

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1947



ENROLLED

HOUSE BILL No. 237

(By Mr. Smith)



PASSED March, 8, 1947

In Effect Thirty days from Passage



237

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(BY MR. SMITH)

[Passed March 8, 1947; in effect ninety 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
2 “West Virginia Fertilizer Law of 1947.”

Sec. 2. *Enforcing Official.*—This article shall be administered by the commissioner of agriculture of the
2 state of West Virginia, hereinafter referred to as the
3 “commissioner.”
4

Sec. 3. *Definitions of Words and Terms.*—When used

2 in this article:

3 (a) The term “person” includes individuals, partner-
4 ships, firms, associations and corporations.

5 (b) Words importing the singular number may ex-
6 tend and be applied to several persons or things, and
7 words importing the plural number may include the
8 singular.

9 (c) The term “distributor” means any person who
10 offers for sale, sells, or otherwise supplies mixed fertil-
11 izers or fertilizer materials.

12 (d) The term “sell” or “sale” includes exchange.

13 (e) The term “fertilizer material” means any sub-
14 stance containing nitrogen, phosphoric acid, potash, or
15 any other recognized plant food element or compound
16 which is used primarily for its plant food content or for
17 compounding mixed fertilizers except unmanipulated
18 animal and vegetable manures.

19 (f) The term “mixed fertilizer” means any combina-
20 tion or mixture of fertilizer materials designed for use
21 or claimed to have value in promoting plant growth.

22 (g) The term "grade" means the minimum percentage
23 of total nitrogen, available phosphoric acid, and soluble
24 potash stated in the order given in this paragraph and,
25 when applied to mixed fertilizers, phosphates and potash
26 salts, shall be in whole numbers only.

27 (h) The term "brand" means the name, grade, and
28 other designations under which mixed fertilizers or
29 fertilizer materials are offered for sale, sold or distribu-
30 ted in this state.

31 (i) The term "official sample" means any sample of
32 mixed fertilizer or fertilizer material taken by the com-
33 missioner or his agents according to the methods pre-
34 scribed by the commissioner.

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

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

Sec. 4 *Registration*.—(a) Each brand of mixed fer-
2 tilizer or fertilizer material shall be registered before
3 being offered for sale, sold or distributed in this state.
4 The application for registration shall be submitted in

5 duplicate to the commissioner on forms furnished by the
6 commissioner, and shall be accompanied by a remittance
7 of one dollar per brand for a registration fee. Upon ap-
8 proval by the commissioner a copy of the registration
9 shall be furnished to the applicant. The application shall
10 include the following information in the following order:

11 1. The name and address of the person guaranteeing
12 registration.

13 2. The brand.

14 3. The guaranteed analysis showing the minimum
15 percentage of plant food in the following order and form:

16 Total nitrogenper cent

17 Available phosphoric acidper cent

18 Soluble potashper cent

19 In the case of bone, tankage, and other organic phos-
20 phate materials on which the chemist makes no deter-
21 mination of available phosphoric acid, the total phosphoric
22 acid shall be guaranteed; *Provided*, That unacidulated
23 material, phosphatic materials and basic slag shall be
24 guaranteed as to both total and available phosphoric
25 acid.

26 4. The commissioner may permit or require the po-
27 tential basicity or acidity (expressed in terms of calcium
28 carbonate equivalent in multiples of one hundred pounds
29 per ton) to be registered and guaranteed.

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

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

42 (c) Each and every brand of mixed fertilizer or
43 fertilizer material filed with the commissioner must re-
44 main uniform for the period of registration, and in no
45 case, even at a subsequent registration, shall the grade
46 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-

9 alysis, and other expenses necessary for putting into
10 effect this article, and may be expended therefor upon
11 order of the commissioner of agriculture.

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

Sec. 7. *Inspection.*—(a) It shall be the duty of the
2 commissioner, who may act through his authorized agent,
3 to sample, inspect, make analyses of, and test mixed

4 fertilizers and fertilizer materials offered for sale, sold
5 or distributed within this state at such time and place
6 to such an extent as he may deem necessary to determine
7 whether such mixed fertilizers or fertilizer materials
8 are in compliance with the provisions of this article, and
9 the commissioner shall have the further authority to
10 obtain such additional information as he may deem ad-
11 visable. The commissioner, individually or through his
12 agent, is authorized to enter upon any public or private
13 premises during regular business hours in order to have
14 access to mixed fertilizers or fertilizer materials subject
15 to the provisions of this article and the rules and regu-
16 lations thereto.

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

19 (c) The results of official analyses of any mixed fert-
20 ilizer or fertilizer material which has been found to be
21 subject to penalty shall be forwarded by the commission-
22 er to the registrant at least ten days before the report
23 is submitted to the purchaser. If during that period no
24 adequate evidence to the contrary is made available to

25 the commissioner, the report shall become official. Upon
26 request the commissioner shall furnish to the registrant
27 a portion of any sample found subject to penalty.

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

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

11 1. Total Nitrogen: A penalty of three times the value
12 of the deficiency, if such deficiency is in excess of 0.20
13 of one per cent of goods that are guaranteed two per
14 cent; 0.25 of one per cent on goods that are guaranteed
15 three per cent; 0.35 of one per cent on goods that are
16 guaranteed four per cent; 0.40 of one per cent on goods
17 that are guaranteed five per cent up to and including
18 eight per cent; 0.50 of one per cent on goods guaranteed

19 above eight per cent up to and including thirty per cent;
20 and 0.75 of one per cent on goods guaranteed over thirty
21 per cent.

22 2. Available Phosphoric Acid: A penalty of three
23 times the value of the deficiency if such deficiency exceeds
24 0.40 of one per cent on goods that are guaranteed up to
25 and including ten per cent; 0.50 of one per cent on goods
26 that are guaranteed above ten per cent up to and includ-
27 ing twenty-five per cent; and 0.75 of one per cent on
28 goods guaranteed over twenty-five per cent.

29 3. Soluble Potash: A penalty of three times the value
30 of the deficiency, if such deficiency is in excess of 0.20 of
31 one per cent on goods that are guaranteed two per cent;
32 0.30 of one per cent on goods that are guaranteed three
33 per cent; 0.40 of one per cent on goods guaranteed four
34 per cent; 0.50 of one per cent on goods guaranteed above
35 four per cent up to and including eight per cent; 0.60 on
36 goods guaranteed above eight per cent up to and includ-
37 ing twenty per cent; and 1.00 per cent on goods guaran-
38 teed over twenty per cent.

39 4. Deficiencies in any other constituent or constitu-

40 ents covered under items (4) and (5), paragraph (a),
41 section four, of this article, which the registrant is re-
42 quired to or may guarantee shall be evaluated by the
43 commissioner, and penalties therefor shall be prescribed
44 by the commissioner.

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

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

Sec. 9. *Commercial Value.*—For the purpose of de-
2 termining the commercial values to be applied under
3 the provisions of section eight, the commissioner shall

4 determine and publish annually the values per pound of
5 nitrogen, phosphoric acid, and potash in mixed fertilizers
6 or fertilizer materials in this state. The values so de-
7 termined and published shall be used in determining
8 and assessing penalties.

Sec. 10. *Minimum Plant Food Content.*—No super-
2 phosphate containing less than eighteen per cent avail-
3 able phosphoric acid nor any mixed fertilizer in which
4 the sum of the guarantees for the nitrogen, available
5 phosphoric acid, and soluble potash totals less than
6 twenty per cent shall be offered for sale, sold, or dis-
7 tributed in this state except for complete fertilizers
8 containing twenty-five per cent or more of their nitrogen
9 in water insoluble form of plant or animal origin, in
10 which case the total nitrogen, available phosphoric acid,
11 and soluble potash need not total more than eighteen
12 per cent.

Sec. 11. *Grade List.*—The commissioner, after a public
2 hearing and upon approval by the director of the agri-
3 cultural experiment station, shall promulgate a list of
4 grades of mixed fertilizer adequate to meet the agricul-

5 tural needs of the state. After this list of grades has
6 been established, no other grades of mixed fertilizers
7 shall be eligible for registration: *Provided, however,*
8 That higher multiples of the ratios carried by the ap-
9 proved grades may be permitted with the approval of
10 the commissioner and the director of the experiment
11 station. The commissioner may revise this list of grades
12 not oftener than once each year by conforming to the
13 procedure described in this section.

Sec. 12. *False or Misleading Statements.*—It shall
2 be unlawful to make any false or misleading statement
3 or representation in regard to any mixed fertilizer or
4 fertilizer material offered for sale, sold, or distributed
5 in this state, or to use any misleading or deceptive trade-
6 mark to brand name in connection therewith.

Sec. 13. *Statistics.*—Each person registering mixed
2 fertilizers and fertilizer materials under this article shall
3 furnish the commissioner with a confidential written
4 statement of the tonnage of each grade of fertilizer sold
5 by him in this state. Said statement shall include all
6 sales for the periods of July first to and including

7 December thirty-first, and of January first to and includ-
8 ing June thirtieth of each year. The commissioner may,
9 in his discretion, cancel the registration of any person
10 failing to comply with this section if the above state-
11 ment is not made within thirty days from date of the
12 close of each period. The commissioner, however, in his
13 discretion, may grant a reasonable extension of time.
14 No information furnished under this section shall be
15 disclosed in such a way as to divulge the operations of
16 any person.

Sec. 14. *Publications.*—The commissioner shall pub-
2 lish at least annually in such forms as he may deem
3 proper, information concerning the production and use
4 of mixed fertilizers and fertilizer materials, and a report
5 of the results of the analyses based on official samples of
6 mixed fertilizers and fertilizer materials sold within the
7 state as compared with the analyses guaranteed under
8 sections four and five: *Provided, however,* That the in-
9 formation concerning the production and use of mixed
10 fertilizer and fertilizer materials shall be shown separ-

11 ately for the periods July first to December thirty-first,
12 and January first to June thirtieth, of each year.

Sec. 15. *Rules, Regulations and Standards.*—For the
2 enforcement of this article, the commissioner is author-
3 ized to prescribe, and after public hearing following
4 due public notice, to enforce such rules, regulations and
5 standards relating to the sale and distribution of mixed
6 fertilizers and fertilizer materials as he may find neces-
7 sary to carry into effect the full intent and meaning of
8 this article.

Sec. 17. *Cancellation of Registrations.*—The commis-
2 sioner is authorized and empowered to cancel the regis-
3 tration of any brand of mixed fertilizer or fertilizer
4 material or to refuse to register any brand of mixed
5 fertilizer or fertilizer material as herein provided, upon
6 satisfactory proof that the registrant has violated any
7 of the provisions of this article, or any of the rules and
8 regulations made and promulgated thereunder: *Provided,*
9 That no registration shall be revoked or refused until
10 the registrant shall have been given a hearing by the
11 commissioner.

Sec. 18. *"Stop Sale" Orders.*—It shall be the duty
2 of the commissioner to issue and enforce a written or
3 printed "stop sale" order to the owner or custodian of
4 any lot of mixed fertilizer or fertilizer material, and to
5 hold at a designated place when the commissioner finds
6 said mixed fertilizer or fertilizer material is being offer-
7 ed or exposed for sale in violation of any of the pro-
8 visions of this article, until the law has been complied
9 with and said mixed fertilizer or fertilizer material is
10 released in writing by the commissioner or said violation
11 has been otherwise legally disposed of by written auth-
12 ority. The commissioner shall release the mixed fertilizer
13 or fertilizer material so withdrawn when the require-
14 ments of the provisions of this article have been complied
15 with, and upon payment of all costs and expenses incur-
16 red in connection with the withdrawal.

Sec. 19. *Seizure, Condemnation, and Sale.*—Any lot
2 of mixed fertilizer or fertilizer material not in compliance
3 with the provisions of this article shall be subject to
4 seizure on complaint of the commissioner to a court of
5 competent jurisdiction in the area in which said fertilizer

6 is located. In the event the court finds the said fertilizer
7 to be in violation of this article and orders the con-
8 demnation of said fertilizer, it shall be disposed of in
9 any manner consistent with the quality of the fertilizer
10 and the laws of the state: *Provided*, That in no instance
11 shall the disposition of said fertilizer be ordered by the
12 court without first giving the claimant an opportunity
13 to apply to the court for the release of said fertilizer,
14 or for permission to process or relabel said fertilizer
15 to bring it into compliance with this article.

Sec. 20. *Violations*.—If it shall appear from the
2 examination of any mixed fertilizer or fertilizer material
3 or other evidence that any of the provisions of this
4 article, or the rules and regulations issued thereunder,
5 have been violated, the commissioner shall cause notice
6 of such violation to be given to the registrant, distributor,
7 and possessor from whom said sample or other evidence
8 was taken; any party so notified shall be given oppor-
9 tunity to be heard under such rules and regulations
10 as may be prescribed by the commissioner. If it appears
11 after such hearing that any of the provisions of this

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

5 affect, impair, or invalidate the remainder thereof but
6 shall be confined in its operation to the clause, sentence,
7 paragraph, or part thereof directly involved in the con-
8 troversy in which such judgment shall have been ren-
9 dered.

10 All acts and parts of acts inconsistent with the pro-
11 visions of this article are hereby repealed.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Forest L. McNeer

Chairman Senate Committee

B. L. Matthews

Chairman House Committee

Originated in the House of Delegates

Takes effect Thirty days from passage.

Howard Myers

Clerk of the Senate

J. Klipp

Clerk of the House of Delegates

Arnold M. Vickers

President of the Senate

John E. Amos

Speaker House of Delegates

The within Approved this the 14th
day of March, 1947.

Donner Meador

Governor.



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