

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FOURTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 93**

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 commercial fertilizer  
6 labeling requirements; to change penalties; to change requirements  
7 for publishing sales information; to remove a license application  
8 requirement; to harmonize provisions; and to repeal the original  
9 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 (5) Notwithstanding any other provision of the Nebraska Commercial  
19 Fertilizer and Soil Conditioner Act, any commercial fertilizer which is  
20 also a pesticide labeled in conformance with the Pesticide Act shall be  
21 deemed to be labeled in conformance with the Nebraska Commercial  
22 Fertilizer and Soil Conditioner Act.

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

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

31 (2) Payment of the inspection fee shall be evidenced by a statement

1 made with documents showing that fees corresponding to the tonnage were  
2 received by the director.

3 (3) Every person who distributes commercial fertilizer or soil  
4 conditioners to the ultimate user in this state shall file, not later  
5 than the last day of January and July of each year, a semiannual tonnage  
6 report on forms provided by the department setting forth the number of  
7 net tons of commercial fertilizer and soil conditioners distributed in  
8 this state during the preceding six-month period, which report shall  
9 cover the periods from July 1 to December 31 and January 1 to June 30,  
10 and such other information as the director shall deem necessary. All  
11 persons required to be licensed pursuant to the Nebraska Commercial  
12 Fertilizer and Soil Conditioner Act shall file such report regardless of  
13 whether any inspection fee is due. Upon filing the report, such person  
14 shall pay the inspection fee at the rate prescribed pursuant to  
15 subsection (1) of this section. The minimum inspection fee required  
16 pursuant to this section shall be five dollars, and no inspection fee  
17 shall be paid more than once for any one product.

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

1 ~~during the period of February 1 to February 28 or August 1 to August 31~~  
2 ~~for the respective delinquency and an additional twenty five percent~~  
3 ~~penalty thereafter.~~ Failure to make an accurate statement of tonnage or  
4 to pay the inspection fee or comply as provided in this subsection shall  
5 constitute sufficient cause for the cancellation of all product  
6 registrations, licenses, or both on file for such person.

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

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

12 81-2,162.07 (1) To enforce the Nebraska Commercial Fertilizer and  
13 Soil Conditioner Act or the rules and regulations adopted pursuant to the  
14 act, the director may:

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

29 (b) Inspect any location or vehicle described in this subsection,  
30 all pertinent equipment, finished and unfinished materials, containers  
31 and labeling, all records, books, papers, and documents relating to the



1 distribution and production of commercial fertilizers and soil  
2 conditioners, and other information necessary for the enforcement of the  
3 act;

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

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

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

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

15 (3) The director, in determining for administrative purposes whether  
16 any product is deficient in plant nutrients, shall be guided solely by  
17 the official sample as defined in subdivision (~~11~~ ~~10~~) of section  
18 81-2,162.02 and obtained and analyzed as provided for in subsection (2)  
19 of this section.

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

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

29 81-2,162.08 No superphosphate containing less than eighteen percent  
30 available phosphate ~~phosphoric acid~~ nor any commercial fertilizer in  
31 which the sum of the guarantees for the nitrogen, available phosphate

1 ~~phosphoric acid~~, and soluble potash totals less than twenty percent shall  
2 be distributed in this state except for fertilizers containing twenty-  
3 five percent or more of their nitrogen in water-insoluble form of plant  
4 or animal origin, in which case the total nitrogen, available phosphate  
5 ~~phosphoric acid~~, and soluble potash shall not total less than eighteen  
6 percent. This section shall not apply to specialty fertilizers.

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

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

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

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

27       (2) An applicant for a license shall make application to the  
28 department on forms furnished by the department. ~~If the applicant is an~~  
29 ~~individual, the application shall include the applicant's social security~~  
30 ~~number~~. Application forms shall be submitted to the department  
31 accompanied by an annual license fee of fifteen dollars. Licenses shall

1 be renewed on or before January 1 of each year.

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

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

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

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

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

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

29 Sec. 10. Original sections 81-2,162.02, 81-2,162.04, 81-2,162.05,  
30 81-2,162.06, 81-2,162.07, 81-2,162.08, 81-2,162.11, 81-2,162.23, and  
31 81-2,162.27, Reissue Revised Statutes of Nebraska, are repealed.