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SENATE BILL NO. 1055**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources
on January 31, 2011)

(Patrons Prior to Substitute—Senators Stuart, McDougle [SB 922], and Whipple [SB 1465])

A BILL to amend and reenact §§ 3.2-3600, 3.2-3602.1, 3.2-3607, 3.2-3610, and 3.2-3611 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 3.2-3607.1, relating to fertilizer and deicing agents; regulation of application; penalty.

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.2-3600, 3.2-3602.1, 3.2-3607, 3.2-3610, and 3.2-3611 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 3.2-3607.1 as follows:

§ 3.2-3600. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Brand" means a term, design, trademark or product name under which a regulated product is distributed.

"Bulk" means in nonpackaged form.

"Bulk fertilizer" means a fertilizer distributed in a nonpackaged form.

"Commercial fertilizer" means a fertilizer distributed for farm use, or for any other use, other than any specialty fertilizer use.

"Compost" means a biologically stable material derived from the composting process.

"Composting" means the biological decomposition of organic matter. It may be accomplished by mixing and piling so as to promote aerobic decay, anaerobic decay, or both aerobic and anaerobic decay.

"Contractor-applicator" means any person required to hold a permit to distribute or apply any regulated product pursuant to § 3.2-3608.

"Custom medium" means a horticultural growing medium that is prepared to the exact specifications of the person who will be planting in the medium and delivered to that person without intermediate or further distribution.

"Deficiency" means the amount of nutrient found by analysis to be less than that guaranteed, which may result from a lack of nutrient ingredients, or from lack of uniformity.

"Distribute" means to import, consign, manufacture, produce, compound, mix, blend, or in any way alter, the chemical or physical characteristics of a regulated product, or to offer for sale, sell, barter, warehouse or otherwise supply regulated product in the Commonwealth.

"Distributor" means any person who distributes.

"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. Fertilizer does not include unmanipulated animal and vegetable manures, marl, lime, limestone, and other products exempted by regulation.

"Fertilizer material" means a fertilizer that: (i) contains important quantities of no more than one of the primary plant nutrients: nitrogen (N), phosphate (P2O5) and potash (K2O); (ii) has 85 percent or more of its plant nutrient content present in the form of a single chemical compound; or (iii) is derived from a plant or animal residue, a by-product, or a natural material deposit that has been processed or conditioned in such a way that its content of plant nutrients has not been materially changed, except by purification and concentration.

"Grade" means the percentage of total nitrogen (N), available phosphate (P2O5) and soluble potash (K2O), stated in whole numbers in the same terms, order, and percentages as in the guaranteed analysis, except that fertilizer materials, specialty fertilizers, bone meal, manures and similar raw materials may be guaranteed in fractional units.

"Guaranteed analysis" means that information required by this chapter to be displayed on the label of a regulated product.

"Guarantor" means the person whose name appears on the label of a regulated product.

"Horticultural growing medium" means any substance or mixture of substances that is promoted as or is intended to function as an artificial soil for the managed growth of horticultural crops.

"Industrial co-product" means a product derived from an industrial process that meets the definition of fertilizer, soil amendment, soil conditioner or horticultural growing medium.

"Investigational allowance" means an allowance for variations, inherent in the taking, preparation, and analysis of an official sample.

"Label" means the display of all written, printed, or graphic matter, upon the immediate container, or a statement accompanying a regulated product, including an invoice.

60 "Labeling" means all written, printed, or graphic matter, upon or accompanying any regulated
61 product, including invoices, advertisements, brochures, posters, and television and radio announcements,
62 used in promoting the sale of the regulated product.

63 *"Lawn fertilizer" means any fertilizer intended for the nonagricultural use on newly established turf*
64 *areas from sod or seed during their first growing season, turf areas being repaired or renovated, and*
65 *turf areas where soil tests performed within the past three years indicate a nutrient deficiency.*

66 *"Lawn maintenance fertilizer" means any fertilizer intended for the nonagricultural routine*
67 *maintenance of turf.*

68 "Licensee" means the person who receives a license to distribute any regulated product under the
69 provisions of this chapter.

70 *"Manipulated manure" means animal or vegetable manure that is ground, pelletized, mechanically*
71 *dried, packaged, supplemented with plant nutrients or other substances other than phosphorus, or*
72 *otherwise treated in a manner to assist with the sale or distribution of the manure as a fertilizer or soil*
73 *or plant additive.*

74 "Manufacturer" means any person who manufactures, produces, compounds, mixes, blends, or in any
75 way alters the chemical or physical characteristics of any regulated product.

76 "Mixed fertilizer" means a fertilizer containing any combination or mixture of fertilizer materials.

77 "Official analysis" means the analysis of an official sample, made by the Commissioner.

78 "Official sample" means the sample of regulated product taken by the Commissioner, and designated
79 as "official" by the Board.

80 "Percent" or "percentage" means the percentage by weight.

81 "Primary nutrient" includes total nitrogen (N), available phosphate (P205), and soluble potash (K20).

82 "Quantity statement" means the net weight (mass), net volume (liquid or dry), count or other form of
83 measurement of a commodity.

84 "Registrant" means the person who registers regulated products, under the provisions of this chapter.

85 "Regulated product" means any product governed by this chapter, including any fertilizer, specialty
86 fertilizer, soil amendment, soil conditioner, and horticultural growing medium.

87 "Soil amendment" means any substance or mixture of substances, imported, manufactured, prepared
88 or sold for manurial, soil enriching, or soil corrective purposes, or intended to be used for promoting or
89 stimulating the growth of plants, increasing the productivity of plants, improving the quality of crops, or
90 producing any chemical or physical change in the soil. The following are exempt from the definition of
91 "soil amendment": fertilizer, unmanipulated or composted animal and vegetable manures, soil
92 conditioners, horticultural growing media, agricultural liming materials, unmixed mulch and unmixed
93 peat.

94 "Soil conditioner" means any substance or mixture of substances imported, manufactured, prepared or
95 sold for soil corrective purposes including polyelectrolytes such as complex vinyl and acrylic compounds
96 and certain cellulose and lignin derivatives.

97 "Specialty fertilizer" means a fertilizer distributed for nonfarm use, including use on home gardens,
98 lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses and nurseries.

99 "Stop sale, use, removal, or seizure order" means an order that prohibits the distributor from selling,
100 relocating, using, or disposing of a lot of regulated product, or portion thereof, in any manner, until the
101 Commissioner or the court gives written permission to sell, relocate, use or dispose of the lot of
102 regulated product or portion thereof.

103 "Ton" means a unit of 2000 pounds avoirdupois weight.

104 *"Turf" means nonagricultural land that is planted as closely mowed, managed grass and includes*
105 *golf courses, parks, cemeteries, publicly owned lands, and residential, commercial, or industrial*
106 *property.*

107 "Unmanipulated manure" means substances composed of the excreta of domestic animals, or
108 domestic fowls, that has not been processed or conditioned in any manner including processing or
109 conditioning by drying, grinding, pelleting, shredding, addition of plant food, mixing artificially with any
110 material or materials (other than those that have been used for bedding, sanitary or feeding purposes for
111 such animals or fowls), or by any other means. § 3.2-3602.1. Board authorized to adopt regulations for
112 the application of regulated products to nonagricultural property; civil penalty.

113 § 3.2-3602.1. Board authorized to adopt regulations for the application of regulated products to
114 nonagricultural property; civil penalty.

115 A. The Board shall adopt regulations to certify the competence of (i) contractor-applicators ~~and~~, (ii)
116 licensees, and (iii) employees, representatives, or agents of state agencies, municipal corporations, or
117 other governmental agencies who apply any regulated product to nonagricultural lands. The regulations
118 shall establish ~~(i)~~ (a) training requirements and ~~(ii)~~ (b) proper nutrient management practices in
119 accordance with § 10.1-104.2, and including soil analysis techniques, equipment calibration, and the
120 timing of the application.

121 B. The Board may impose a civil penalty of up to \$250 on any contractor-applicator or licensee who

fails to comply with the regulations. The amount of the civil penalty shall be paid into the special fund established in § 3.2-3617.

C. The Board shall form a technical advisory committee of stakeholders. The Board shall consult with the technical advisory committee of stakeholders and the Department of Conservation and Recreation in the development of the regulations.

D. Contractor-applicators and licensees who apply any regulated product to nonagricultural lands shall comply with the regulations within 12 months of the effective date of the regulations.

§ 3.2-3607. Product registration and label requirements; exemptions.

A. In addition to licensing requirements:

1. Any person whose name is on the label of and who distributes in the Commonwealth any specialty fertilizer packaged in containers of 50 pounds or less dry net weight, or five gallons or less liquid net volume, shall: (i) apply for registration for such specialty fertilizer with the Commissioner on forms furnished or approved by the Commissioner; (ii) pay to the Commissioner by July 1 of each registration year a registration fee of \$50 for each grade under a given brand prior to distributing the fertilizer in the Commonwealth; and (iii) provide labels for each grade under a given brand with the application.

2. Any person who distributes in the Commonwealth a soil amendment, soil conditioner, or horticultural growing medium shall: (i) apply for registration for such soil amendment, soil conditioner, or horticultural growing medium with the Commissioner on forms furnished or approved by the Commissioner; (ii) pay to the Commissioner by July 1 of each registration year a registration fee of \$100 for each product name or brand of soil amendment, soil conditioner or horticultural growing medium prior to distributing the product in the Commonwealth; and (iii) provide labels for each product name or brand with the application.

B. The Commissioner shall furnish a copy of the registration to the applicant after approval of the registration.

C. Any person applying for registration of a specialty fertilizer, soil amendment, soil conditioner, or horticultural growing medium shall include with the application a label that includes the following information:

1. For specialty fertilizer, the grade under a given brand; for soil amendments, soil conditioners, or horticultural growing media, the product name or brand;

2. The guaranteed analysis;

3. The name and address of the registrant; and

4. The quantity statement.

D. The Commissioner may require verification of any labeling claims for any regulated product.

E. Custom-media and horticultural growing media planted with live plant material are exempt from labeling and registration requirements and inspection fees.

F. Beginning January 1, 2013, no lawn maintenance fertilizer containing more than zero percent phosphorus or other compound containing phosphorus, such as phosphate, shall be registered with the Commissioner or offered for sale, distribution, or use in the Commonwealth. This prohibition does not include lawn fertilizer, manipulated manure, yard waste compost, products derived from sewage sludge, soils containing fertilizer, fertilizer products intended primarily for gardening, tree, shrub, and indoor plant application, including nurseries, or reclaimed water. The provisions of this section shall not restrict the continued sale by retailers of any prohibited fertilizer from any existing inventories.

G. The Commissioner shall give the guarantor or manufacturer of any unregistered regulated product in commerce in the Commonwealth, a grace period of 15 working days from issuance of notification within which to register the regulated product. Any person required to register any regulated product who fails to register the regulated product within the grace period shall pay to the Commissioner a \$50 late fee in addition to the registration fee. The Commissioner may issue a stop sale, use, removal or seizure order upon any regulated product until the registration is issued.

§ 3.2-3607.1. Sale of deicing agents.

Beginning January 1, 2013, it is unlawful for any person to offer for sale 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 in the Commonwealth. The provisions of this section shall not restrict the continued sale by retailers of any prohibited fertilizer from any existing inventories.

§ 3.2-3610. Statistical reports.

A. For commercial fertilizer:

1. Any person distributing or selling commercial fertilizer to a nonlicensee shall furnish the Commissioner ~~a monthly~~ *an annual* report showing:

a. The county or city of the nonlicensee consignee;

b. The amounts (expressed in tons, or decimal portions) of each grade of fertilizer; and

c. The form in which the person distributed the fertilizer (e.g., in bags, bulk, or in liquid form).

183 2. ~~This information~~ Contractor-applicators and licensees applying commercial fertilizer for
 184 nonagricultural use shall furnish the Commissioner with an annual report providing information deemed
 185 by the Commissioner to be necessary for the implementation of the total maximum daily load for the
 186 Chesapeake Bay or any other waters of the Commonwealth. Such reports shall include the total acreage
 187 receiving nitrogen and phosphorus, by county or city, in accordance with any nutrient management
 188 standards and criteria developed by the Department of Conservation and Recreation.

189 3. The information required by subdivisions 1 and 2 shall be submitted in the following form and
 190 shall specify shipments made during the preceding ~~month~~ year on or before February 1:

191 a. ~~A~~ For contractor-applicators and licensees, a summary report on a form prescribed by the
 192 Commissioner; ~~on or before the 20th day of each month that includes the information described in~~
 193 subdivision 2; or

194 b. A summary report by electronic transfer, utilizing the Uniform Fertilizer Tonnage Reporting
 195 System. Prior to using the electronic transfer method, the person responsible for submitting the ~~monthly~~
 196 annual tonnage report shall make arrangements with the Commissioner for the Commissioner's receipt of
 197 the report by such method.

198 ~~3.4.~~ If the ~~monthly~~ annual report is not filed ~~by~~ within 15 days after the due date, a late fee of \$35
 199 \$250 shall be assessed against the licensee or contractor-applicators.

200 B. For all other regulated products:

201 1. The person distributing or selling such products to a nonlicensee shall furnish the Commissioner
 202 an annual report showing:

203 a. The county or city of the nonlicensee consignee; and

204 b. The amounts (expressed in tons, or decimal portions) of each grade under a given brand of
 205 product.

206 2. Any person listed in subdivision B 1 who fails to file this report by August 1 shall pay a late fee
 207 of \$35 to the Commissioner.

208 § 3.2-3611. Labeling.

209 A. The manufacturer or guarantor of any regulated product distributed in the Commonwealth shall
 210 affix a label to the container or provide an invoice at the time of delivery for a bulk regulated product
 211 that states in clear, legible and conspicuous form, in the English language, the following information:

212 1. The quantity statement;

213 2. The grade under a given brand. The grade shall not be required when no primary nutrients are
 214 claimed;

215 3. The guaranteed analysis, which shall:

216 a. For fertilizers, conform to the following, with the percentage of each plant nutrient stated as
 217 follows:

218 (1) Total Nitrogen (N) %

219 Available Phosphate (P205) %

220 Soluble Potash (K20) %

221 (2) For unacidulated mineral phosphate materials and basic slag, bone, tankage, and other organic
 222 phosphate materials, the available phosphate (P205), or the degree of fineness, or both, may also be
 223 guaranteed;

224 (3) Guarantees for plant nutrients other than nitrogen (N), phosphate (P205), and potash (K20) shall
 225 be expressed in the form of the element. A statement of the sources of nutrients including oxides, salt,
 226 and chelates, may be required on the application for registration of specialty fertilizers, and may be
 227 included as a parenthetical statement on the label. Degree of acidity or alkalinity (pH), beneficial
 228 substances, or compounds determinable by laboratory methods also may be guaranteed by permission of
 229 the Commissioner and with the advice of the Director of the Virginia Experiment Station. When any
 230 degree of acidity or alkalinity (pH), beneficial substances, or compounds are guaranteed, they shall be
 231 subject to inspection and analysis in accord with the methods and regulations prescribed by the Board;

232 b. For soil amendments, consist of a list of ingredients, and may include a statement of naturally
 233 occurring nutrient levels;

234 c. For soil conditioners, including polyelectrolytes, contain the following information in the following
 235 form:

236 (1) Name of active ingredient %

237 (name and list all)

238 (2) Total other ingredients %

239 d. For horticultural growing media, include a list of ingredients and other guarantees as required by
 240 regulation;

241 e. When compost derived from sewage sludge, hazardous materials, unrendered animals or poultry or
 242 their parts, or other source material specified in regulations established by the Board is used as an
 243 ingredient, identify the source material of the compost; ~~and~~

244 f. The following statement must be affixed to all bags of turf fertilizer, and for bulk sales of turf

fertilizer, the following statement must be clearly visible on the invoice: "Do not apply near water, storm drains or drainage ditches. Do not apply if heavy rain is expected. Apply this product only to your lawn or garden, and sweep any product that lands on the driveway, sidewalk, or street, back onto your lawn or garden."; and

g. Include a list of such other ingredients as may be required by the Board through regulation.

4. The name and address of the registrant or licensee.

B. A commercial fertilizer that is formulated according to specifications provided by a consumer prior to mixing, or any fertilizer formulated for a consumer, shall be labeled to show: (i) the quantity statement; (ii) the guaranteed analysis; and (iii) the name and address of the distributor or the licensee.

C. For horticultural growing media, a statement of added fertilizers, if any, shall be listed on the registration document and customer sales invoice.

2. That the Department of Agriculture and Consumer Services shall provide, no later than December 15, 2011, a report concerning the use of slowly available nitrogen in lawn fertilizer to the Senate Committee on Agriculture, Conservation and Natural Resources and the House Committee on Agriculture, Chesapeake and Natural Resources. The report shall (i) conduct an assessment of the most effective means to encourage the use of slowly available nitrogen in lawn fertilizer, (ii) determine the most appropriate percentages of slowly available nitrogen to be included in lawn fertilizers, (iii) recommend the most appropriate effective date for any change, (iv) calculate the costs to the manufacturer and consumer, and (v) provide a review of any other issues related to the use of slowly available nitrogen in lawn fertilizers. The Department shall consult with the Department of Conservation and Recreation, the Chesapeake Bay Commission, and, at its discretion, may convene a technical advisory committee of stakeholders concerning the development and content of the report.

3. That the provisions of §§ 3.2-3602.1 and 3.2-3607.1 of this act shall not restrict the continued sale by retailers of any prohibited fertilizer and deicer from any existing inventories in stock at the time such restrictions become effective.