

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 93

FINAL READING

Introduced by Johnson, 23.

Read first time January 08, 2015

Committee: Agriculture

1 A BILL FOR AN ACT relating to the Nebraska Commercial Fertilizer and Soil
2 Conditioner Act; to amend sections 81-2,162.02, 81-2,162.04,
3 81-2,162.05, 81-2,162.06, 81-2,162.07, 81-2,162.08, 81-2,162.11,
4 81-2,162.23, and 81-2,162.27, Reissue Revised Statutes of Nebraska;
5 to define and redefine terms; to change labeling requirements; to
6 change penalties; to change requirements for publishing sales
7 information; to remove a license application requirement; to change
8 provisions relating to a fund; to harmonize provisions; and to
9 repeal the original sections.
10 Be it enacted by the people of the State of Nebraska,

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

3 81-2,162.02 For purposes of the Nebraska Commercial Fertilizer and
4 Soil Conditioner Act, unless the context otherwise requires:

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

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

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

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

17 (5) Custom-blended product means ~~shall mean~~ any individually
18 compounded commercial fertilizer or soil conditioner mixed, blended,
19 offered for sale, or sold in Nebraska to a person's specifications, when
20 such person is the ultimate consumer, if the ingredients used in such
21 product which are subject to the registration requirements of section
22 81-2,162.03 have been so registered;

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

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

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

30 (9) Label means ~~shall mean~~ a display of written, printed, or other
31 graphic matter upon the container in which a commercial fertilizer or

1 soil conditioner is distributed, or a statement accompanying such
2 product;

3 (10 9) Labeling means ~~shall mean~~ the label and all other written,
4 printed, or graphic matter accompanying the commercial fertilizer or soil
5 conditioner at any time or to which reference is made on the label;

6 (11 10) Official sample means ~~shall mean~~ any sample of commercial
7 fertilizer or soil conditioner taken by the director or his or her agent;

8 (12 11) Product means ~~shall mean~~ both commercial fertilizers and
9 soil conditioners;

10 (13 12) Ton means ~~shall mean~~ a net weight of two thousand pounds
11 avoirdupois;

12 (14 13) Percent or percentage means ~~shall mean~~ the percentage by
13 weight;

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

17 (16 15) Sell or sale includes ~~shall include~~ exchange;

18 (17 16) Soil conditioner means ~~shall mean~~ any formula or product
19 distributed, except unmanipulated animal and vegetable manures, which,
20 when added to the soil, is intended to (a) change the physical condition
21 of the soil or (b) produce a favorable growth, yield, or quality of crops
22 or other soil characteristics but shall not mean a commercial fertilizer,
23 a pesticide as defined in the Pesticide Act, or an agricultural liming
24 material as defined in the Agricultural Liming Materials Act; and

25 (18 17) Specialty product means ~~shall mean~~ a product for nonfarm
26 use.

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

29 81-2,162.04 (1) Any packaged soil conditioner distributed in this
30 state, except custom-blended products, shall have placed on or affixed to
31 the package a label stating clearly and conspicuously (a) the net weight

1 or measure of the product, (b) the information required by subdivisions
2 (1)(c) and (d) of section 81-2,162.03, (c) the total percentage of all
3 ~~the~~ active ingredients in the soil conditioner, (d) the identification
4 and percentage of each individual active ingredient, (e) the total
5 percentage of the inactive ingredients, (f) the identification and
6 percentage of each individual inactive ingredient which comprises more
7 than two percent of the entire soil conditioner, and (g) under a category
8 entitled other inactive ingredients, the total percentage of the
9 remaining inactive ingredients which individually do not comprise two
10 percent or more of the soil conditioner.

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

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

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

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

26 81-2,162.05 (1) Any packaged commercial fertilizer distributed in
27 this state, except custom-blended products, shall have placed on or
28 affixed to the package a label stating clearly and conspicuously:

29 (a) The net weight or measure of the product;

30 (b) The name and principal address of the manufacturer or
31 distributor;

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

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

5 Total Nitrogen.....percent

6 Ammoniacal Nitrogen

7 (Specialty products only).....percent

8 Nitrate Nitrogen

9 (Specialty products only).....percent

10 Water Insoluble Nitrogen

11 (Specialty products only).....percent

12 Available Phosphate ~~Phosphoric Acid~~ (P205).....percent

13 Soluble Potash (K20).....percent

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

27 (e) The sources from which the nitrogen, available phosphate
28 ~~phosphoric acid~~ (P205), and potash (K20) are derived; and -

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

31 (i) Speciality products may be guaranteed in fractional units of

1 less than one percent of the total nitrogen, available phosphate, and
2 soluble potash; and

3 (ii) The director may allow types of fertilizer materials, bone
4 meal, or manures to be guaranteed in fractional units.

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

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

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

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

20 81-2,162.06 (1) There shall be paid to the director, for all
21 commercial fertilizers and soil conditioners distributed in this state to
22 the ultimate user, except custom-blended products, an inspection fee at
23 the rate fixed by the director but not exceeding ten cents per ton. The
24 fee shall be paid by the person distributing the product to the ultimate
25 user.

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

29 (3) Every person who distributes commercial fertilizer or soil
30 conditioners to the ultimate user in this state shall file, not later
31 than the last day of January and July of each year, a semiannual tonnage

1 report on forms provided by the department setting forth the number of
2 net tons of commercial fertilizer and soil conditioners distributed in
3 this state during the preceding six-month period, which report shall
4 cover the periods from July 1 to December 31 and January 1 to June 30,
5 and such other information as the director shall deem necessary. All
6 persons required to be licensed pursuant to the Nebraska Commercial
7 Fertilizer and Soil Conditioner Act shall file such report regardless of
8 whether any inspection fee is due. Upon filing the report, such person
9 shall pay the inspection fee at the rate prescribed pursuant to
10 subsection (1) of this section. The minimum inspection fee required
11 pursuant to this section shall be five dollars, and no inspection fee
12 shall be paid more than once for any one product.

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

1 registrations, licenses, or both on file for such person.

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

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

7 81-2,162.07 (1) To enforce the Nebraska Commercial Fertilizer and
8 Soil Conditioner Act or the rules and regulations adopted pursuant to the
9 act, the director may:

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

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

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

1 describing the samples obtained; and

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

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

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

10 (3) The director, in determining for administrative purposes whether
11 any product is deficient in plant nutrients, shall be guided solely by
12 the official sample as defined in subdivision (~~11~~ ~~10~~) of section
13 81-2,162.02 and obtained and analyzed as provided for in subsection (2)
14 of this section.

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

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

24 81-2,162.08 No superphosphate containing less than eighteen percent
25 available phosphate ~~phosphoric acid~~ nor any commercial fertilizer in
26 which the sum of the guarantees for the nitrogen, available phosphate
27 ~~phosphoric acid~~, and soluble potash totals less than twenty percent shall
28 be distributed in this state except for fertilizers containing twenty-
29 five percent or more of their nitrogen in water-insoluble form of plant
30 or animal origin, in which case the total nitrogen, available phosphate
31 ~~phosphoric acid~~, and soluble potash shall not total less than eighteen

1 percent. This section shall not apply to specialty fertilizers.

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

4 81-2,162.11 The director shall ~~publish at least annually~~ make
5 available, in such form ~~forms~~ as he or she may deem proper, information
6 concerning the sales of commercial fertilizers and soil conditioners,
7 ~~together with such data on their production and use as he or she may~~
8 ~~consider advisable~~, and a report of the results of the analysis based on
9 official samples of commercial fertilizers and soil conditioners
10 distributed within the state as compared with the analyses guaranteed
11 under the provisions of the Nebraska Commercial Fertilizer and Soil
12 Conditioner Act.

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

15 81-2,162.23 (1) No person shall manufacture or distribute commercial
16 fertilizers or soil conditioners in this state unless such person holds a
17 valid license for each manufacturing and distribution facility in this
18 state. Any out-of-state manufacturer or distributor who has no
19 distribution facility within this state shall obtain a license for his or
20 her principal out-of-state office if he or she markets or distributes
21 commercial fertilizer or soil conditioners in the State of Nebraska.

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

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

30 (4) Persons distributing custom-blended products shall maintain
31 records of purchase orders received for custom-blended products from the

1 date such orders are received until such products are distributed, which
2 records shall be sufficient to show the product ordered, date of such
3 order, purchaser, and quantity of product ordered.

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

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

9 81-2,162.27 (1) All money received under the Nebraska Commercial
10 Fertilizer and Soil Conditioner Act and the Agricultural Liming Materials
11 Act shall be remitted to the State Treasurer for credit to the
12 Fertilizers and Soil Conditioners Administrative Fund, which fund is
13 hereby created. All money so received shall be used by the department for
14 defraying the expenses of administering the Nebraska Commercial
15 Fertilizer and Soil Conditioner Act and the Agricultural Liming Materials
16 Act.

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

24 Sec. 10. Original sections 81-2,162.02, 81-2,162.04, 81-2,162.05,
25 81-2,162.06, 81-2,162.07, 81-2,162.08, 81-2,162.11, 81-2,162.23, and
26 81-2,162.27, Reissue Revised Statutes of Nebraska, are repealed.