

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1149 Session of 2013

INTRODUCED BY BRUBAKER, TOMLINSON, GREENLEAF, WAUGH, ALLOWAY, RAFFERTY, WHITE, VULAKOVICH, YAW, FERLO, SOLOBAY AND SCHWANK, OCTOBER 29, 2013

SENATOR VOGEL, AGRICULTURE AND RURAL AFFAIRS, AS AMENDED, FEBRUARY 4, 2014

AN ACT

1 Amending Title 3 (Agriculture) of the Pennsylvania Consolidated
2 Statutes, in fertilizer, further providing for labels and
3 labeling and for disposition of funds; and providing for
4 fertilizer for use on turf.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Section 6705 of Title 3 of the Pennsylvania
8 Consolidated Statutes is amended by adding a subsection to read:

9 § 6705. Labels and labeling.

10 * * *

11 (a.1) Prohibited label.--No fertilizer may be labeled for
12 the purpose of melting snow or ice.

13 * * *

14 Section 2. Section 6725 of Title 3 is amended to read:

15 § 6725. Disposition of funds.

16 Moneys received from license fees, registration fees,
17 inspection fees, fines and penalties shall be paid into a
18 special restricted account in the General Fund to be known as

1 the Agronomic Regulatory Account. All moneys in the Agronomic
2 Regulatory Account are hereby appropriated to the department for
3 the purposes of this chapter and Chapters 68 (relating to
4 fertilizer for use on turf), 69 (relating to soil and plant
5 amendment) and 71 (relating to seed).

6 Section 3. Title 3 is amended by adding a chapter to read:

7 CHAPTER 68

8 FERTILIZER FOR USE ON TURF

9 Sec.

10 6801. Definitions.

11 6802. Applicability.

12 6803. Fertilizer sold to consumers.

13 6804. Labeling.

14 6805. Application of fertilizer to turf.

15 6806. Certification of professional fertilizer applicators.

16 6807. Cooperation with other entities.

17 6808. Preemption.

18 6809. Rules and regulations.

19 6810. Enforcement and penalties.

20 6811. Disposition of funds.

21 § 6801. Definitions.

22 The following words and phrases when used in this chapter
23 shall have the meanings given to them in this section unless the
24 context clearly indicates otherwise:

25 "Agricultural production." The production for commercial
26 purposes of crops, livestock and livestock products, including
27 the processing or retail marketing of such crops, livestock or
28 livestock products if more than 50% of such processed or
29 merchandised products are produced by the farm operator. The
30 term includes use of land that is devoted to and meets the

1 requirements of and qualifications for payments or other
2 compensation pursuant to a soil conservation program under an
3 agreement with an agency of the Federal Government.

4 "Bulk fertilizer." A fertilizer distributed in a nonpackaged
5 form.

6 "By-product." Municipal waste or residual waste as defined
7 in the act of July 7, 1980 (P.L.380, No.97), known as the Solid
8 Waste Management Act, that contains a plant nutrient and meets
9 all the applicable regulations of the Department of
10 Environmental Protection.

11 "Consumer." A person who purchases fertilizer for the end
12 use of the product.

13 "Crops, livestock and livestock products." Include, but are
14 not limited to:

15 (1) Field crops, including corn, wheat, oats, rye,
16 barley, hay, potatoes and dry beans.

17 (2) Fruits, including apples, peaches, grapes, cherries
18 and berries.

19 (3) Vegetables, including tomatoes, snap beans, cabbage,
20 carrots, beets, onions and mushrooms.

21 (4) Horticultural specialties, including nursery stock
22 ornamental shrubs, ornamental trees and flowers.

23 (5) Livestock and livestock products, including cattle,
24 sheep, hogs, goats, horses, poultry, furbearing animals,
25 milk, eggs and furs.

26 (6) Timber, wood and other wood products derived from
27 trees.

28 (7) Aquatic plants and animals and their products.

29 "Distribute." To import, consign, offer for sale, sell,
30 barter or otherwise supply fertilizer in this Commonwealth.

1 "Enhanced-efficiency fertilizer." A fertilizer product with
2 characteristics that allow increased plant uptake and reduced
3 potential of nutrient losses to the environment, such as gaseous
4 losses, leaching or runoff, when compared to an appropriate
5 reference product.

6 "Fertilizer." Any substance, including fertilizer material,
7 mixed fertilizer, specialty fertilizer and bulk fertilizer,
8 containing one or more recognized plant nutrients which is used
9 for its plant nutrient content and which is designed for use or
10 claimed to have value in promoting plant growth, except
11 unmanipulated animal and vegetable manure, agricultural liming
12 materials, wood ashes and other materials exempted by regulation
13 by the Department of Agriculture.

14 "Fertilizer material." A fertilizer which:

15 (1) contains only one of the following primary plant
16 nutrients:

17 (i) nitrogen;

18 (ii) phosphate; or

19 (iii) potash;

20 (2) has 85% or more of its plant nutrient content
21 present in the form of a single chemical compound; or

22 (3) is derived from a plant or animal residue, by-
23 product or coproduct as defined in regulation or natural
24 material deposit which has been processed in such a way that
25 its content of plant nutrients has not been materially
26 changed except by purification and concentration.

27 "Impervious surface." A structure, surface or improvement
28 that reduces or prevents absorption of water into land and
29 includes porous paving, paver blocks, gravel, crushed stone,
30 decks, patios, elevated structures and other similar structures,

1 surfaces or improvements.

2 "Intermittent stream." A body of water flowing in a channel
3 or bed composed primarily of substrates associated with flowing
4 water which, during periods of the year, is below the water
5 table and obtains its flow from both surface runoff and
6 groundwater discharges.

7 "Label." The display of all written, printed or graphic
8 matter upon the immediate container or a statement accompanying
9 a fertilizer.

10 "Labeling." All written, printed or graphic matter upon or
11 accompanying any fertilizer or advertisements, brochures,
12 posters or electronic media used in promoting the distribution
13 of fertilizer.

14 "Natural organic fertilizer." A fertilizer derived from
15 either plant or animal products containing one or more elements,
16 other than carbon, hydrogen and oxygen, which are essential for
17 plant growth. These materials may be subjected to biological
18 degradation processes under normal conditions of aging,
19 rainfall, sun curing, air drying, composting, rotting, enzymatic
20 or anaerobic or aerobic bacterial action or a combination of
21 these processes. These materials may not be mixed with synthetic
22 materials or changed in any physical or chemical manner from
23 their initial state except by physical manipulation such as
24 drying, cooking, chopping, grinding, shredding or pelleting.

25 "Organic-base fertilizer." A mixed fertilizer where:

26 (1) More than half of the fertilizer materials are
27 organic.

28 (2) More than half of the sum of the guaranteed primary
29 nutrient percentages are derived from organic materials.

30 "Percent" or "percentage." A percentage by weight.

1 "Perennial stream." A body of water flowing in a channel or
2 bed composed primarily of substrates associated with flowing
3 waters and capable, in the absence of pollution or other manmade
4 stream disturbances, of supporting bottom-dwelling aquatic
5 animals.

6 "Person." An individual, partnership, association, firm,
7 corporation or any other legal entity.

8 "Plant nutrient." Any of the following:

9 (1) primary nutrient;

10 (2) secondary nutrient; and

11 (3) micronutrient.

12 "Primary nutrient." Any of the following:

13 (1) total nitrogen;

14 (2) available phosphate; and

15 (3) soluble potash.

16 "Professional fertilizer applicator." An individual who
17 applies fertilizer for hire, including, but not limited to, an
18 employee of a government entity or golf course who applies
19 fertilizer within the scope of employment. The term does not
20 include an individual who applies fertilizer only for the
21 purpose of agricultural production or sod produced for
22 commercial sale.

23 "Readily available nitrogen." Water soluble nitrogen in
24 either ammoniacal, urea or nitrate form that does not have slow
25 or controlled release properties.

26 "Secondary nutrient." Any of the following:

27 (1) calcium;

28 (2) magnesium; and

29 (3) sulfur.

30 "Slow or controlled release." A fertilizer containing a

1 plant nutrient in a form that delays its availability for plant
2 uptake and use after application or which extends its
3 availability to the plant significantly longer than a reference
4 "rapidly available nutrient fertilizer," such as ammonium
5 nitrate or urea, ammonium phosphate or potassium chloride.

6 "Soil test." A chemical, physical or biological procedure
7 that estimates the suitability of the soil to support plant
8 growth.

9 "Specialty fertilizer." A fertilizer distributed for nonfarm
10 use and fertilizer material primarily intended to supply plant
11 nutrients other than nitrogen, phosphate or potash.

12 "Turf." Land, including, but not limited to, residential
13 property, golf courses and publicly owned land, that is planted
14 in closely mowed, managed grass, except for land used for
15 agricultural production.

16 "Under the direct supervision of." Acting with the
17 instructions and under the control of a certified applicator who
18 is responsible for the actions of the technician and who is
19 available when needed.

20 § 6802. Applicability.

21 This chapter shall not apply to fertilizer applied for the
22 purposes of agricultural production or sod produced for
23 commercial sale.

24 § 6803. Fertilizer sold to consumers.

25 (a) Contents.--Fertilizer sold at retail and intended for
26 use on turf shall:

27 (1) contain no more than 0.7 pounds of readily available
28 nitrogen and no more than 0.9 pounds of total nitrogen per
29 1,000 square feet when applied pursuant to the instructions
30 on the container;

1 (2) consist of at least 20% enhanced-efficiency nitrogen
2 of the total nitrogen; and

3 (3) contain no phosphorus, except when specifically
4 labeled for the following purpose:

5 (i) providing nutrients to specific soils and target
6 vegetation as determined to be necessary pursuant to a
7 soil test performed no more than three years prior to
8 application;

9 (ii) establishing vegetation for the first time;

10 (iii) reestablishing or repairing a turf area; or

11 (iv) as an enhanced-efficiency phosphorus
12 fertilizer, natural organic fertilizer, organic-base
13 fertilizer or fertilizer derived from a by-product, AS <--
14 LONG AS THE APPLICATION RATE DOES NOT EXCEED 0.25 POUNDS
15 OF PHOSPHORUS PER 1,000 SQUARE FEET PER APPLICATION, WITH
16 A MAXIMUM TOTAL ANNUAL APPLICATION OF 0.5 POUNDS OF
17 PHOSPHORUS PER 1,000 SQUARE FEET, WHEN APPLIED PURSUANT
18 TO THE INSTRUCTIONS ON THE CONTAINER.

19 (b) Turf.--Notwithstanding the limits of subsection (a) (1),
20 fertilizer sold at retail and intended for use on turf may
21 contain up to 2.5 pounds of enhanced-efficiency nitrogen
22 fertilizer per 1,000 square feet when applied pursuant to the
23 instructions on the container, provided the monthly release rate
24 does not exceed 0.7 pounds of nitrogen per 1,000 square feet.

25 § 6804. Labeling.

26 (a) Mandatory label.--In addition to any other requirements
27 under Chapter 67 (relating to fertilizer), a container of
28 fertilizer sold at retail and intended for use on turf shall
29 include the following statement on its label in a legible and
30 conspicuous form:

1 "Do not apply near water, storm drains or drainage
2 ditches. Do not apply if heavy rain is expected. Apply
3 this product only to your lawn and sweep any product that
4 lands on the driveway, sidewalk or street back onto your
5 lawn."

6 (b) Prohibited label.--No fertilizer material may be labeled
7 for the purpose of melting snow or ice.

8 § 6805. Application of fertilizer to turf.

9 (a) Restrictions.--No person or professional fertilizer
10 applicator may:

11 (1) apply fertilizer intended for use on turf to an
12 impervious surface. Any fertilizer inadvertently applied to
13 an impervious surface shall be removed from the impervious
14 surface;

15 (2) apply fertilizer containing phosphorus or nitrogen
16 to turf at any time when the ground is frozen to a depth of
17 at least two inches or snow covered;

18 (3) apply fertilizer containing phosphorus or nitrogen
19 to turf before March 1 or after November 15 in any calendar
20 year, except fertilizer containing no more than 0.5 pounds of
21 total nitrogen per 1,000 square feet may be applied by a
22 professional fertilizer applicator to turf after November 15
23 but before March 1 in a calendar year;

24 (4) apply fertilizer within five feet of the top of a
25 bank of any perennial or intermittent stream, except that
26 fertilizer may be applied to the top of the bank of any
27 perennial or intermittent stream if applied using a drop
28 spreader, rotary spreader with deflector, targeted spray
29 liquid or other available targeted application technology.
30 The establishment of setbacks for fertilizer application

1 pursuant to this paragraph shall not preclude the
2 establishment or applicability of, or required compliance
3 with, any other environmental standard established pursuant
4 to any other Federal or State law, rule or regulation; or

5 (5) apply fertilizer for the purpose of melting snow or
6 ice.

7 (b) Application rates.--Except as provided under subsections
8 (c), (d) and (e), at least 20% of the total nitrogen applied per
9 1,000 square feet shall be enhanced-efficiency nitrogen and
10 application rates shall:

11 (1) not exceed 0.7 pounds of readily available nitrogen
12 per 1,000 square feet per application;

13 (2) not exceed 0.9 pounds of total nitrogen per 1,000
14 square feet per application; and

15 (3) contain zero phosphorus, except when specifically
16 labeled for the following purposes:

17 (i) providing nutrients to specific soils and target
18 vegetation as determined to be necessary pursuant to a
19 soil test performed no more than three years prior to the
20 application;

21 (ii) establishing vegetation for the first time;

22 (iii) reestablishing or repairing a turf area; or

23 (iv) as an enhanced-efficiency phosphorus
24 fertilizer, natural organic fertilizer, organic-base
25 fertilizer or fertilizer derived from a by-product.

26 (c) Professional fertilizer applicators.--A professional
27 fertilizer applicator shall not be required to use enhanced-
28 efficiency nitrogen fertilizer. Except as provided under
29 subsections (d) and (e), no professional fertilizer applicator
30 may apply fertilizer at a rate exceeding:

1 (1) 0.7 pounds of readily available nitrogen per 1,000
2 square feet per application;

3 (2) 0.9 pounds of total nitrogen per 1,000 square feet
4 per application; and

5 (3) zero phosphorus, except when the professional
6 fertilizer applicator:

7 (i) determines that the fertilizer is necessary for
8 the specific soils and target vegetation pursuant to a
9 soil test performed no more than three years before the
10 application, and the application is in a manner
11 consistent with generally accepted best management
12 practices;

13 (ii) is establishing vegetation for the first time
14 in a manner consistent with generally accepted best
15 management practices;

16 (iii) is reestablishing or repairing a turf area in
17 a manner consistent with generally accepted best
18 management practices; or

19 (iv) is utilizing an enhanced-efficiency phosphorus
20 fertilizer, natural organic fertilizer, organic-base
21 fertilizer or fertilizer derived from a by-product.

22 (d) Enhanced-efficiency nitrogen fertilizer.--

23 Notwithstanding the provisions of subsections (b) and (c),
24 enhanced-efficiency nitrogen fertilizer may be applied at a rate
25 not to exceed 2.5 pounds of nitrogen per application with a
26 monthly release rate not to exceed 0.7 pounds of nitrogen per
27 1,000 square feet.

28 (e) Enhanced-efficiency phosphorus fertilizer, natural
29 organic fertilizer, organic-base fertilizer and fertilizer
30 derived from a by-product.--

1 (1) Except as provided in paragraph (2) and
2 notwithstanding the provisions of subsections (b) and (c), an
3 enhanced-efficiency phosphorus fertilizer, natural organic
4 fertilizer, organic-base fertilizer or fertilizer derived
5 from a by-product containing phosphorus may be applied at a
6 rate indicated by a soil test performed not more than three
7 years before the application date or at a rate not to exceed
8 0.25 pounds of phosphorus per 1,000 square feet, with a
9 maximum total annual application of 0.5 pounds of phosphorus
10 per 1,000 square feet per year.

11 (2) Fertilizer products containing phosphorus may not be
12 applied to turf when a soil test performed not more than
13 three years before the application date indicates a soil
14 phosphorus level equal to or greater than 200 ppm according
15 to a Mehlich 3 test or equivalent.

16 § 6806. Certification of professional fertilizer applicators.

17 (a) Certification.--

18 (1) No professional fertilizer applicator may apply
19 fertilizer to turf without first completing a certification
20 program and receiving appropriate certification pursuant to
21 subsection (c), unless acting under the supervision of a
22 certified professional fertilizer applicator as provided
23 under subsection (b).

24 (2) A certification issued under subsection (c) shall be
25 valid for three years, subject to the limitations of section
26 6810(c) (relating to enforcement and penalties).

27 (b) Supervisory employees.--A person or entity employing
28 professional fertilizer applicators shall have at least one
29 supervisory employee who holds a valid certificate present or
30 immediately accessible to employees applying fertilizer at all

1 hours of operation.

2 (c) Professional fertilizer application program.--

3 (1) The department shall:

4 (i) establish a professional fertilizer application
5 certification program; or

6 (ii) designate one or more professional fertilizer
7 application certification programs provided by a third
8 party, such as a university, industry association,
9 employer of professional fertilizer applicators or other
10 continuing education provider, as an approved
11 professional fertilizer application certification program
12 for purposes of this section.

13 (2) Any program established or designated under this
14 subsection shall include, but not be limited to, information
15 on the following subject areas:

16 (i) the proper use and calibration of fertilizer
17 application equipment;

18 (ii) the hazards involved in, and the environmental
19 impact of, applying fertilizer, including nutrient
20 pollution, to perennial or intermittent streams;

21 (iii) all applicable Federal and State laws, rules
22 and regulations;

23 (iv) the correct interpretation of fertilizer
24 labeling information; and

25 (v) the generally accepted best management practices
26 for fertilizer use on turf, including the appropriate
27 time to wait before applying fertilizer when rain is
28 forecast and the appropriate time to apply fertilizer
29 when soils are wet and the potential for fertilizer
30 movement offsite exists.

1 (d) Program fees and continuing education.--In administering
2 a professional fertilizer application certification program:

3 (1) The department, acting pursuant to subsection (c)(1)
4 (i), may:

5 (i) require payment, not to exceed \$50, for a
6 certificate of competency to cover costs associated with
7 the administration of this chapter; and

8 (ii) require payment, not to exceed \$25, for
9 recertification to cover costs associated with the
10 administration of this chapter.

11 (2) A third party, acting pursuant to subsection (c)(1)
12 (ii), may:

13 (i) require payment, not to exceed \$50, for a
14 certificate of competency to cover costs associated with
15 the administration of this chapter; and

16 (ii) require payment, not to exceed \$25, for a
17 recertification to cover costs associated with the
18 administration of this chapter.

19 (e) Program duties of department.--In establishing or
20 designating a professional fertilizer application certification
21 program under subsection (c), the department shall, to the
22 maximum extent practicable, align education and training
23 opportunities for commercial applicators of pesticides under
24 section 16.1 of the act of March 1, 1974 (P.L.90, No.24), known
25 as the Pennsylvania Pesticide Control Act of 1973.

26 (f) List of certified professional fertilizer applicators.--
27 The department shall publish and maintain a list of all
28 certified professional fertilizer applicators and make the list
29 available on its publicly accessible Internet website.

30 § 6807. Cooperation with other entities.

1 The department may cooperate with and enter into agreements
2 with agencies of the Federal Government, agencies and political
3 subdivisions of the Commonwealth or any other state or a
4 nongovernmental entity in order to carry out the purpose and
5 provisions of this chapter.

6 § 6808. Preemption.

7 This chapter and its provisions are of Statewide concern, and
8 no political subdivision shall have the authority to adopt or
9 enforce any ordinance, regulation or resolution which is in
10 conflict with this chapter.

11 § 6809. Rules and regulations.

12 The department shall promulgate and enforce rules and
13 regulations necessary for the administration and implementation
14 of this chapter. To implement section 6806(c) (relating to
15 certification of professional fertilizer applicators), the
16 department shall promulgate rules and regulations no later than
17 two years from the effective date of this section.

18 § 6810. Enforcement and penalties.

19 (a) Civil penalties.--

20 (1) In addition to any other remedy available at law or
21 in equity for a violation of this chapter, the department
22 may:

23 (i) Except as otherwise provided in subparagraph
24 (ii), assess a civil penalty of not more than \$50 upon
25 any person for each violation of a provision of this
26 chapter.

27 (ii) Assess a civil penalty of not more than \$2,500
28 upon any person for each violation of section 6803
29 (relating to fertilizer sold to consumers) or 6804
30 (relating to labeling).

1 (2) The civil penalty assessed shall be payable to the
2 department and shall be collectible in any manner provided by
3 law for the collection of debt.

4 (3) No civil penalty may be assessed unless the person
5 assessed the penalty has been given notice and an opportunity
6 for a hearing on the assessment in accordance with the
7 provisions of 2 Pa.C.S. Chs. 5 Subch. A (relating to practice
8 and procedure of Commonwealth agencies) and 7 Subch. A
9 (relating to judicial review of Commonwealth agency action).

10 (b) De minimis violations.--Nothing in this chapter may be
11 construed as requiring the department to report a violation and
12 to institute penalties as a result of de minimis violations of
13 this chapter when the department concludes that the public
14 interest will be best served by a suitable notice of warning in
15 writing.

16 (c) Suspension or revocation of certification.--The
17 department may suspend or revoke a certification under section
18 6806 (relating to certification of professional fertilizer
19 applicators) for a violation of this chapter.

20 § 6811. Disposition of funds.

21 Moneys received from fees collected pursuant to section
22 6806(d)(1) (relating to certification of professional fertilizer
23 applicators), fines and penalties under this chapter shall be
24 paid into the Agronomic Regulatory Account established under
25 section 6725 (relating to disposition of funds).

26 Section 4. This act shall take effect as follows:

27 (1) The addition of 3 Pa.C.S. §§ 6801, 6803, 6804 and
28 6805 shall take effect in two years.

29 (2) The addition of 3 Pa.C.S. § 6806(a) and (b) shall
30 take effect one year after the promulgation of regulations

1 made under 3 Pa.C.S. § 6806(c).

2 (3) The remainder of this act shall take effect
3 immediately.