

SB 631

FILED

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CLIFFE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2004

ENROLLED

SENATE BILL NO. 631

(By Senator Snyder)

PASSED March 11, 2004

In Effect ninety days from Passage

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OFFICE WEST VIRGINIA
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Senate Bill No. 631

(BY SENATOR SNYDER)

[Passed March 11, 2004; in effect ninety days from passage.]

AN ACT to amend and reenact §19-15-1 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §19-15-16a, all relating to the West Virginia fertilizer law; definitions; and political subdivisions not to regulate packaging, labeling, sale, storage, distribution, use or application of fertilizers.

Be it enacted by the Legislature of West Virginia:

That §19-15-1 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §19-15-16a, all to read as follows:

ARTICLE 15. WEST VIRGINIA FERTILIZER LAW.

§19-15-1. Definitions of words and terms.

- 1 (a) "Brand" means a term, design or trademark used in
- 2 connection with one or several grades of regulated pro-
- 3 duct.

4 (b) "Bulk fertilizer" means fertilizer delivered to the
5 purchaser either in solid or liquid state in a nonpackage
6 form to which a label cannot be attached.

7 (c) "Commissioner" means the commissioner of agricul-
8 ture of the state of West Virginia or his or her duly autho-
9 rized agent.

10 (d) "Compost" means a biologically stable material
11 derived from the composting process.

12 (e) "Custom media" means a horticultural growing
13 medium prepared to exact specifications of the person who
14 will be planting in the medium.

15 (f) "Department" means the department of agriculture
16 of the state of West Virginia.

17 (g) "Distribute" means to import, consign, to offer for
18 sale, sell, barter, warehouse or otherwise supply a regu-
19 lated product in this state.

20 (h) "Distributor" means any person who distributes a
21 regulated product in this state.

22 (i) "Embargo" means a written stop sale order issued by
23 the commissioner of agriculture prohibiting the sale, use
24 of or transportation of any regulated product in any
25 manner until the embargo is released by the commissioner.

26 (j) "Fertilizer" means any substance containing one or
27 more recognized plant nutrients, including natural organic
28 fertilizer, which is designed for use or claimed to have
29 value in promoting plant growth, except unmanipulated
30 animal and vegetable manures, marl, lime, limestone,
31 wood ashes and gypsum and other products exempted by
32 rule of the commissioner.

33 (k) "Fertilizer material" means a fertilizer which either:

34 (1) Contains important quantities of no more than one of
35 the primary plant nutrients: (nitrogen (N), available
36 phosphate (P205) and soluble potash (K20); or

37 (2) Has eighty-five percent or more of its plant nutrient
38 content present in the form of a single chemical compound;
39 or

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

45 (l) "Grade" means the percentage of total nitrogen,
46 available phosphate and soluble potash stated in whole
47 numbers in the same terms, order and percentages as in the
48 guaranteed analysis: *Provided*, That specialty fertilizers
49 may be guaranteed in fractional units of less than one
50 percent of total nitrogen, available phosphate and soluble
51 potash: *Provided, however*, That fertilizer materials, bone
52 meal, manures and similar raw materials may be guaran-
53 teed in fractional units.

54 (m) "Guaranteed analysis" means the minimum per-
55 centage of plant nutrients claimed in the following order
56 and form:

- 57 (1) Total nitrogen (N) percent
- 58 Available phosphate (P205) percent
- 59 Soluble potash (K201) percent

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

64 (3) Guarantees for other plant nutrients may be permit-
65 ted or required by rule of the commissioner and shall be
66 expressed in the form of the element. The sources of such
67 other nutrients (oxides, salt, chelates, etc.) may be required
68 to be stated on the application for registration and may be
69 included as a parenthetical statement on the label. Other
70 beneficial substances or compounds, determinable by

71 laboratory methods, also may be guaranteed by permission
72 of the commissioner. When any plant nutrients or other
73 substances or compounds are guaranteed, they shall be
74 subject to inspection and analysis in accord with the
75 methods and rules prescribed by the commissioner.

76 (n) "Horticultural growing medium" means any sub-
77 stance or mixture of substances promoted as or intended
78 to function as a commercial or consumer growing medium
79 for the managed growth of horticultural crops in contain-
80 ers.

81 (o) "Investigational allowance" means an allowance for
82 variations inherent in the collection, preparation and
83 analysis of an official sample of regulated product.

84 (p) "Label" means the display of all written, printed or
85 graphic matter upon the immediate container or statement
86 accompanying a regulated product.

87 (q) "Labeling" means all written, printed or graphic
88 matter, upon or accompanying any regulated product, or
89 advertisements, brochures, posters or electronic announce-
90 ments used in promoting the sale of regulated products.

91 (r) "Local legislation" means, but not limited to, any
92 ordinance, motion, resolution, amendment, regulation or
93 rule adopted by a political subdivision.

94 (s) "Manufacture" means to produce, compound, mix,
95 blend or in any way alter the chemical or physical charac-
96 teristics of a regulated product.

97 (t) "Manufacturer" means any person who manufactures
98 a regulated product.

99 (u) "Mixed fertilizer" means a fertilizer containing any
100 combination or mixture of fertilizer materials.

101 (v) "Natural organic fertilizer" means materials derived
102 from either plant or animal products containing one or
103 more elements other than carbon, hydrogen and oxygen

104 which are essential for plant growth. These materials may
105 be subjected to biological degradation processes under
106 normal conditions of aging, rainfall, sun-curing, air
107 drying, composting, rotting, enzymatic or anaero-
108 bic/aerobic bacterial action or any combination of these.
109 These materials may not be mixed with synthetic materials
110 or changed in any physical or chemical manner from their
111 initial state except by manipulations such as drying,
112 cooking, chopping, grinding, shredding, hydrolysis or
113 pelleting.

114 (w) "Official sample" means any sample of regulated
115 product collected by the commissioner or his or her agent
116 and designated as "official" by the commissioner.

117 (x) "Percent" or "percentage" means the percentage by
118 weight.

119 (y) "Person" means an individual, partnership, associa-
120 tion, firm or corporation.

121 (z) "Political subdivision" means any local government
122 entity which includes, but is not limited to, any city,
123 county or municipal corporation and any other body
124 corporate and politic that is responsible for government
125 activities in a geographical area smaller than that of the
126 state.

127 (aa) "Primary nutrients" means nitrogen (N), available
128 phosphate (P205) and soluble potash (K20).

129 (bb) "Registrant" means the person who registers
130 regulated products under the provisions of this article.

131 (cc) "Regulated product" means any product governed
132 by this article, including any fertilizer, specialty fertilizer,
133 soil amendment and horticultural growing medium.

134 (dd) "Soil amendment" means any substance or mixture
135 of substances, imported, manufactured, prepared or sold
136 for manurial, soil enriching or soil corrective purposes, or
137 intended to be used for promoting or stimulating the

138 growth of plants, increasing the productivity of plants,
139 improving the quality of crops or producing any chemical
140 or physical change in the soil. The following are exempt
141 from the definition of "soil amendment": Fertilizer,
142 unmanipulated animal manures, horticultural growing
143 medium, agricultural liming materials, unmixed mulch
144 and unmixed peat.

145 (ee) "Specialty fertilizer" means a fertilizer distributed
146 primarily for nonfarm use, such as home gardens, lawns,
147 shrubbery, flowers, house plants, golf courses, municipal
148 parks, cemeteries, greenhouses and nurseries.

149 (ff) "Synthetic" means any substance generated from
150 another material or materials by means of a chemical
151 reaction.

152 (gg) "Ton" means a net weight of two thousand pounds
153 avoirdupois.

154 (hh) "Unmanipulated manure" means substances
155 composed of the excreta of domestic animals, or domestic
156 fowls, which has not been processed or conditioned in any
157 manner, including, but not limited to, processing or
158 conditioning by drying, grinding, pelleting, shredding,
159 addition of plant food, mixing artificially with any
160 material or materials, other than those which have been
161 used for bedding, sanitary or feeding purposes for animals
162 or fowls or by any other means.

§19-15-16a. Local legislation prohibited.

1 No political subdivision may regulate the registration,
2 packaging, labeling, sale, storage, distribution, use and
3 application of fertilizers; and, in addition, no political
4 subdivision may adopt or continue in effect local legisla-
5 tion relating to the registration, packaging, labeling, sale,
6 storage, distribution, use or application of fertilizers.

7 Local legislation in violation of this section is void and
8 unenforceable.

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

Carly M...
.....
Chairman Senate Committee

Greg Butcher
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Carroll E. Phelps
.....
Clerk of the Senate

Gregory M. Sear
.....
Clerk of the House of Delegates

Carl Kay Tomblin
.....
President of the Senate

Robert E. Siss
.....
Speaker House of Delegates

The within is approved this the 5th
Day of April, 2004.
Bob Wise
.....
Governor

PRESENTED TO THE

GOVERNOR

DATE

TIME

3/22/04

9:45 am