

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 92

Introduced by Johnson, 23.

Read first time January 08, 2015

Committee: Agriculture

1 A BILL FOR AN ACT relating to the Agricultural Liming Materials Act; to
2 amend sections 2-4323, 2-4324, 2-4326, and 2-4327, Reissue Revised
3 Statutes of Nebraska; to change requirements for annual report
4 filing and report publication; to change provisions relating to
5 enforcement; to provide for seizure and disposal of noncompliant
6 agricultural liming materials; to change penalties; to provide a
7 duty for the Attorney General and local county attorneys; to remove
8 an obsolete provision; to provide operative dates; and to repeal the
9 original sections.

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

1 Section 1. Section 2-4323, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 2-4323 (1) Every retailer licensee shall file, not later than the
4 last day of January and July of each year, a semiannual tonnage report on
5 forms provided by the department, setting forth the number of net tons of
6 each agricultural liming material sold during the preceding six-month
7 period, which report shall cover the periods from July 1 to December 31
8 and January 1 to June 30, and such other information as the director
9 shall deem necessary. All persons required to be licensed pursuant to the
10 Agricultural Liming Materials Act shall file such report regardless of
11 whether any inspection fee is due. Upon filing the report, such person
12 shall pay the inspection fee at the rate prescribed pursuant to this
13 section. The minimum inspection fee required pursuant to this section
14 shall be five dollars, and no inspection fee shall be paid more than once
15 for any one product within thirty days following the expiration of each
16 license, each retailer licensee shall submit on a form furnished and
17 approved by the department an annual statement setting forth, by county
18 name, the number of net tons of each agricultural liming material sold by
19 him or her for use in this state during the previous twelve-month period.
20 Such report statement shall be accompanied by payment of an inspection
21 fee at the rate fixed by the director but not exceeding ten cents per
22 ton. The fee shall be set at an amount to cover the expenses of the
23 inspection provided in section 2-4325 and the costs of administering this
24 section. In The fee shall be paid by the retailer licensee and in the
25 case of agricultural lime slurry, the fee shall be paid on the base lime
26 material only.

27 (2) If a person fails to report and pay the fee required by
28 subsection (1) of this section by January 31 and July 31, the fee shall
29 be considered delinquent and the person owing the fee shall pay an
30 additional administrative fee of twenty-five percent of the delinquent
31 amount for each month it remains unpaid, not to exceed one hundred

1 percent of the original amount due. The department may waive the
2 additional administrative fee based upon the existence and extent of any
3 mitigating circumstances that have resulted in the late payment of such
4 fee. The purpose of the additional administrative fee is to cover the
5 administrative costs associated with collecting fees, and all money
6 collected as an additional administrative fee shall be remitted to the
7 State Treasurer for credit to the Fertilizers and Soil Conditioners
8 Administrative Fund. Failure to make an accurate statement of tonnage or
9 to pay the inspection fee or comply as provided in this subsection shall
10 constitute sufficient cause for the cancellation of all product
11 registrations or licenses on file for such person.

12 (3 2) The director department shall annually make information
13 available in such form as he or she may deem proper concerning publish
14 and make available, to each agricultural liming material registrant or
15 licensee and to any other interested person upon his or her request, a
16 composite report showing the tons of agricultural liming material sold in
17 each county in this state. Such report shall in no way divulge the
18 operation of any registrant or licensee.

19 Sec. 2. Section 2-4324, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 2-4324 All fees paid to the department pursuant to the Agricultural
22 Liming Materials Act shall be remitted to the State Treasurer for credit
23 to the Fertilizers and Soil Conditioners Administrative Fund. ~~Any money~~
24 ~~in the Liming Materials Cash Fund on August 31, 2003, shall be~~
25 ~~transferred to the Fertilizers and Soil Conditioners Administrative Fund.~~
26 All money credited ~~or transferred~~ to the fund shall be used by the
27 department to aid in defraying expenses of administering the Agricultural
28 Liming Materials Act and the Nebraska Commercial Fertilizer and Soil
29 Conditioner Act.

30 Sec. 3. Section 2-4326, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 2-4326 (1) When the director has reasonable cause to believe
2 agricultural liming materials are being sold in violation of the
3 Agricultural Liming Materials Act or the rules and regulations adopted
4 and promulgated pursuant to the act, he or she ~~The department~~ may issue
5 and enforce a written or printed stop-sale, stop-use, or removal order to
6 the owner or custodian of any lot of agricultural liming material. The
7 department may order the owner or custodian to hold such material at a
8 designated place when the department finds such material is being offered
9 or exposed for sale by the owner or custodian in violation of the act
10 ~~Agricultural Liming Materials Act or the rules and regulations adopted~~
11 ~~and promulgated by the department.~~ Such material shall be released when
12 the act or the rules and regulations have been complied with, such
13 violations have otherwise been legally disposed of in writing, and all
14 costs and expense incurred in connection with such material's holding
15 have been paid. This section shall not apply if the owner or custodian is
16 the ultimate consumer of the agricultural liming material and he or she
17 has title to such materials.

18 (2) Any agricultural liming materials not in compliance with the act
19 or the rules and regulations shall be subject to seizure on complaint of
20 the director to a court of competent jurisdiction in the area in which
21 the agricultural liming materials are located. If the court finds the
22 agricultural liming materials to be in violation of the act or the rules
23 and regulations and orders the condemnation of the agricultural liming
24 materials, such agricultural liming materials shall be disposed of in any
25 manner consistent with the quality of the agricultural liming materials
26 and the laws of the State of Nebraska. The court shall not order
27 disposition without first giving the claimant an opportunity to apply to
28 the court for release of the agricultural liming materials or for
29 permission to process or relabel such product to bring it into compliance
30 with the act.

31 Sec. 4. Section 2-4327, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 2-4327 (1) Any person violating the Agricultural Liming Materials
3 Act shall be guilty of a Class IV ~~V~~ misdemeanor upon the first conviction
4 thereof, and a Class II ~~IV~~ misdemeanor for each subsequent conviction
5 thereof.

6 (2) Nothing in the act shall be construed to require the director or
7 his or her duly authorized agent to report a violation in order to
8 prosecute or to institute seizure proceedings as a result of minor
9 violations of the act when he or she believes that the public interest
10 will best be served by a suitable written warning to the violator.

11 (3) The Attorney General or the county attorney of the county in
12 which any violation occurs or is about to occur, when notified by the
13 department of such violation or threatened violation, shall pursue
14 appropriate proceedings pursuant to section 2-4326 or this section or
15 both without delay.

16 (4) In order to insure compliance with the act, the department may
17 apply for a restraining order, a temporary or permanent injunction, or a
18 mandatory injunction against any person violating or threatening to
19 violate the act or the rules and regulations adopted and promulgated
20 pursuant to the act. The district court of the county where the violation
21 is occurring or is about to occur shall have jurisdiction to grant such
22 relief upon good cause shown. Relief may be granted notwithstanding the
23 existence of any other remedy at law and shall be granted without bond.

24 (5) Any person adversely affected by an action, order, or ruling
25 made by the department pursuant to the act may appeal the action, order,
26 or ruling, and the appeal shall be in accordance with the Administrative
27 Procedure Act.

28 Sec. 5. Sections 1 and 6 of this act become operative on February
29 1, 2016. The other sections of this act become operative on their
30 effective date.

31 Sec. 6. Original section 2-4323, Reissue Revised Statutes of

1 Nebraska, is repealed.

2 Sec. 7. Original sections 2-4324, 2-4326, and 2-4327, Reissue

3 Revised Statutes of Nebraska, are repealed.