WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1974

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ENROLLED

HOUSE BILL No. 849

(By Mr. House of Mr. Own)

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PASSED March 9 1974

In Effect July 1, 1974 Passage

C 641
AN ACT to repeal article fifteen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to enact in lieu thereof a new article fifteen of said chapter, relating to commercial fertilizer; definitions; requiring fertilizer to be registered; requiring labels and inspections; fees therefor; requiring tonnage reports; requiring inspection, sampling and analysis; plant food deficiency; prohibiting misbranding and adulteration; requiring certain publications; rules and regulations; short weight; cancellations of registrations and hearings thereon; “stop sale” orders; seizure, condemnation and sale; exchanges between manufacturers; disposition of registration; inspection; penalty fees; powers of courts of competent jurisdiction; duty of prosecuting attorneys; and penalties for violation.

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article fifteen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and that a new article fifteen of said chapter be enacted in lieu thereof, to read as follows:

ARTICLE 15. WEST VIRGINIA FERTILIZER LAW.


1 (a) “Brand” means a term, design or trademark used in connection with one or several grades of commercial fertilizer.
(b) "Bulk fertilizer" means a commercial fertilizer distributed in a nonpackaged form.

(c) "Commercial fertilizer" means any substance containing one or more recognized plant nutrients which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes and gypsum, and other products exempted by regulation of the commissioner.

(d) "Commissioner" means the commissioner of agriculture of the state of West Virginia or his duly authorized agent.

(e) "Department" means the department of agriculture of the state of West Virginia.

(f) "Distributor" means any person who imports, consigns, manufactures, produces, compounds, mixes or blends commercial fertilizer, or who offers for sale, sells, barters or otherwise supplies commercial fertilizer in this state.

(g) "Fertilizer material" means a commercial fertilizer which either:

(1) Contains important quantities of no more than one of the primary plant nutrients (nitrogen, phosphoric acid and potash), or

(2) Has approximately eighty-five percent of its plant nutrient content present in the form of a single chemical compound, or

(3) Is derived from a plant or animal residue or by-product or a natural material deposit which has been processed in such a way that its content of primary plant nutrients has not been materially changed except by purification and concentration.

(h) "Grade" means the percentage of total nitrogen, available phosphorus or phosphoric acid, and soluble potassium or soluble potash stated in whole numbers in the same terms, order and percentages as in the guaranteed analysis: Provided,
That fertilizer materials, bone meal, manures and similar raw materials may be guaranteed in fractional units.

(i) "Guaranteed analysis" means the minimum percentage of plant nutrients claimed in the following order and form:

(1) Total nitrogen (N) _______________________ percent

   Available phosphoric acid (P$_2$O$_5$) __ __ percent

   Soluble potash (K$_2$O) __ __ percent

(2) For unacidulated mineral phosphatic materials and basic slag, bone, tankage and other organic phosphate materials, the total phosphoric acid or degree of fineness may also be guaranteed.

(3) Guarantees for plant nutrients other than nitrogen, phosphorus and potassium may be permitted or required by regulation of the commissioner. The guarantees for such other nutrients shall be expressed in the form of the element. The sources of such other nutrients (oxides, salt, chelates, etc.) may be required to be stated on the application for registration and may be included as a parenthetical statement on the label. Other beneficial substances or compounds, determinable by laboratory methods, also may be guaranteed by permission of the commissioner. When any plant nutrients or other substances or compounds are guaranteed, they shall be subject to inspection and analysis in accord with the methods and regulations prescribed by the commissioner.

(4) Potential basicity and acidity expressed in terms of calcium carbonate equivalent in multiples of one hundred pounds per ton, when required by regulation, or

(5) When the commissioner finds that the requirements for expressing the guaranteed analysis of phosphorus and potassium in elemental form would not impose an economic hardship on distributors and users of fertilizer by reason of conflicting labeling requirements among the states, he may require by regulation thereafter that the "guaranteed analysis" shall be in the following form:

   Total nitrogen (N) _______________________ percent

   Available phosphorus (P) __ __ percent

   Soluble potassium (K) __ __ percent
Provided, That the effective date of said regulation shall not be less than six months following the issuance thereof:

Provided, however, That for a period of two years following the effective date of said regulation the equivalent of phosphorus and potassium may also be shown in the form of phosphoric acid and potash: Provided, further, That after the effective date of a regulation issued under the provisions of this section, requiring that phosphorus and potassium be shown in the elemental form, the guaranteed analysis for nitrogen, phosphorus and potassium shall constitute the grade.

(j) “Investigational allowance” means an allowance for variations inherent in taking, preparation and analysis of an official sample of commercial fertilizer.

(k) “Label” means the display of all written, printed or graphic matter upon the immediate container or statement accompanying a commercial fertilizer.

(l) “Labeling” means all written, printed or graphic matter, upon or accompanying any commercial fertilizer, or advertisements, brochures, posters, television and radio announcements used in promoting the sale of such commercial fertilizers.

(m) “Mixed fertilizer” means a commercial fertilizer containing any combination or mixture of fertilizer materials.

(n) “Official sample” means any sample of commercial fertilizer taken by the commissioner or his agent and designated as “official” by the commissioner.

(o) “Percent” means the percentage by weight.

(p) “Person” means an individual, partnership, association, firm and corporation.

(q) “Registrant” means the person who registers commercial fertilizer under the provisions of this article.

(r) “Specialty fertilizer” means a commercial fertilizer distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses and nurseries.
(s) "Ton" means a net weight of two thousand pounds avoirdupois.


(a) Each brand and grade of commercial fertilizer shall be registered before being distributed in this state. The application for registration shall be submitted to the commissioner on forms furnished or approved by the commissioner, and shall be accompanied by a fee of one dollar per brand and grade, except that those fertilizers sold in packages of ten pounds or less shall be registered at a fee of ten dollars each. Upon approval by the commissioner a copy of the registration shall be furnished to the applicant.

All registrations expire on the thirtieth day of June of the following year.

The application shall include the following information:

(1) The net weight;
(2) The brand and grade;
(3) The guaranteed analysis; and
(4) The name and address of the registrant.

(b) A distributor shall not be required to register any commercial fertilizer which is already registered under this article by another person, providing the label does not differ in any respect.

(c) A distributor shall not be required to register each grade of commercial fertilizer formulated according to specifications which are furnished by a consumer prior to mixing, but shall be required to register his firm in a manner and at a fee as prescribed in the regulations by the commissioner and to label such fertilizer as provided in subsection (b), section three of this article.


(a) Any commercial fertilizer distributed in this state in containers shall have placed on or affixed to the container a label setting forth in clearly legible and conspicuous form the information required by subdivision (1), (2), (3) and (4), sub-
section (a), section two of this article. In case of bulk ship-
ments, this information in written or printed form shall ac-
company delivery and be supplied to the purchaser at time of
delivery.

(b) A commercial fertilizer formulated according to speci-
fications which are furnished by a consumer prior to mixing
shall be labeled to show the net weight, guaranteed analysis,
and the name and address of the distributor.


(a) There shall be paid to the commissioner for all commer-
cial fertilizers distributed in this state an inspection fee at the
rate of twenty cents per ton: Provided, That sales to manufac-
turers or exchanges between them are hereby exempted. Fees
so collected shall be used for the payment of the costs of in-
spection, sampling and analysis, and other expenses necessary
for the administration of this article.

On individual packages of commercial fertilizer containing
ten pounds or less, there shall be paid in lieu of the twenty cents
per ton inspection fee, an inspection fee of ten dollars
for each brand and grade sold or distributed. Where a person
sells commercial fertilizer in packages over ten pounds the in-
spection fee of ten dollars shall apply only to that por-
tion sold in packages of ten pounds or less, and that por-
tion sold in packages over ten pounds shall be subject to the
same inspection fee of twenty cents per ton as provided in this
article.

(b) Every person who distributes a commercial fertilizer in
this state shall:

File with the commissioner on forms furnished or approved
by the commissioner a quarterly statement for the periods end-
ing on the thirtieth day of September, the thirty-first day
of December, the thirty-first day of March and the thirtieth
day of June, setting forth the number of net tons of each
commercial fertilizer distributed in this state during such
quarter. The report shall be due on or before the thirtieth
day of the month following the close of each quarter and upon
such statement shall pay the inspection fee at the rate stated
in subsection (a) of this section.
If the tonnage report is not filed and the payment of inspection fee is not made within thirty days after the end of the quarter, a collection fee amounting to ten percent of the amount shall be assessed against the registrant, and the amount of fees due shall constitute a debt and become the basis of a judgment against the registrant.

(c) When more than one person is involved in the distribution of a commercial fertilizer, the last person who has the fertilizer registered and who distributes to a nonregistrant (dealer or consumer) is responsible for reporting the tonnage and paying the inspection fee, unless the report and payment is made by a prior distributor of a fertilizer.


The person transacting, distributing or selling commercial fertilizer to a nonregistrant shall mail the commissioner a report showing the county of the consignee, the amounts (tons) of each grade of commercial fertilizer, and the form in which the fertilizer was distributed (bags, bulk, liquid, etc.). This information shall be reported by one of the following methods: (a) Submitting a summary report approved by the commissioner on or before the fifteenth day of each month covering shipments made during the preceding month; or (b) submitting a copy of the invoice within five business days after shipment. No information furnished the commissioner under this section shall be disclosed in such a way as to divulge the operation of any person.


(a) It shall be the duty of the commissioner, who may act through his authorized agent, to sample, inspect, make analyses of, and test commercial fertilizers distributed within this state at any time and place and to such an extent as he may deem necessary to determine whether such commercial fertilizers are in compliance with the provisions of this article. The commissioner individually or through his agent is authorized to enter upon any public or private premises or carriers during regular business hours in order to have access to commercial fertilizers subject to the provisions of this article and the
rules and regulations pertaining thereto, and to the records relating to their distribution.

(b) The methods of analysis and sampling to determine plant food deficiencies in fertilizer shall use the tolerances established by the Association of American Plant Food Control Officials and the Association of Analytical Chemist.

(c) The commissioner, in determining for administrative purposes whether any commercial fertilizer is deficient in plant food, shall be guided solely by the official sample as defined in subsection (e), section one of this article, and obtained and analyzed as provided for in subsection (b) of this section.

(d) The results of official analysis of commercial fertilizers and portions of official samples, shall be distributed by the commissioner as provided in the regulations.


(a) Penalty for nitrogen, available phosphoric acid or phosphorus and potash or potassium.—If the analysis shall show that a commercial fertilizer is deficient in one or more of its guaranteed primary plant foods (NPK) beyond the “investigational allowances” as established by regulation, or if the overall index value of the fertilizer is below the level established by regulation, a penalty of three times the commercial value of such deficiency shall be assessed.

(b) Penalty for other deficiencies.—Deficiencies beyond the investigational allowances as established by regulation in any other constituent, which the registrant is required to or may guarantee, shall be evaluated and penalties prescribed therefor 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 commercial fertilizer represented by the sample analyzed within three months after the date of notice from the commissioner to the registrant, receipts taken therefor and promptly forwarded to the commissioner. If said consumers cannot be found, the amount of penalty shall be
paid to the commissioner who shall deposit the same in the department of agriculture’s fees account.


For the purpose of determining the commercial values to be applied under the provisions of section seven of this article, the commissioner shall determine and publish annually the values per unit of nitrogen, available phosphoric acid and soluble potash in commercial fertilizers in this state.


No person shall distribute misbranded fertilizer. A commercial fertilizer shall be deemed to be misbranded:

(a) If its label is false or misleading in any particular;

(b) If it is distributed under the name of another fertilizer product;

(c) If it is not labeled as required in section three of this article and in accordance with regulations prescribed under this article; or

(d) If it purports to be or is represented as a commercial fertilizer, or is represented as containing a plant nutrient or commercial fertilizer unless such plant nutrient or commercial fertilizer conforms to the definition of identity, if any, prescribed by regulation of the commissioner; in the adopting of such regulations the commissioner shall give regard to commonly accepted definitions and official fertilizer terms such as those issued by the association of american plant food control officials.

§19-15-10. Adulteration.

No person shall distribute an adulterated fertilizer product. A commercial fertilizer shall be deemed to be adulterated:

(a) If it contains any deleterious or harmful ingredient in sufficient amount to render it injurious to beneficial plant life when applied in accordance with directions for use on the label, or if adequate warning statements or directions for use, which may be necessary to protect plant life are not shown upon the label;
(b) If its composition falls below or differs from that which it is purported to possess by its labeling; or
(c) If it contains unwanted crop seed or weed seed.


The commissioner shall publish at least annually and in such forms as he may deem proper: (a) Information concerning the distribution of commercial fertilizers; and (b) results of analyses based on official samples of commercial fertilizers distributed within the state as compared with the analyses guaranteed under sections two and three of this article.


The commissioner is authorized to prescribe and, after a public hearing following due public notice, to enforce such rules and regulations relating to investigational allowances, definitions, records, and the distribution of commercial fertilizers as may be necessary to carry into effect the full intent and meaning of this article.


If any commercial fertilizer in the possession of the consumer is found by the commissioner to be short in weight, the registrant of said commercial fertilizer shall within thirty days after official notice from the commissioner pay to the consumer a penalty equal to four times the value of the actual shortage.


The commissioner is authorized and empowered to cancel the registration of any brand of commercial fertilizer or to refuse to register any brand of commercial fertilizer as herein provided, upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in the evasions or attempted evasions of the provisions of this article or any rules and regulations promulgated thereunder: Provided, That no registration shall be revoked or refused until the registrant shall have been given the opportunity to appear for a hearing by the commissioner.

The commissioner may issue and enforce a written or printed “stop sale, use or removal” order to the owner or custodian of any lot of commercial fertilizer and to hold at a designated place when the commissioner finds said commercial fertilizer 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 commercial fertilizer is released in writing by the commissioner, or said violation has been otherwise legally disposed of by written authority. The commissioner shall release the commercial fertilizer so withdrawn when the requirements of the provisions of this article have been complied with and all costs and expenses incurred in connection with the withdrawal have been paid.


Any lot of commercial fertilizer 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 commercial fertilizer is located. In the event the court finds the said commercial fertilizer to be in violation of this article and orders the condemnation of said commercial fertilizer it shall be disposed of in any manner consistent with the quality of the commercial fertilizer and the laws of the state: Provided, That in no instance shall the disposition of said commercial fertilizer be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial fertilizer or for permission to process or relabel said commercial fertilizer to bring it into compliance with this article.


(a) If it shall appear from the examination of any commercial fertilizer that any of the provisions of this article or the rules and regulations issued thereunder have been violated, the commissioner shall cause notice of the violation to be given to the registrant, distributor or possessor from whom said sample was taken; any person so notified shall be given an opportunity to be heard under such rules and regulations as may be prescribed by the commissioner. If it appears after
such hearing, either in the presence or absence of the person
so notified, that any of the provisions of this article or rules
and regulations issued thereunder have been violated, the
commissioner is hereby authorized to prosecute in any court
of competent jurisdiction any person violating the provisions
of this article.

(b) Any person convicted of violating any provisions of this
article or the rules and regulations issued thereunder shall be
guilty of a misdemeanor, and, upon conviction thereof, shall be
fined not less than one hundred dollars nor more than two
hundred dollars for the first offense and not less than two
hundred dollars nor more than five hundred dollars for each
subsequent offense.

c) Nothing in this article shall be construed as requiring
the commissioner or his agent to report for prosecution or for
the institution of seizure proceedings as a result of minor vio-
lations of the article when he believes that the public interest
will be best served by a suitable notice of warning in writing.

(d) It shall be the duty of each prosecuting attorney to
whom any violation is reported to cause appropriate proceed-
ings to be instituted and prosecuted in a court of competent
jurisdiction without delay.

e) The commissioner is hereby authorized to apply for and
the court to grant a temporary or permanent injunction re-
straining any person from violating or continuing to violate
any of the provisions of this article or any rule or regulation
promulgated under the article notwithstanding the existence of
other remedies at law. Said injunction to be issued without
bond.


Nothing in this article shall be construed to restrict or avoid
sales or exchanges of commercial fertilizers to each other by
importers, manufacturers or manipulators who mix fertilizer
materials for sale or as preventing the free and unrestricted
shipments of commercial fertilizer to manufacturers or manipu-
lators who have registered their brands as required by the pro-
visions of this article.

1 All registration, inspection and such penalty fees not paid to the consumer shall be deposited in a special account with the state treasurer and shall be expended on order of the commissioner.


1 If any clause, sentence, paragraph or part of this article shall for any reason be judged invalid by any 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 controversy in which such judgment shall have been rendered.


1 All laws and parts of laws in conflict with or inconsistent with the provisions of this article are hereby repealed.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

V. Daniel Sarby
Chairman Senate Committee

Claude C. Fletcher
Chairman House Committee

Originated in the House.
Takes effect July 1, 1974.

Howard W. Jackson
Clerk of the Senate

C.A. Blankenship
Clerk of the House of Delegates

W. T. Brotherhood, Jr.
President of the Senate

Lewis F. Mann
Speaker House of Delegates

The within was approved this the 26th day of March, 1974.

Arthur E. Reece, Jr.
Governor
PRESENTED TO THE
GOVERNOR

Date 3/21/74
Time 10:30 a.m.