

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
93rd General Assembly
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As Engrossed: H3/18/21

A Bill

HOUSE BILL 1679

By: Representative Hillman

For An Act To Be Entitled

AN ACT TO AMEND LAWS RELATED TO PLANT INDUSTRIES
REGARDING PESTICIDE CONTROL, FERTILIZER REGISTRATION,
AND LIME VENDOR LICENSING; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND LAWS RELATED TO PLANT INDUSTRIES
REGARDING PESTICIDE CONTROL, FERTILIZER
REGISTRATION, AND LIME VENDOR LICENSING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 2-16-418(b) and (c), concerning the protection of trade secrets and other information related to pesticides, are amended to read as follows:

(b) Notwithstanding any other provision of this subchapter, the ~~State Plant Board~~ Department of Agriculture shall not make public any information which, in its judgment, contains or relates to trade secrets or commercial or financial information obtained from a person and is privileged or confidential, except that, when necessary to carry out the provisions of this subchapter, information relating to formulas of products acquired by authorization of this subchapter may be revealed to any state or federal agency consulted or in findings of fact issued by the ~~board~~ State Plant Board.

(c)(1) If the board proposes to release for inspection information which the applicant or registrant believes to be protected from disclosure under subsection (b) of this section, it shall notify the applicant or registrant, in writing, *by certified mail*.



(2) The board shall not, after ~~mailing~~ issuing the notice as provided in this subsection, make available for inspection the data until thirty (30) days after receipt of the notice by the applicant or registrant.

(3) During this period, the applicant or registrant may institute an action in an appropriate court for a declaratory judgment as to whether the information is subject to protection under subsection (b) of this section.

SECTION 2. Arkansas Code § 2-19-202(a)(1), concerning the registration required for fertilizer brands and materials, is amended to read as follows:

(a)(1) All manufacturers, jobbers, and manipulators of commercial fertilizers and of fertilizer materials to be used in the manufacture of fertilizer, who may desire to sell or offer for sale in Arkansas fertilizer and fertilizer materials, shall first file for registration with the State Plant Board, upon forms furnished by the ~~board~~ Department of Agriculture. The forms shall include the name of the brand of each fertilizer, fertilizer materials, or chemicals which they may desire to sell in the state, either by themselves or their agents, together with the names and addresses of the manufacturers or manipulators, and such other information as may be required by the board in its rules.

SECTION 3. Arkansas Code § 2-19-202(a)(3), concerning approval of registrations, is amended to read as follows:

(3) All registrations must be approved by the ~~board~~ department or its authorized agent before being effective.

SECTION 4. Arkansas Code § 2-19-202(d)(1)(B)(iii), concerning exemptions from the special agricultural crop fertilizer and specialty fertilizer minimum unit of primary plant food requirement, is amended to read as follows:

(iii) The ~~board~~ department or its designee shall evaluate the formulation based on criteria established by rules of the board; and

SECTION 5. Arkansas Code § 2-19-206(b) and (c), concerning the penalty for deficiency from guaranteed analysis related to fertilizers, are amended

to read as follows:

(b)(1) Penalties assessed under this section and under such rules as may be enacted under it, except those exceeding the actual value of the shortages found, shall be paid to the consumer of the lot of deficient fertilizer within thirty (30) days after the date of notice from the ~~board~~ Department of Agriculture to the manufacturer or agent, receipts to be taken and promptly forwarded to the ~~board~~ department.

(2) The value of the deficiencies, if any, exceeding the actual shortages, and the actual value of the shortages when the consumer cannot be found, shall be paid to the ~~board~~ department within forty-five (45) days after the date of notice from the ~~board~~ department to the manufacturer or his or her agent and shall be deposited into the ~~Feed and Fertilizer Fund~~ Plant Board Fund of the State Treasury.

(c)(1) The ~~board~~ department shall ascertain the market value of the materials from the manufacturers of fertilizer and fertilizer materials specified in this subchapter to be used in the manufacture of fertilizer and fertilizer materials and from other reliable sources. This determination shall be done to fix units of value on them to be used in determining the amount of damages due when the official analysis shows a deficiency from the guaranteed analysis as specified in this subchapter.

(2) The board is authorized to cancel the present registration or refuse to register for the next season any fertilizer or fertilizer materials offered for sale by any manufacturer, jobber, or manipulator who fails or refuses to comply with this section.

SECTION 6. Arkansas Code § 2-19-207 is amended to read as follows:

2-19-207. Sampling fertilizers.

The inspectors for the ~~State Plant Board~~ Department of Agriculture shall obtain samples of fertilizer or fertilizer materials in the following manner:

(1) They shall draw samples with a core instrument that shall not be less than twelve inches (12") in length in a manner that will procure a representative sample from such shipments of fertilizer or fertilizer materials as they may be directed by the board or that they may find uninspected;

(2) Where there are ten (10) packages or less, they shall take

samples from every package; where there are ten (10) or more packages, they shall take samples from ten (10) packages, plus a sample for each additional ton. In no case do more than twenty (20) packages need to be sampled;

(3) After thoroughly mixing the samples so drawn, they shall fill a container to be approved by the board with a portion of the mixed sample for chemical analysis or inspection; and

(4) Accompanying these samples, a report shall be made giving the name of the commodity inspected, number of packages represented by sample, the name of the manufacturer, the guaranteed analysis, the place where inspected, the date of inspection, and the name of the inspector.

SECTION 7. Arkansas Code § 2-19-208 is amended to read as follows:
2-19-208. Analysis of fertilizers.

(a)(1) Samples of fertilizer or fertilizer materials obtained by the inspectors shall be delivered to the ~~State Plant Board~~ Department of Agriculture which shall deliver the samples to the chief department chemist who shall make or cause to be made a complete analysis thereof.

(2) Analyses are to be made according to methods adopted by the AOAC International or other generally recognized methods.

(b)(1) He or she shall file his or her analysis with the ~~board~~ department, and it shall be recorded as official.

(2) The official analysis of fertilizer or fertilizer materials under the seal of the ~~board~~ department shall be deemed prima facie evidence in any court of this state on the trial of any issue involved on the merits of the fertilizer or fertilizer materials represented by the sample.

(3) Three (3) copies of the official analysis shall be made:

(A) One (1) shall be sent:

(i) To the manufacturer; and

(ii) To the purchaser; and

(B) One (1) kept on file in the office of the ~~board~~ department.

SECTION 8. Arkansas Code § 2-19-209 is amended to read as follows:
2-19-209. ~~Monthly tonnage~~ Tonnage reports.

(a)(1)(A) All manufacturers and manipulators or agents representing them who have registered their brands in compliance with § 2-19-202 shall

forward to the ~~State Plant Board~~ Department of Agriculture each month a report that shall reach its office on or before the twentieth day of the month in which the tonnage report is due, on the forms and in the number of copies to be prescribed by the ~~State Plant Board~~ department.

(B) The report shall include a sworn statement of the total tonnage of all commercial fertilizers and fertilizer materials shipped or caused to be shipped for sale or consumption in this state, or which have been made, mixed, manufactured, or compounded in this state for sale or consumption in this state.

(2)(A)(i) The report shall be accompanied with the sum of two dollars and forty cents (\$2.40) per ton or fractional ton.

(ii) A fee of two dollars and forty cents (\$2.40) will accompany each monthly report of tonnage which amounts to less than one (1) ton.

(B) The ~~State Plant Board~~ department shall issue receipt for the amount received and shall deposit the sums received as follows:

(i) Sixty-two cents (62¢) of the two-dollar-and-forty-cent fee per ton or fractional ton inspected shall be deposited with the Treasurer of State as special revenues and shall be credited to the Plant Board Fund to be used for the maintenance, operation, support, and improvement of the ~~board~~ State Plant Board programs; and

(ii)(a) One dollar and seventy-eight cents (\$1.78) of the two-dollar-and-forty-cent fee per ton or fractional ton inspected shall be remitted to the Board of Trustees of the University of Arkansas and shall be credited to a fund to be known as the "University of Arkansas, Division of Agriculture, Soil Testing and Research Fund" to be maintained in accounts in one (1) or more financial institutions in the State of Arkansas. This amount shall be expended exclusively for soil testing service and soil fertility research by the Board of Trustees of the University of Arkansas under appropriations made by the General Assembly. It shall be expended in support of one (1) or more soil testing laboratories and soil fertility research activities at the main experiment station, branch experiment stations, or subbranch experiment stations, as determined and designated by the Vice President for Agriculture of the University of Arkansas.

(b)(1) The Board of Trustees of the University of Arkansas shall provide for the investment of any funds in the University

of Arkansas, Division of Agriculture, Soil Testing and Research Fund that are not needed for current operations of the soil testing laboratories and soil fertility service and research activities and shall credit the interest earned on that investment to the credit of the University of Arkansas, Division of Agriculture, Soil Testing and Research Fund.

(2) The investment shall be of the type and nature authorized for the investment of average daily State Treasury balances by the State Board of Finance.

(b)(1) The ~~State Plant Board~~ department or its agents shall have the right, at any time, to inspect or audit the books of any manufacturer and manipulator or their agents to determine the correctness of the monthly reports required under this section.

(2) Refusal to allow this inspection or audit shall be deemed a violation of this subchapter, and the violator shall be subject to the penalties provided in this subchapter.

(3) For a late report or for failure to report the entire amount sold, the tonnage fee on the late reported or unreported amount shall be enhanced by ten percent (10%) if less than fifteen (15) days late, twenty percent (20%) if less than thirty-one (31) days late, and doubled if more than thirty (30) days late. Penalties shall be deposited into the Plant Board Fund; otherwise, registrations may be cancelled by the State Plant Board.

SECTION 9. Arkansas Code § 2-19-210(b), concerning the authority to stop the sale of fertilizer or fertilizer materials is amended to read as follows:

(b) The ~~board~~ Department of Agriculture or its authorized representatives shall have authority to stop the sale of any fertilizer or fertilizer material when the sale is found in violation of this subchapter, or of the rules of the board made in accordance with this subchapter, or when it has reason to suspect that the sale is in violation of this subchapter or of the board's rules.

SECTION 10. Arkansas Code § 2-19-211 is amended to read as follows:
2-19-211. Use of penalties from fertilizer tonnage fees.

All penalties received by the ~~State Plant Board~~ Department of Agriculture for failure to pay or report fertilizer tonnage fees shall be

remitted to the Board of Trustees of the University of Arkansas, to be credited to the University of Arkansas, Division of Agriculture, Soil Testing and Research Fund in the same manner as prescribed by § 2-19-209 and to be used for the same purposes as described in § 2-19-209.

SECTION 11. Arkansas Code § 2-19-306 is amended to read as follows:

2-19-306. Registration ~~and vendor's license.~~

~~(a) Registration.~~

~~(1)~~ Before any liming material is sold or offered for sale or distribution in this state, the manufacturer, importer, or other guarantor, which is a person or firm ~~who~~ that places or mixes liming materials of more than one (1) manufacturer in a stockpile, shall register each ~~such~~ liming material with the State Plant Board.

~~(2)~~(b) The registration shall contain the statement referred to in § 2-19-303 or the rules provided for therein and be accompanied by a fee of fifteen dollars (\$15.00) for each liming material.

~~(3)~~(c) Registrations shall expire June 30 of each year.

~~(b) Vendor's License.~~

~~(1)~~ It shall be unlawful for any person or firm to engage in the spreading of liming material on properties belonging to others unless application for a license shall be in the form prescribed by the board. The form shall state the name and address of the applicant and total number of spreader trucks or other similar vehicles to be used by the applicant.

~~(2)~~ The application shall be accompanied by a fee of fifteen dollars (\$15.00) for the license plus a fee of three dollars (\$3.00) for each spreader truck or similar vehicle.

~~(3)~~ Licenses shall expire June 30 of each year.

SECTION 12. Arkansas Code § 17-37-220(a), concerning hearings and appeals related to pest control services licensing, is amended to read as follows:

(a) When any person is refused a license or his or her license is not renewed, or when the State Plant Board contemplates invalidation of his or her license, he or she shall have the right of a hearing before the board or an authorized committee of the board by filing a written request for a hearing with the ~~board by registered or certified mail~~ Department of

Agriculture.

SECTION 13. Arkansas Code § 19-6-301(47), concerning the special revenues of the state deposited into the State Treasury, is amended to read as follows:

(47) Liming material registration fees, ~~and vendor's licenses~~ and inspection fees, as enacted by Acts 1969, No. 353, known as the "Arkansas Agricultural Liming Materials Act", §§ 2-19-301 – 2-19-308;

/s/Hillman