

HOUSE BILL 161

M4

01r0026

By: **Chair, Environment and Transportation Committee (By Request – Departmental – Agriculture)**

Introduced and read first time: January 15, 2020

Assigned to: Environment and Transportation

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 3, 2020

CHAPTER _____

1 AN ACT concerning

2 **Nutrient Management – ~~Professional Fertilizer Applicators~~ Nonagricultural**
3 **Fertilizer Application – Requirements and Penalties**

4 FOR the purpose of ~~prohibiting a person from commercially applying fertilizer to certain~~
5 ~~property unless the person is a professional fertilizer applicator or employs a~~
6 ~~professional fertilizer applicator; requiring a person that employs a certain~~
7 ~~professional fertilizer applicator to obtain a certain license for each place of business~~
8 ~~for which the professional fertilizer applicator provides certain services~~ requiring
9 each place of business at which a person is employed to apply fertilizer to certain
10 property used for nonagricultural purposes to have a certain certified professional
11 fertilizer applicator on staff and be licensed annually by the Department of
12 Agriculture; requiring an applicant for a certain license to submit a certain
13 application and pay a certain fee to the Department; altering the application of a
14 certain civil penalty to include the employer of a person who violates certain
15 provisions of law; ~~providing for the application of this Act;~~ and generally relating to
16 professional fertilizer applicators nonagricultural fertilizer application.

17 BY repealing and reenacting, without amendments,
18 Article – Agriculture
19 Section 8–801(a) and (i)
20 Annotated Code of Maryland
21 (2016 Replacement Volume and 2019 Supplement)

22 BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Article – Agriculture
 2 Section 8–803.4
 3 Annotated Code of Maryland
 4 (2016 Replacement Volume and 2019 Supplement)

5 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
 6 That the Laws of Maryland read as follows:

7 **Article – Agriculture**

8 8–801.

9 (a) In this subtitle the following words have the meanings indicated.

10 (i) (1) “Professional fertilizer applicator” means any person who:

11 (i) Is certified to apply fertilizer in accordance with § 8–803.4 of this
 12 subtitle; and

13 (ii) Applies fertilizer for hire.

14 (2) “Professional fertilizer applicator” includes the owner or manager of
 15 property, or an employee of a government entity who applies fertilizer within the scope of
 16 employment.

17 8–803.4.

18 (a) In this section, “fertilizer” means a commercial fertilizer and specialty
 19 fertilizer.

20 (b) (1) This section applies to a professional fertilizer applicator who applies
 21 fertilizer to:

22 (i) Property that is not used for agricultural purposes; or

23 (ii) State property that is not used for agricultural purposes.

24 (2) This section does not apply to the application of fertilizer on commercial
 25 farms.

26 ~~(C) (1) A PERSON MAY NOT COMMERCIALY APPLY FERTILIZER TO~~
 27 ~~PROPERTY SPECIFIED UNDER SUBSECTION (B)(1) OF THIS SECTION UNLESS THE~~
 28 ~~PERSON:~~

29 ~~(I) IS A PROFESSIONAL FERTILIZER APPLICATOR; OR~~

30 ~~(II) EMPLOYS A PROFESSIONAL FERTILIZER APPLICATOR.~~

~~(2) A PERSON THAT EMPLOYS A PROFESSIONAL FERTILIZER APPLICATOR WHO IS REGULATED UNDER THIS SECTION SHALL OBTAIN AN ANNUAL LICENSE FROM THE DEPARTMENT IN ACCORDANCE WITH COMAR 15.20.10.07 FOR EACH PLACE OF BUSINESS FOR WHICH THE PROFESSIONAL FERTILIZER APPLICATOR PROVIDES THE SERVICES REGULATED UNDER THIS SECTION.~~

(C) (1) EACH PLACE OF BUSINESS AT WHICH A PERSON IS EMPLOYED TO APPLY FERTILIZER TO PROPERTY SPECIFIED UNDER SUBSECTION (B)(1) OF THIS SECTION SHALL:

(I) HAVE A PROFESSIONAL FERTILIZER APPLICATOR ON STAFF WHO HAS OBTAINED A FERTILIZER APPLICATION CERTIFICATION IN ACCORDANCE WITH § 8-803.6 OF THIS SUBTITLE; AND

(II) BE LICENSED ANNUALLY BY THE DEPARTMENT.

(2) AN APPLICANT FOR A LICENSE UNDER THIS SUBSECTION SHALL:

(I) SUBMIT TO THE DEPARTMENT AN APPLICATION ON THE FORM THE DEPARTMENT REQUIRES; AND

(II) PAY TO THE DEPARTMENT AN APPLICATION FEE SET BY THE DEPARTMENT.

[(c)] (D) A professional fertilizer applicator may not:

(1) Apply fertilizer to turf without first obtaining a fertilizer application certification, unless the person is under the direct supervision of a certified professional fertilizer applicator, in accordance with § 8-803.6 of this subtitle; or

(2) Apply fertilizer intended for use on turf on an impervious surface.

[(d)] (E) (1) Except as provided in paragraph (2) of this subsection, a professional fertilizer applicator may not apply fertilizer containing phosphorus or nitrogen to turf:

(i) Before March 1 or after November 15 of any calendar year;

(ii) Any time the ground is frozen; or

(iii) In an amount that is inconsistent with the annual recommended rate established by the University of Maryland.

1 (2) From November 16 through December 1 of each calendar year, a
2 professional fertilizer applicator may apply fertilizer containing nitrogen to turf at an
3 application rate of no more than 0.5 pounds of nitrogen per 1,000 square feet of turf.

4 **[(e)] (F)** (1) Except as provided in paragraph (2) of this subsection, a
5 professional fertilizer applicator may not apply fertilizer containing phosphorus or nitrogen
6 to turf that is within 15 feet of:

7 (i) Surface water subject to the jurisdiction of the State;

8 (ii) The Chesapeake Bay and its tributaries;

9 (iii) A pond within the State;

10 (iv) A lake within the State;

11 (v) A river within the State;

12 (vi) A stream within the State;

13 (vii) A public ditch within the State;

14 (viii) A tax ditch within the State; or

15 (ix) A public drainage system within the State, other than those
16 designed and used to collect, convey, or dispose of sanitary sewage.

17 (2) When a drop spreader, rotary spreader with a deflector, or targeted
18 spray liquid is used for fertilizer application, the setback required under paragraph (1) of
19 this subsection may be reduced to 10 feet.

20 (3) The establishment of setbacks for fertilizer application under this
21 subsection does not preclude the establishment or applicability of, or compliance with, any
22 other environmental standards established under any other State or federal law, rule, or
23 regulation.

24 **[(f)] (G)** (1) Except as provided in paragraph (2) of this subsection, a
25 professional fertilizer applicator may not apply fertilizer containing nitrogen to turf:

26 (i) At an application rate of more than 0.7 pounds of water-soluble
27 nitrogen per 1,000 square feet of turf; and

28 (ii) At an application rate of more than 0.9 pounds of nitrogen per
29 1,000 square feet of turf.

30 (2) (i) Subject to subparagraphs (ii) and (iii) of this paragraph, a
31 professional fertilizer applicator may apply an enhanced efficiency fertilizer:

1 1. At an annual application rate of no more than 2.5 pounds
2 of nitrogen per 1,000 square feet of turf; and

3 2. That has a release rate of no more than 0.7 pounds of total
4 nitrogen per 1,000 square feet of turf per month.

5 (ii) The annual total application rate of an enhanced efficiency
6 fertilizer may not exceed 80% of the annual recommended rate for total nitrogen
7 established by the University of Maryland.

8 (iii) An enhanced efficiency fertilizer may not be applied after
9 November 15 or before March 1 of each calendar year.

10 [(g)] (H) (1) Except as provided in paragraphs (2) and (4) of this subsection, a
11 professional fertilizer applicator may not apply fertilizer containing phosphorus to turf.

12 (2) A professional fertilizer applicator may apply organic or natural organic
13 fertilizer containing phosphorus to turf when:

14 (i) A soil test performed no more than 3 years before the fertilizer
15 application indicates a low or medium level of phosphorus; and

16 (ii) The fertilizer is applied at a rate recommended by the University
17 of Maryland.

18 (3) Paragraph (2) of this subsection does not authorize a professional
19 fertilizer applicator to apply fertilizer containing phosphorus when a soil test indicates an
20 optimum or excessive level of phosphorus.

21 (4) A professional fertilizer applicator may apply fertilizer to turf
22 containing phosphorus if the professional fertilizer applicator:

23 (i) Determines that the fertilizer is necessary for the specific soils
24 and target vegetation in accordance with a soil test performed no more than 3 years before
25 the fertilizer application, provided the application complies with the recommendations
26 established by the University of Maryland;

27 (ii) Is establishing vegetation for the first time, such as after land
28 disturbance, provided the application complies with the recommendations established by
29 the University of Maryland; or

30 (iii) Is reestablishing or repairing a turf area.

31 [(h)] (I) (1) A person who violates any provision of this section **OR EMPLOYS**
32 **A PERSON WHO VIOLATES ANY PROVISION OF THIS SECTION** is subject to a civil penalty
33 of not more than \$1,000 for a first violation.

1 (2) A person who violates any provision of this section **OR EMPLOYS A**
2 **PERSON WHO VIOLATES ANY PROVISION OF THIS SECTION** is subject to a civil penalty
3 of not more than \$2,000 for each subsequent violation.

4 (3) Each day a violation occurs under this section is a separate violation.

5 (4) The total penalties imposed on a person for violations of this section
6 that result from the same set of facts and circumstances may not exceed \$10,000.

7 **[(i)] (J)** The penalty imposed on a person under this section shall be assessed
8 with consideration given to:

9 (1) The willfulness of the violation, the extent to which the existence of the
10 violation was known to the violator but uncorrected by the violator, and the extent to which
11 the violator exercised reasonable care;

12 (2) Any actual harm to human health or to the environment including
13 injury to or impairment of the use of the waters of the State or the natural resources of the
14 State;

15 (3) The cost of control;

16 (4) The nature and degree of injury to or interference with general welfare,
17 health, and property;

18 (5) The extent to which the location of the violation, including location near
19 areas of human population, creates the potential for harm to the environment or to human
20 health or safety; and

21 (6) The extent to which the current violation is part of a recurrent pattern
22 of the same or similar type of violation committed by the violator.

23 **[(j)] (K)** Penalties collected by the Secretary under this section shall be paid into
24 the General Fund of the State.

25 **[(k)] (L)** The Department may adopt regulations to implement this section.

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 October 1, 2020.