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SENATE BILL NO. 1465

Offered January 21, 2011

A BILL to amend and reenact §§ 3.2-3600, 3.2-3601, 3.2-3602, 3.2-3602.1, and 3.2-3611 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 3.2-3602.01, 3.2-3602.2, and 3.2-3611.1, relating to fertilizer; regulation of application and labeling.

Patron—Whipple

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.2-3600, 3.2-3601, 3.2-3602, 3.2-3602.1, and 3.2-3611 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 3.2-3602.01, 3.2-3602.2, and 3.2-3611.1 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 (P205) and potash (K20); (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 (P205) and soluble potash (K20), 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.

"Impervious surface" means any structure, surface, or improvement that reduces or prevents absorption of stormwater into land.

"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.

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

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

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

66 *"Lawn fertilizer" means any fertilizer distributed for nonagricultural use on turf. "Lawn fertilizer"*
67 *does not include lawn soils containing fertilizer or fertilizer products intended primarily for gardening,*
68 *tree, shrub, and indoor plant application.*

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

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

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

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

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

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

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

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

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

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

84 *"Slow release" means the quality of a fertilizer containing plant nutrients in a form that delays the*
85 *availability for plant uptake and use after application or which extends its availability to the plant*
86 *significantly longer than a reference rapidly available nutrient fertilizer.*

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 "Unmanipulated manure" means substances composed of the excreta of domestic animals, or
105 domestic fowls, that has not been processed or conditioned in any manner including processing or
106 conditioning by drying, grinding, pelleting, shredding, addition of plant food, mixing artificially with any
107 material or materials (other than those that have been used for bedding, sanitary or feeding purposes for
108 such animals or fowls), or by any other means.

109 § 3.2-3601. Authority of the Board and the Commissioner to adopt regulations.

110 A. The Board may adopt such regulations as are necessary to carry out the provisions of this chapter.
111 Such regulations may include investigational allowances, definitions, records, and manufacturing
112 practices, and the distribution and storage of regulated product prior to final sale.

113 B. The Commissioner may adopt as a regulation:

114 1. The Official Fertilizer Terms and Definitions adopted by the Association of American Plant Food
115 Control Officials;

116 2. The methods of sampling and analysis for regulated products adopted by the Association of
117 Official Analytical Chemists; and

118 3. Any method of sampling and analysis for a regulated product developed by the Department or
119 adopted by agencies of the federal government, agencies of other states, the Division of Consolidated
120 Laboratories or other commercial laboratories accredited by the Food and Drug Administration, the U.S.

Department of Agriculture or the Association of Official Analytical Chemists.

C. Such regulations adopted by the Commissioner shall be effective upon filing with the Registrar of Regulations, who shall publish the regulation as a final regulation in the Virginia Register of Regulations. The regulation shall contain a preamble stating that the Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision of such regulation. The Commissioner shall provide notice by first-class mail of regulations adopted by him pursuant to this section to all manufacturers of currently registered regulated product.

D. The Board, after giving notice in the Virginia Register of Regulations, may reconsider and revise the regulation adopted by the Commissioner. Such revised regulation shall be effective upon filing with the Registrar of Regulations, who shall publish the regulation as a final regulation in the Virginia Register of Regulations.

E. Neither the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) nor public participation guidelines adopted pursuant thereto shall apply to the adoption, reconsideration, or revision of any regulation adopted pursuant to subsections B, C, and D of this section.

F. The Commissioner shall maintain and publish on the Department website a list of all contractor-applicators and licensees currently certified in the nutrient management training and certification program operated by the Department of Conservation and Recreation pursuant to § 10.1-104.2.

§ 3.2-3602. Local government regulation of fertilizer.

~~No~~ Except as provided in § 10.1-603.7 or 15.2-924.1, no locality shall regulate the registration, packaging, labeling, sale, use, application, or distribution of fertilizers. The provisions of this section shall not preempt the adoption, amendment, or enforcement of the Statewide Fire Prevention Code pursuant to § 27-97 and the Uniform Statewide Building Code pursuant to § 36-98.

§ 3.2-3602.01. Lawn fertilizer; training and certification required; prohibited applications.

A. Any contractor-applicator, licensee, and any employee and agent thereof, who applies lawn fertilizer shall (i) become trained and certified in nutrient management pursuant to the nutrient management training and certification program operated by the Department of Conservation and Recreation pursuant to § 10.1-104.2 and (ii) apply lawn fertilizer in a manner consistent with recommendations adopted by the Department of Conservation and Recreation in accordance with § 10.1-104.2 and any regulation adopted pursuant thereto.

B. No person shall:

1. Apply lawn fertilizer to an impervious surface. Any lawn fertilizer applied inadvertently to an impervious surface shall be swept or blown back onto the target surface or returned to either its original or another appropriate container for reuse;

2. Apply lawn fertilizer containing phosphorus or nitrogen to turf before March 1 or after November 15 in any calendar year, or at any time when the ground is frozen;

3. Apply lawn fertilizer containing phosphorus unless (i) vegetation is being established for the first time, such as after land disturbance, and such application is consistent with the Department of Conservation and Recreation's nutrient management standards and criteria established pursuant to § 10.1-104.2; (ii) the area is under repair or being reestablished; or (iii) a soil test performed within the past three years determines that phosphorus is necessary for the specific soils and target vegetation;

4. Apply lawn fertilizer containing nitrogen at a rate more frequent or greater than prescribed by the label on the lawn fertilizer container; or

5. Apply lawn fertilizer containing phosphorus or nitrogen within 15 feet of state waters. The setback may be reduced to 10 feet when using a drop spreader, rotary spreader with a deflector, or targeted spray liquid.

C. No person other than a contractor-applicator, licensee, or any employee and agent thereof, shall (i) apply lawn fertilizer to a golf course or (ii) apply lawn fertilizer containing less than 20 percent of slow release nitrogen.

D. The Board may impose a civil penalty pursuant to § 3.2-3602 on any contractor-applicator or licensee who fails to comply, or whose employee or agent thereof fails to comply, with this section pursuant to § 3.2-3602.1. The Board shall transmit, by electronic means or otherwise, the consumer information and recommended best practices for the application of lawn fertilizer prepared pursuant to § 3.2-3602.2 to any person who fails to comply with this section.

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

A. The Board shall adopt regulations to certify the competence of contractor-applicators and licensees who apply any regulated product to nonagricultural lands. The regulations shall establish (i) training requirements and (ii) ~~proper nutrient management practices in accordance with § 10.1-104.2, and including soil analysis techniques, equipment calibration, and the timing of the application reasonable fees to support the administration and enforcement of the program. The training requirements shall~~

182 include:

- 183 1. The proper use and calibration of fertilizer application equipment;
184 2. The costs and environmental impacts of excessive fertilizer application, including nutrient pollution
185 to state waters;
186 3. All applicable state and federal laws, rules, and regulations;
187 4. The correct interpretation of fertilizer labeling information; and
188 5. The best management practices developed by the Department of Conservation and Recreation
189 pursuant to § 10.1-104.2 for nutrient management on turf, including the appropriate time to wait before
190 applying fertilizer when rain is forecast and the appropriate time to apply fertilizer when soils are wet
191 and the potential for fertilizer movement off site exists.

192 B. The Board may impose a civil penalty of up to \$250 on any contractor-applicator or licensee who
193 fails to comply with the regulations. The amount of the civil penalty shall be no more than \$1,000 for a
194 first violation and no more than \$2,000 for a second or any subsequent violation. Each day during
195 which such violation shall continue shall be deemed a separate violation. All penalties assessed
196 pursuant to this section shall be paid into the special fund established in § 3.2-3617.

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

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

202 § 3.2-3602.2. Application of lawn fertilizer; consumer information and recommended best practices.

203 The Department, in consultation with representatives of the fertilizer industry, fertilizer retailers,
204 statewide turf and lawn care organizations, and other interested parties, may develop consumer
205 information and recommended best practices for the application of lawn fertilizer, including the
206 dissemination of information regarding nutrient pollution, best management practices for fertilizer use,
207 soil testing, proper interpretation of fertilizer label instructions, and the proper use and calibration of
208 fertilizer application equipment.

209 § 3.2-3611. Labeling.

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

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

216 3. The guaranteed analysis, which shall:

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

219 (1) Total Nitrogen (N) %

220 Available Phosphate (P205) %

221 Soluble Potash (K20) %

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

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

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

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

237 (1) Name of active ingredient %

238 (name and list all)

239 (2) Total other ingredients %

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

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

ingredient, identify the source material of the compost; and

f. 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.

D. The following statement must be affixed to all bags of lawn fertilizer, and for bulk sales of lawn 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 and sweep any product that lands on the driveway, sidewalk, or street, back onto your lawn."

§ 3.2-3611.1. Restrictions on the sale of certain fertilizers.

No person shall offer to sell at retail:

1. Any lawn fertilizer containing greater than zero percent phosphorus without limited user access, such as product placements that require the assistance of sales personnel. This restriction shall not apply to lawn fertilizer sold for (i) newly established lawn areas; (ii) lawn areas where soil tests performed within the three years preceding the sale confirm that the phosphorus levels indicate the need for phosphorus fertilizer applications; or (iii) gardens, including vegetable and flower, trees, and shrubs, and indoor applications, including greenhouses;

2. Any lawn fertilizer unless it contains no more than 0.7 pounds of water-soluble nitrogen and no more than 0.9 pounds of total nitrogen at least 20 percent of which shall consist of slow release nitrogen per 1,000 square feet when applied pursuant to the instructions on the container; and

3. Any deicing agent containing urea or other forms of nitrogen or phosphorus marketed for application to parking lots, roadways, sidewalks or other paved surfaces.

2. That the provisions of this act provided in §§ 3.2-3602.01 and 3.2-3611.1 shall become effective on July 1, 2013, and that all other provisions of this act shall become effective on July 1, 2012.