemeanor and shall, upon conviction thereof, (1) for the first conviction be fined not less than one hundred dollars nor more than five hundred dollars and (2) for each subsequent conviction thereof, be fined not less than three hundred dollars nor more than one thousand dollars or be imprisoned in the county jail for not less than thirty days nor more than six months, or both such a fine and imprisonment be both so fined and imprisoned.

Sec. 19. That section 81-2,162.18, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-2,162.18. Nothing in sections 81-2,162;81--to-81-2,162:22 this act shall be construed as requiring the director or his representative to report for prosecution or for the institution of seizure proceedings for minor violations of sections 81-2,162;81--to--81-2,162:22 this act when he believes that the public interest will be best served by a suitable notice of warning in writing.

Sec. 20. That section 81-2,162.20, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-2,162.20. The director is hereby authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of ~~sections-81-2,162:01-to-81-2,162:22~~ this act, or any rules or regulations promulgated under ~~sections 81-2,162:01-to-81-2,162:22~~ this act, notwithstanding the existence of other remedies at law. The injunction shall be issued without bond.

Sec. 21. That section 81-2,162.21, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-2,162.21. Nothing in ~~sections-81-2,162:01--to 81-2,162:22~~ this act shall be construed to restrict or avoid sales or exchanges of commercial fertilizers or soil conditioners to each other by importers, manufacturers, or manipulators who mix ~~fertilizer materials commercial fertilizers or soil conditioners~~ for sale or as preventing the free and unrestricted shipments of commercial fertilizers and soil conditioners to manufacturers or manipulators who have registered their brands products as required by the provisions of ~~sections 81-2,162:01-to-81-2,162:22~~ this act.

Sec. 22. All money received under the provisions of this act shall be paid to the state treasury and credited by the State Treasurer to the Fertilizers and Soil Conditioners Administrative Fund, which fund is hereby created. All money so received shall be appropriated to the uses of the department for defraying the expenses of administering the provisions of this act. Any unexpended balance in such fund at the close of any fiscal year shall, when reappropriated, be available for the uses and purposes of the fund for the succeeding fiscal year. Any unexpended balance in the Fertilizer Tonnage Tax Fund as of the effective date of this act shall be transferred to the Fertilizers and Soil Conditioners Administrative Fund.

Sec. 23. That section 81-2,162.22, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-2,162.22. ~~Sections-81-2,162:01-to-81-2,162:22~~ This act shall be known and may be cited as the Nebraska Commercial Fertilizer and Soil Conditioner Act, of-1955-

Sec. 24. This act shall become operative
January 1, 1976.

Sec. 25. That original sections 81-2,162.01, 81-2,162.02, 81-2,162.03, 81-2,162.05, 81-2,162.06, 81-2,162.07, 81-2,162.08, 81-2,162.11 to 81-2,162.18, 81-2,162.20, 81-2,162.21, and 81-2,162.22, Reissue Revised Statutes of Nebraska, 1943, and also sections 81-2,162.04, 81-2,162.09, and 81-2,162.10, Reissue Revised Statutes of Nebraska, 1943, are repealed.