WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1947

ENROLLED

HOUSE BILL No. 237

(By Mr. Smith)

PASSED March 8, 1947

In Effect Thirty days from Passage
AN ACT to amend and reenact article fifteen, chapter nineteen, of the code of West Virginia, one thousand nine hundred thirty-one, as amended, pertaining to the sale and distribution of mixed fertilizers and fertilizer materials in the state of West Virginia.

Be it enacted by the Legislature of West Virginia:

That article fifteen, chapter nineteen, of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 1. Title.—This article shall be known as the "West Virginia Fertilizer Law of 1947."

Sec. 2. Enforcing Official.—This article shall be administered by the commissioner of agriculture of the state of West Virginia, hereinafter referred to as the "commissioner."
Sec. 3. Definitions of Words and Terms.—When used in this article:

(a) The term "person" includes individuals, partnerships, firms, associations and corporations.

(b) Words importing the singular number may extend and be applied to several persons or things, and words importing the plural number may include the singular.

(c) The term "distributor" means any person who offers for sale, sells, or otherwise supplies mixed fertilizers or fertilizer materials.

(d) The term "sell" or "sale" includes exchange.

(e) The term "fertilizer material" means any substance containing nitrogen, phosphoric acid, potash, or any other recognized plant food element or compound which is used primarily for its plant food content or for compounding mixed fertilizers except unmanipulated animal and vegetable manures.

(f) The term "mixed fertilizer" means any combination or mixture of fertilizer materials designed for use or claimed to have value in promoting plant growth.
(g) The term "grade" means the minimum percentage of total nitrogen, available phosphoric acid, and soluble potash stated in the order given in this paragraph and, when applied to mixed fertilizers, phosphates and potash salts, shall be in whole numbers only.

(h) The term "brand" means the name, grade, and other designations under which mixed fertilizers or fertilizer materials are offered for sale, sold or distributed in this state.

(i) The term "official sample" means any sample of mixed fertilizer or fertilizer material taken by the commissioner or his agents according to the methods prescribed by the commissioner.

(j) The term "ton" means a net ton of two thousand pounds avoirdupois.

(k) The term "per cent" or "percentage" means the percentage by weight.

Sec. 4 Registration.—(a) Each brand of mixed fertilizer or fertilizer material shall be registered before being offered for sale, sold or distributed in this state. The application for registration shall be submitted in
duplicate to the commissioner on forms furnished by the commissioner, and shall be accompanied by a remittance of one dollar per brand for a registration fee. Upon approval by the commissioner a copy of the registration shall be furnished to the applicant. The application shall include the following information in the following order:

1. The name and address of the person guaranteeing registration.
2. The brand.
3. The guaranteed analysis showing the minimum percentage of plant food in the following order and form:

   Total nitrogen __________________ per cent
   Available phosphoric acid __ __ _ ____ ____ per cent
   Soluble potash __________________ per cent

In the case of bone, tankage, and other organic phosphate materials on which the chemist makes no determination of available phosphoric acid, the total phosphoric acid shall be guaranteed; Provided, That unacidulated material, phosphatic materials and basic slag shall be guaranteed as to both total and available phosphoric acid.
4. The commissioner 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.

5. The commissioner may permit or require mixed fertilizers and fertilizer materials to be registered and guaranteed with additional information if the foregoing does not adequately describe the fertility value of the product. Whenever such guarantees are for plant food elements other than phosphorus and potassium, they shall be stated in their elemental form.

(b) The distributor of any brand of mixed fertilizer or fertilizer material shall not be required to register the same if it has already been registered under this article by a person entitled to do so and such registration is then outstanding.

(c) Each and every brand of mixed fertilizer or fertilizer material filed with the commissioner must remain uniform for the period of registration, and in no case, even at a subsequent registration, shall the grade or quality be lowered.
Sec. 5. *Labeling.*—(a) Any mixed fertilizer or fertilizer material offered for sale or sold or distributed in this state in bags, barrels, or other containers commonly used shall have placed on or affixed to the container the net weight and the data, in written or printed form, required by paragraph (a) of section four, printed either (1) on tags to be affixed to the end of the package, or (2) directly on the package: Provided, That the grade appears on the end of the package for identification when piled.

(b) If transported in bulk, the net weight and the data, in written or printed form, as required by paragraph (a) of section four, shall accompany delivery and be supplied to the purchaser.

Sec. 6. *Tonnage Fee.*—(a) There shall be paid to the commissioner for all mixed fertilizers or fertilizer materials offered for sale, sold or distributed in this state an inspection fee at the rate of twenty-five cents per ton: Provided, That sales to manufacturers or exchanges between them are hereby exempted. Fees so collected shall constitute a special revenue fund for the payment of the costs of inspection, sampling, and an-
alysis, and other expenses necessary for putting into
effect this article, and may be expended therefor upon
order of the commissioner of agriculture.

(b) Payment of the fee levied by paragraph (a) of
this section shall be based on a statement under oath in
due form of law which shall be filed with the commis-
sioner of agriculture on or before the fifteenth day of July
and January, which shall set forth the number of net
tons of such fertilizers sold or distributed in this state
during the preceding six month period; and upon such
statement each and every manufacturer shall pay to
the commissioner of agriculture the sum of twenty-five
cents per net ton of two thousand pounds. Each appli-
cant for a certificate of registration shall include in such
application a permit granting to the commissioner or
his duly designated representative permission to verify
from applicants' records such applicants' statement of
tonnage.

Sec. 7. Inspection.—(a) It shall be the duty of the
commissioner, who may act through his authorized agent,
to sample, inspect, make analyses of, and test mixed
fertilizers and fertilizer materials offered for sale, sold or distributed within this state at such time and place to such an extent as he may deem necessary to determine whether such mixed fertilizers or fertilizer materials are in compliance with the provisions of this article, and the commissioner shall have the further authority to obtain such additional information as he may deem ad-
visable. The commissioner, individually or through his agent, is authorized to enter upon any public or private premises during regular business hours in order to have access to mixed fertilizers or fertilizer materials subject to the provisions of this article and the rules and regu-
lations thereto.

(b) The methods of sampling and analysis shall be those adopted as official by the commissioner.

(c) The results of official analyses of any mixed fert-
ilizer or fertilizer material which has been found to be subject to penalty shall be forwarded by the commission-
er 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 commissioner, the report shall become official. Upon request the commissioner shall furnish to the registrant a portion of any sample found subject to penalty.

Sec. 8. *Plant Food Deficiency.*—(a) The commissioner, in determining for administration purposes whether any mixed fertilizer or fertilizer material is deficient in plant food, shall be guided solely by the official sample as defined in paragraph (i) of section three, and as provided for in paragraphs (b) and (c), of section seven.

(b) If the analysis shall show that any mixed fertilizer or fertilizer material falls short of the guaranteed analysis in any one ingredient, a penalty shall be assessed in accordance with the following provisions:

1. Total Nitrogen: A penalty of three times the value of the deficiency, if such deficiency is in excess of 0.20 of one per cent of goods that are guaranteed two per cent; 0.25 of one per cent on goods that are guaranteed three per cent; 0.35 of one per cent on goods that are guaranteed four per cent; 0.40 of one per cent on goods that are guaranteed five per cent up to and including eight per cent; 0.50 of one per cent on goods guaranteed
above eight per cent up to and including thirty per cent; and 0.75 of one per cent on goods guaranteed over thirty per cent.

2. Available Phosphoric Acid: A penalty of three times the value of the deficiency if such deficiency exceeds 0.40 of one per cent on goods that are guaranteed up to and including ten per cent; 0.50 of one per cent on goods that are guaranteed above ten per cent up to and including twenty-five per cent; and 0.75 of one per cent on goods guaranteed over twenty-five per cent.

3. Soluble Potash: A penalty of three times the value of the deficiency, if such deficiency is in excess of 0.20 of one per cent on goods that are guaranteed two per cent; 0.30 of one per cent on goods that are guaranteed three per cent; 0.40 of one per cent on goods guaranteed four per cent; 0.50 of one per cent on goods guaranteed above four per cent up to and including eight per cent; 0.60 on goods guaranteed above eight per cent up to and including twenty per cent; and 1.00 per cent on goods guaranteed over twenty per cent.

4. Deficiencies in any other constituent or constitut-
ents covered under items (4) and (5), paragraph (a), section four, of this article, which the registrant is required to or may guarantee shall be evaluated by the commissioner, and penalties therefor shall be prescribed by the commissioner.

(c) Nothing contained in this section shall prevent any person from appealing to a court of competent jurisdiction, praying for judgment as to the justification of such penalties.

(d) All penalties assessed under this section shall be paid to the consumer of the lot of mixed fertilizer or fertilizer material represented by the sample analyzed within three months from the date of notice by the commissioner to the registrant, receipts taken therefor and promptly forwarded to the commissioner. If said consumers cannot be found, the amount of the penalty shall be paid to the commissioner, who shall deposit the same in the treasury of the state of West Virginia.

Sec. 9. Commercial Value.—For the purpose of determining the commercial values to be applied under the provisions of section eight, the commissioner shall
determine and publish annually the values per pound of
nitrogen, phosphoric acid, and potash in mixed fertilizers
or fertilizer materials in this state. The values so de-
termined and published shall be used in determining
and assessing penalties.

Sec. 10. Minimum Plant Food Content.—No super-
phosphate containing less than eighteen per cent avail-
able phosphoric acid nor any mixed 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 offered for sale, sold, or dis-
tributed 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 need not total more than eighteen
per cent.

Sec. 11. Grade List.—The commissioner, after a public
hearing and upon approval by the director of the agri-
cultural experiment station, shall promulgate a list of
grades of mixed fertilizer adequate to meet the agricul-
tural needs of the state. After this list of grades has been established, no other grades of mixed fertilizers shall be eligible for registration: Provided, however, that higher multiples of the ratios carried by the approved grades may be permitted with the approval of the commissioner and the director of the experiment station. The commissioner may revise this list of grades not oftener than once each year by conforming to the procedure described in this section.

Sec. 12. False or Misleading Statements.—It shall be unlawful to make any false or misleading statement or representation in regard to any mixed fertilizer or fertilizer material offered for sale, sold, or distributed in this state, or to use any misleading or deceptive trademark to brand name in connection therewith.

Sec. 13. Statistics.—Each person registering mixed fertilizers and fertilizer materials under this article shall furnish the commissioner with a confidential written statement of the tonnage of each grade of fertilizer sold by him in this state. Said statement shall include all sales for the periods of July first to and including
December thirty-first, and of January first to and including June thirtieth of each year. The commissioner may, in his discretion, cancel the registration of any person failing to comply with this section if the above statement is not made within thirty days from date of the close of each period. The commissioner, however, in his discretion, may grant a reasonable extension of time. No information furnished under this section shall be disclosed in such a way as to divulge the operations of any person.

Sec. 14. Publications.—The commissioner shall publish at least annually in such forms as he may deem proper, information concerning the production and use of mixed fertilizers and fertilizer materials, and a report of the results of the analyses based on official samples of mixed fertilizers and fertilizer materials sold within the state as compared with the analyses guaranteed under sections four and five: Provided, however, That the information concerning the production and use of mixed fertilizer and fertilizer materials shall be shown separ-
ately for the periods July first to December thirty-first, and January first to June thirtieth, of each year.

Sec. 15. Rules, Regulations and Standards.—For the enforcement of this article, the commissioner is authorized to prescribe, and after public hearing following due public notice, to enforce such rules, regulations and standards relating to the sale and distribution of mixed fertilizers and fertilizer materials as he may find necessary to carry into effect the full intent and meaning of this article.

Sec. 17. Cancellation of Registrations.—The commissioner is authorized and empowered to cancel the registration of any brand of mixed fertilizer or fertilizer material or to refuse to register any brand of mixed fertilizer or fertilizer material as herein provided, upon satisfactory proof that the registrant has violated any of the provisions of this article, or any of the rules and regulations made and promulgated thereunder: Provided, That no registration shall be revoked or refused until the registrant shall have been given a hearing by the commissioner.
Sec. 18. "Stop Sale" Orders.—It shall be the duty of the commissioner to issue and enforce a written or printed "stop sale" order to the owner or custodian of any lot of mixed fertilizer or fertilizer material, and to hold at a designated place when the commissioner finds said mixed fertilizer or fertilizer material is being offered or exposed for sale in violation of any of the provisions of this article, until the law has been complied with and said mixed fertilizer or fertilizer material is released in writing by the commissioner or said violation has been otherwise legally disposed of by written authority. The commissioner shall release the mixed fertilizer or fertilizer material so withdrawn when the requirements of the provisions of this article have been complied with, and upon payment of all costs and expenses incurred in connection with the withdrawal.

Sec. 19. Seizure, Condemnation, and Sale.—Any lot of mixed fertilizer or fertilizer material not in compliance with the provisions of this article shall be subject to seizure on complaint of the commissioner to a court of competent jurisdiction in the area in which said fertilizer
is located. In the event the court finds the said fertilizer
to be in violation of this article and orders the con-
demnation of said fertilizer, it shall be disposed of in
any manner consistent with the quality of the fertilizer
and the laws of the state: Provided, That in no instance
shall the disposition of said fertilizer be ordered by the
court without first giving the claimant an opportunity
to apply to the court for the release of said fertilizer,
or for permission to process or relabel said fertilizer
to bring it into compliance with this article.

Sec. 20. Violations.—If it shall appear from the
examination of any mixed fertilizer or fertilizer material
or other evidence that any of the provisions of this
article, or the rules and regulations issued thereunder,
have been violated, the commissioner shall cause notice
of such violation to be given to the registrant, distributor,
and possessor from whom said sample or other evidence
was taken; any party so notified shall be given oppor-
tunity to be heard under such rules and regulations
as may be prescribed by the commissioner. If it appears
after such hearing that any of the provisions of this
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12 article or the rules and regulations issued thereunder
13 have been violated, the commissioner may and is hereby
14 authorized to prosecute, in any court of competent juris-
15 diction, any person violating the provisions of this article.
16 Any person convicted of violating any provisions of this
17 article or the rules and regulations issued thereunder
18 shall be adjudged guilty of a misdemeanor, and upon
19 conviction thereof shall be fined not less than one hundred
20 dollars nor more than two hundred dollars for the first
21 offense, and not less than two hundred dollars nor more
22 than five hundred dollars for each subsequent offense.

Sec. 21. Exchanges between Manufacturers.—Nothing
2 in this article shall be construed to restrict or avoid
3 sales or exchanges of mixed fertilizers or fertilizer ma-
4 terials to each other by importers, manufacturers, or
5 manipulators who have registered their brands as re-
6 quired by the provisions of this article.

Sec. 22. Constitutionality; Repeal of Inconsistent
2 Acts.—If any clause, sentence, paragraph, or part of
3 this article shall for any reason be judged invalid by any
4 court of competent jurisdiction, such judgment shall not
affect, impair, or invalidate the remainder thereof but
shall be confined in its operation to the clause, sentence,
paragraph, or part thereof directly involved in the con-
troversy in which such judgment shall have been ren-
dered.

All acts and parts of acts inconsistent with the pro-
visions of this article are hereby repealed.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Forest L. McKinney
Chairman Senate Committee

B. L. Matthews
Chairman House Committee

Originated in the House of Delegates

Takes effect Thirty days from passage.

J. Howard Meyer
Clerk of the Senate

J. A. S. Shipp
Clerk of the House of Delegates

Arnold M. Wickers
President of the Senate

John E. Amos
Speaker House of Delegates

The within Approved this the 11th
day of March, 1947.

Governor.

Filed in the Office of the Secretary of State
of West Virginia MAR 14 1947
WM. S. O'Brien,
SECRETARY OF STATE