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HOUSE BILL NO. 2348

Offered January 12, 2011

Prefiled January 12, 2011

A *BILL to amend and reenact § 15.2-924.1 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 1 of Title 10.1 a section numbered 10.1-104.5, relating to fertilizer and deicing agents; regulation of application; penalty.*

Patron—Morrissey

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-924.1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 1 of Title 10.1 a section numbered 10.1-104.5 as follows:

§ 10.1-104.5. Use and application of lawn fertilizers and deicing agents; exemptions; penalty.

A. As used in this section, unless the context requires a different meaning:

"Fertilizer" means the same as that term is defined in § 3.2-3600.

"Lawn fertilizer" or "turf fertilizer" means any fertilizer, whether distributed by a property owner, renter, commercial entity, or locality, distributed for nonagricultural use such as lawns, golf courses, parks, and cemeteries. "Lawn fertilizer" or "turf fertilizer" does not include fertilizer products intended for specific gardening, tree, shrub, and indoor plant application.

B. Any locality subject to or operating a program under the regulatory oversight of the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.), the Erosion and Sediment Control Law (§ 10.1-560 et seq.), the Stormwater Management Act (§ 10.1-603.1 et seq.), or other nonpoint source regulations adopted by the Department or the Soil and Water Conservation Board shall enforce all provisions of this section.

C. Effective January 1, 2014, and except as provided in subsection D, no person shall:

1. Apply on any lawn a fertilizer that is labeled as containing more than zero percent phosphorus or other compound containing phosphorus, such as phosphate;

2. Apply lawn fertilizer or turf fertilizer (i) after December 1 of any calendar year, (ii) prior to March 1 of any calendar year, or (iii) at any other time the ground is frozen; or

3. Cause fertilizer to be applied to or run onto any impervious surface, including parking lots, roadways, and sidewalks. If such application occurs, the fertilizer shall be immediately contained and collected, and either applied to turf or placed in an appropriate container.

D. The prohibition against the use of fertilizer under subsection C shall not apply to the following:

1. Applications to newly established turf or lawn areas during their first growing season;

2. Applications to turf or lawn areas where soil tests performed within the past three years confirm that the phosphorus levels indicate the need for phosphorus fertilizer applications based upon the Department's nutrient management standards and criteria established pursuant to § 10.1-104.2. The fertilizer application shall not contain an amount of phosphorus exceeding the amount and rate of application based on the soil test;

3. Applications to gardens, including vegetable and flower, trees, shrubs, and indoor applications, including greenhouses; or

4. Fertilizers composed of yard waste compost or other similar materials that are primarily organic in nature and are applied to improve the physical condition of the soil. The application of fertilizers under this subdivision shall be consistent with the nutrient management standards and criteria of the Department pursuant to § 10.1-104.2.

E. No commercial entity shall:

1. Store fertilizer unless protected from exposure to precipitation and precipitation runoff; or

2. Allow any damaged fertilizer containers or spilled fertilizer to be exposed to precipitation or runoff from precipitation or to be discarded or washed into storm drains.

F. Effective January 1, 2014, no person in a locality specified by subsection B shall display for sale any fertilizer labeled as lawn fertilizer or turf fertilizer and containing more than zero percent phosphorus or other compound containing phosphorus. However, should the conditions of subsection D be met, fertilizer with greater than zero percent phosphorus may be sold but user access shall be limited to this product.

G. Effective January 1, 2014, no person in a locality specified by subsection B shall sell any deicing agent containing urea or other forms of nitrogen or phosphorus intended for application to parking lots, roadways, and sidewalks or other paved surfaces for use.

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59 *H. Effective January 1, 2014, a sign referencing the requirements of this section and the effects of*
60 *excessive fertilizer application on state waters such as the Chesapeake Bay shall be prominently*
61 *displayed where fertilizers are sold. A commercial entity shall be deemed to have complied with this*
62 *requirement by displaying a sign consistent with a sample sign that the Department shall design and*
63 *make available.*

64 *I. Any person who violates any provision of this section may be assessed a civil penalty by a locality*
65 *not to exceed \$250 per violation per day. The penalty shall not exceed a total of \$2,000 for a 365-day*
66 *period. All civil penalties assessed under this section shall be deposited in an account by the local*
67 *governing body dedicated to implementation of this section.*

68 § 15.2-924.1. Regulation of nonpoint source pollution; fertilizer.

69 A. No locality shall regulate the use, application, or storage of fertilizers, as defined in Chapter 36
70 (§ 3.2-3600 et seq.) of Title 3.2, except by ordinances consistent with the requirements of § 10.1-104.5,
71 the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.), the Erosion and Sediment Control Law
72 (§ 10.1-560 et seq.), the Stormwater Management Act (§ 10.1-603.1 et seq.) or other nonpoint source
73 regulations promulgated by the Department of Conservation and Recreation or the Soil and Water
74 Conservation Board.

75 B. The provisions of this section shall not preempt the adoption, amendment, or enforcement of the
76 Statewide Fire Prevention Code pursuant to § 27-97 and the Uniform Statewide Building Code pursuant
77 to § 36-98.

78 C. Any person aggrieved by any development condition prohibiting or restricting the use, application,
79 or storage of fertilizers imposed as a condition of approval of a land use application submitted shall
80 have the right to contest any such development condition by filing an action pursuant to § 15.2-2285 or
81 15.2-2314, as the case may be, with the circuit court having jurisdiction of the land affected by the
82 imposed development condition.