

FIRST REGULAR SESSION

# HOUSE BILL NO. 1257

## 102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DEATON.

2599H.011

DANA RADEMAN MILLER, Chief Clerk

### AN ACT

To repeal sections 266.291, 266.301, 266.311, 266.331, 266.336, and 266.347, RSMo, and to enact in lieu thereof six new sections relating to fertilizer control.

*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 266.291, 266.301, 266.311, 266.331, 266.336, and 266.347, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 266.291, 266.301, 266.311, 266.331, 266.336, and 266.347, to read as follows:

266.291. The following words, terms, and phrases, when used in sections 266.291 to 266.351 have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) **"Department", the department of agriculture;**

(2) "Director" means the director of the ~~[Missouri agricultural experiment station at Columbia, Missouri]~~ **department;**

~~[(2)]~~ (3) "Distributor" means any person who imports, consigns, manufactures, produces or compounds fertilizer, or offers for sale, sells, barter, or otherwise supplies fertilizers for consumption or use in this state; provided that this term shall not apply to any person who purchases fertilizer from a distributor registered under sections 266.291 to 266.351 and which fertilizer has been once sold in compliance with sections 266.291 to 266.351;

~~[(3)]~~ (4) "Essential plant nutrient" includes any element recognized as being directly required by any plant to complete its life cycle;

~~[(4)]~~ (5) "Fertilizer" includes any organic or inorganic material of natural or synthetic origin which is added to soil, soil mixtures, or solution to supplement nutrients and is claimed

EXPLANATION — Matter enclosed in bold-faced brackets ~~[thus]~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 to contain one or more essential plant nutrients. The term "fertilizer" does not include  
18 unmanipulated animal and vegetable manure and agricultural liming materials used to reduce  
19 soil acidity;

20 ~~[(5)]~~ (6) "Person" includes individuals, partnerships, associations, firms, corporations,  
21 estates, trusts, receivers, or trustees appointed by any state or federal court;

22 ~~[(6)]~~ (7) "Sale", "sold", and "sells" include exchanges and consignments for sale and  
23 means any transfer or barter;

24 ~~[(7)]~~ (8) "Variable rate technology" means the method of applying two or more  
25 fertilizer materials which are blended at variable rates by a spreading vehicle or device during  
26 the application process.

266.301. It shall be unlawful for any distributor to sell, offer for sale or expose for  
2 sale for consumption or use in this state any fertilizer without first securing a permit from the  
3 ~~[fertilizer control board]~~ **department**. Such permit shall expire on the thirtieth day of June of  
4 each year. Application for such permit shall be on forms furnished by the ~~[fertilizer control~~  
5 ~~board]~~ **department**.

266.311. It shall be unlawful for any person to sell, offer for sale or expose for sale  
2 any fertilizer for use or consumption in this state which is misbranded. Any fertilizer shall be  
3 deemed to be misbranded if it fails to carry the printed statement required under section  
4 266.321, or if the chemical composition of such fertilizer does not meet the guarantee  
5 expressed on said statement within allowable tolerances fixed by the ~~[fertilizer control board]~~  
6 **department**, or if the container for such fertilizer or any statement accompanying the same  
7 carries any false or misleading statement, or if false or misleading statements concerning its  
8 agricultural value are made on any advertising matter accompanying or associated with such  
9 fertilizer.

266.331. Every distributor shall, within thirty days after each six-months' period  
2 ending June thirtieth and December thirty-first, file with the ~~[fertilizer control board]~~  
3 **department** on forms supplied by the ~~[fertilizer control board]~~ **department** a sworn  
4 certificate setting forth the information required by rule. At the time of filing said certificate,  
5 each distributor of fertilizer, excluding manipulated animal or vegetable manure, shall pay to  
6 the director the fee prescribed by rule, which fee shall not exceed one dollar per ton and one  
7 dollar ten cents per metric ton; except that, sales to fertilizer manufacturers or exchanges  
8 between them are hereby exempted. Each distributor of fertilizer consisting of manipulated  
9 animal or vegetable manure shall pay to the director a fee paid for each ton of manure as  
10 prescribed by rule, which fee shall not exceed two cents for each percent nitrogen for manure  
11 containing less than five percent nitrogen; or which fee shall not exceed four cents for each  
12 percent nitrogen for manure containing at least five but less than ten percent nitrogen; or  
13 which fee shall not exceed six cents for each percent nitrogen for manure containing ten or

14 more percent nitrogen. In the event that the ~~[fertilizer control board]~~ **department** has not  
15 prescribed a fee under this section, each distributor required to pay a fee under this section  
16 shall pay a fee of one and one-half cents for each one hundred pounds of fertilizer sold during  
17 the period covered by the certificate filed under this section. The director is hereby  
18 authorized to collect fees and hold all fees in a separate fund that shall be utilized by the  
19 ~~[fertilizer control board]~~ **department** to administer sections 266.291 to 266.351.

266.336. 1. ~~[There is hereby created a "Fertilizer Control Board". The fertilizer  
2 control board shall be composed of thirteen members. Of the thirteen members, five shall be  
3 actively employed as fertilizer manufacturers or distributors and five shall be actively  
4 engaged in the business of farming. The nonprofit corporation organized under Missouri law  
5 to promote the interests of the fertilizer industry shall nominate persons employed as fertilizer  
6 manufacturers or distributors, and Missouri not for profit organizations that represent farmers  
7 shall nominate persons engaged in the business of farming. Such nominations shall be  
8 submitted to the director, and the director shall select members from these nominations.  
9 Three at large members shall be selected by the director with the approval of a majority of the  
10 other ten members of the fertilizer control board.~~

11 ~~2.]~~ The ~~[fertilizer control board]~~ **department** shall:

12 ~~(1) [Meet at least twice each year with meetings conducted according to bylaws;~~

13 ~~(2)]~~ Review and approve the income received and expenditures made under sections  
14 266.291 to 266.351;

15 ~~[(3)]~~ **(2)** In accordance with this section and chapter 536, adopt, amend, promulgate,  
16 or repeal after due notice and hearing rules and regulations to enforce, implement, and  
17 effectuate the powers and duties of sections 266.291 to 266.351. Any rule or portion of a  
18 rule, as that term is defined in section 536.010, that is created under the authority delegated in  
19 this section shall become effective only if it complies with and is subject to all of the  
20 provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536  
21 are nonseverable and if any of the powers vested with the general assembly pursuant to  
22 chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are  
23 subsequently held unconstitutional, then the grant of rulemaking authority and any rule  
24 proposed or adopted after August 28, 2016, shall be invalid and void;

25 ~~[(4)]~~ **(3)** Revoke or suspend a permit, or refuse to issue a permit, to any distributor  
26 who has knowingly violated any of the provisions of sections 266.291 to 266.351, or has  
27 failed or neglected to pay the fees or penalties provided for in sections 266.291 to 266.351.  
28 The ~~[board]~~ **department** shall conduct a hearing if requested by the distributor to review all  
29 penalties assessed and permit decisions made by the ~~[board]~~ **department**. Upon completion  
30 of a hearing, the ~~[board]~~ **department** shall determine if penalty modifications are warranted  
31 giving consideration to the history of previous violations, the seriousness of the violation, any

32 overage in any other ingredients, demonstrated good faith of the distributor, and any other  
33 factors deemed appropriate. Any penalty modification must comply with section 266.343;

34 ~~[(5)]~~ (4) Determine the method and amount of fees to be assessed. In performing its  
35 duties under this subdivision, the ~~[fertilizer control board]~~ **department** shall represent the  
36 best interests of the Missouri farmers and Missouri agribusinesses;

37 ~~[(6)]~~ (5) Secure access to a laboratory with necessary equipment, and employees as  
38 may be necessary, to aid in the administration of sections 266.291 to 266.351;

39 ~~[(7)]~~ (6) Pursue nutrient research, educational, and outreach programs to ensure the  
40 adoption and implementation of practices that optimize nutrient use efficiency, ensure soil  
41 fertility, and address environmental concerns with regard to fertilizer use extending the results  
42 of the fertilizer experiments that may be of practical use to the farmers and agribusinesses of  
43 this state;

44 ~~[(8)]~~ (7) Exercise general supervision of the administration and enforcement of  
45 sections 266.291 to 266.351, and all rules and regulations and orders promulgated under such  
46 sections;

47 ~~[(9)]~~ (8) Institute and prosecute through the attorney general of the state suits to  
48 collect any fees due under sections 266.301 to 266.347 which are not promptly paid.

49 ~~[3-]~~ 2. Authorized agents of the ~~[fertilizer control board]~~ **department** are hereby  
50 authorized and empowered to:

51 (1) Only to the extent necessary to determine general compliance, collect samples,  
52 inspect, and make analysis of fertilizer sold, offered, or exposed for sale within this state;  
53 except that, samples taken of fertilizer sold in bulk shall be taken from the bulk container  
54 immediately after mixing on the premises of the mixing facility or, when not possible, to be  
55 sampled from the bulk container wherever found. All samples shall have a preliminary  
56 analysis completed within five business days of the sample being obtained. If requested, a  
57 portion of any sample found subject to penalty or other legal action shall be provided to the  
58 distributor liable for the penalty;

59 (2) Only to the extent necessary to determine general compliance, inspect and audit  
60 the books of every distributor who sells, offers for sale, or exposes for sale fertilizer for  
61 consumption or use in this state to determine whether or not the provisions of sections  
62 266.291 to 266.351 are being fully complied with;

63 (3) Require every distributor to file documentation as prescribed by rules  
64 promulgated under sections 266.291 to 266.351. Such documents shall not be required  
65 more often than six-month intervals, and all such documents shall be returned to the  
66 distributor upon request;

67 (4) Enter upon any public or private premises during regular business hours in order  
68 to have access to fertilizer subject to sections 266.291 to 266.351 and the rules and

69 regulations promulgated under sections 266.291 to 266.351, and to take samples and inspect  
70 such fertilizer;

71 (5) Issue and enforce a written or printed "stop-sale, use, or removal" order to the  
72 owner or custodian of any fertilizer that is found to be in violation of any of the provisions of  
73 sections 266.291 to 266.351, which such order prohibiting the further sale of such fertilizer  
74 until sections 266.291 to 266.351 have been complied with or otherwise disposed of;

75 (6) Publish each year the full and detailed report giving the names and addresses of all  
76 distributors registered under sections 266.291 to 266.351, the analytical results of all samples  
77 collected, and a statement of all fees and penalties received and expenditures made under  
78 sections 266.291 to 266.351;

79 (7) Establish from information secured from manufacturers and other reliable  
80 sources, the market value of fertilizer and fertilizer materials for the purpose of determining  
81 the amount of damages due when the official analysis shows an excessive deficiency from the  
82 guaranteed analysis; **and**

83 (8) Retain, employ, provide for, and compensate such consultants, assistants, and  
84 other employees on a full- or part-time basis and contract for goods and services as may be  
85 necessary to carry out the provisions of sections 266.291 to 266.351, and prescribe the times  
86 at which they shall be appointed and their powers and duties.

87 ~~[4. The filling of vacancies, the selection of officers, the conduct of its meetings, and~~  
88 ~~all other matters concerning the fertilizer control board shall be outlined in the bylaws~~  
89 ~~established by the fertilizer control board. All members of the fertilizer control board shall~~  
90 ~~serve for terms of three years and until their successors are duly appointed and qualified;~~  
91 ~~except that, of the members first appointed:~~

92 ~~(1) Two members who are actively employed as fertilizer manufacturers or~~  
93 ~~distributors, two members actively engaged in the business of farming, and one at large~~  
94 ~~member shall serve for terms of three years;~~

95 ~~(2) Two members who are actively employed as fertilizer manufacturers or~~  
96 ~~distributors, two members actively engaged in the business of farming, and one at large~~  
97 ~~member shall serve for terms of two years; and~~

98 ~~(3) The remaining three members shall serve for terms of one year.~~

99 ~~5. All members shall be residents of this state. No member may serve more than two~~  
100 ~~consecutive terms on the fertilizer control board, but any member may be reappointed after he~~  
101 ~~has not been a member of the advisory council for a period of at least three years.~~

102 ~~6. All members shall be reimbursed for reasonable expenses incurred in the~~  
103 ~~performance of their official duties in accordance with the reimbursement policy set by the~~  
104 ~~fertilizer control board bylaws. All reimbursements paid under this section shall be paid from~~  
105 ~~fees collected under sections 266.291 to 266.351.]~~

266.347. 1. The penalties assessed under section 266.343 shall be paid by the distributor to the purchaser of such fertilizer, and in the event such purchaser cannot be ascertained, then said penalty shall be paid to the director under section 266.331 and shall be used in accordance with the provisions of such section.

2. Where the preliminary analysis shows that a fertilizer has a potential plant food deficiency, the distributor shall be provided preliminary notification within two business days by telephone or email in addition to a notification letter delivered by mail. Once the analysis is certified, a written certification of penalties assessed under section 266.343 shall be mailed to the distributor liable for the penalty.

3. Any decision, finding, order or ruling of the ~~[fertilizer control board]~~ **department** made pursuant to the provisions of sections 266.291 through 266.351 shall be subject to judicial review in the manner provided by chapter 536.

4. If any distributor shall fail to pay any penalty assessed after the time for judicial review has expired, or after any judgment or decree approving such assessment has become final, the person entitled to such penalty under the provisions of subsection 1 **of this section** shall be entitled to bring a civil action to recover the same, and in such civil action such persons shall be entitled to recover from the distributor the amount of the penalty, a reasonable attorney's fee and costs of the action.

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