

HOUSE BILL 609

M4, M3

9lr2804
CF SB 553

By: **Delegates Holmes, Carr, V. Clagett, and Niemann**

Introduced and read first time: February 6, 2009

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Chesapeake Bay Phosphorous Reduction Act of 2009**

3 FOR the purpose of prohibiting a certain fertilizer from being labeled in a certain
4 manner on or after a certain date; requiring a certain fertilizer to be marked
5 with certain words in a certain manner on or after a certain date; prohibiting a
6 certain person from selling or distributing certain fertilizer at a retail
7 establishment on or after a certain date unless it is low phosphorous fertilizer;
8 requiring certain manufacturers to reduce phosphorous levels resulting from
9 the application of their lawn care products by a certain amount and on or before
10 a certain date; prohibiting certain manufacturers from exceeding certain
11 phosphorous levels in their lawn care products under certain circumstances;
12 requiring certain manufacturers to report certain phosphorous levels annually
13 to the Department of Agriculture after a certain date; authorizing the
14 Department to adopt certain regulations; defining certain terms; and generally
15 relating to fertilizer and phosphorus.

16 BY repealing and reenacting, with amendments,
17 Article – Agriculture
18 Section 6–201 and 6–210
19 Annotated Code of Maryland
20 (2007 Replacement Volume and 2008 Supplement)

21 BY adding to
22 Article – Agriculture
23 Section 6–222
24 Annotated Code of Maryland
25 (2007 Replacement Volume and 2008 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **Article - Agriculture**

2 6-201.

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

4 (b) A commercial fertilizer is “adulterated” if:

5 (1) Any poisonous, deleterious, or nonnutritive ingredient is added in
6 sufficient amount to render it injurious to the health of plants, humans, or animal life
7 or injurious to the environment;8 (2) A valuable constituent is omitted or abstracted wholly or partially
9 from it or any less valuable substance is substituted for it; or10 (3) Its composition or quality falls below or differs from that which it
11 is purported or is represented to contain by its labeling.12 (c) “Brand” means the term, design, trademark, or other specific designation
13 under which a commercial fertilizer or soil conditioner is distributed in the State.14 (d) “Bulk fertilizer” means any commercial fertilizer distributed in a
15 nonpackaged form.16 (e) “Buyer’s mixture” means commercial fertilizer mixed on specific request
17 of a purchaser according to a formula furnished by him.18 (f) “Commercial fertilizer” means any substance containing a recognized
19 plant nutrient used for its plant nutrient content and designed for use or claimed to
20 have value in promoting plant growth, except unmanipulated animal and vegetable
21 manure, marl, lime, wood ashes, and gypsum.22 (g) “Custom-mix” means commercial fertilizer mixed on specific request of a
23 purchaser according to a formula furnished by him.24 (h) “Distribute” means to import, manufacture, produce, compound, mix,
25 blend, barter, sell, offer for sale, consign, furnish, provide, or otherwise supply
26 commercial fertilizer or soil conditioners as part of a commercial enterprise.27 (i) “Fertilizer material” means a commercial fertilizer containing a
28 recognized plant nutrient, which is used primarily for its plant nutrient content.29 (j) “Grade” means the percentage of total nitrogen (N), available phosphoric
30 acid (H_3PO_4), and soluble potash (K_2O) stated in whole numbers in the same terms,
31 order, and percentages as in the “guaranteed analysis”. In the case of any “specialty
32 fertilizer” or “mixed-to-order fertilizer” guarantees may be stated in decimal fractions
33 of whole numbers.

1 (k) "Guaranteed analysis" means the minimum percentage of plant nutrient
2 claimed as follows:

3 (1) Total nitrogen (N), available phosphoric acid (H_3PO_4), soluble
4 potash (K_2O);

5 (2) For unacidulated mineral phosphatic materials and basic slag,
6 both total and available phosphoric acid and the degree of fineness;

7 (3) For bone, tankage, and other organic phosphatic materials, total
8 phosphoric acid;

9 (4) Additional plant nutrients, when claimed, shall be expressed in
10 elemental form; and

11 (5) Potential basicity or acidity may be expressed in terms of calcium
12 carbonate equivalent in multiples of 100 pounds per ton.

13 (l) "Gypsum" means any product that consists chiefly of calcium sulfate
14 intended for use for agricultural purposes.

15 (m) "Label" means the display of all written, printed, or graphic matter on the
16 immediate container or a statement accompanying a commercial fertilizer or soil
17 conditioner.

18 (n) "Labeling" means all written, printed, or graphic matter on or
19 accompanying any commercial fertilizer or soil conditioner, or the contents of any
20 advertisement, brochure, poster or television or radio announcement used in
21 promoting the sale of a commercial fertilizer or soil conditioner.

22 (o) "Lot" means a definite quantity of commercial fertilizer or soil
23 conditioner, identified by name, grade, or code designation as certified by the
24 Secretary.

25 **(P) "LOW PHOSPHOROUS FERTILIZER" MEANS FERTILIZER:**

26 **(1) CONTAINING NOT MORE THAN 5% OF AVAILABLE**
27 **PHOSPHORIC ACID (H_3PO_4); AND**

28 **(2) THAT HAS AN APPLICATION RATE NOT TO EXCEED 0.25**
29 **POUND OF AVAILABLE PHOSPHORIC ACID (H_3PO_4)/1,000 SQUARE**
30 **FEET/APPLICATION AND 0.5 POUND OF AVAILABLE PHOSPHORIC ACID**
31 **(H_3PO_4)/1,000 SQUARE FEET/YEAR.**

32 [(p)] **(Q)** A commercial fertilizer or soil conditioner is "misbranded", if:

33 (1) Its labeling is false or misleading in any particular;

1 (2) It is distributed under the name of another product;

2 (3) It is not labeled as required in § 6–210 of this subtitle and in rules
3 and regulations prescribed under this subtitle;

4 (4) A fertilizer purports to be or is represented as a commercial
5 fertilizer or if it purports to contain or is represented as containing a fertilizer
6 material, unless the fertilizer material conforms to any definition of identity,
7 prescribed by departmental rules and regulations which give due regard to commonly
8 accepted definitions, such as those issued by the Association of American Plant Food
9 Control Officials, Inc.; or

10 (5) Any word, statement, or other information, required to appear on
11 the label or labeling, is not placed on it prominently and conspicuously as compared
12 with other words, statements, designs, or devices in the labeling, and it is not in terms
13 that render it likely to be read and understood by the ordinary individual under
14 customary conditions of purchase and use.

15 [(q)] (R) “Mixed fertilizer” means a commercial fertilizer containing any
16 combination, blend, or mixture of fertilizer materials designed for use or claimed to
17 have value in promoting plant growth.

18 [(r)] (S) “Mixed-to-order” means commercial fertilizer mixed on a specific
19 request of a purchaser according to a formula furnished by him.

20 [(s)] (T) “Official sample” means any sample of fertilizer or soil conditioner
21 taken and designated as “official” by the Secretary.

22 [(t)] (U) “Percent” or “percentage” means percentage by weight.

23 [(u)] (V) “Registrant” means any person who registers a commercial
24 fertilizer or soil conditioner pursuant to the provisions of this subtitle.

25 (W) **“RETAIL ESTABLISHMENT” HAS THE MEANING STATED IN § 5–401**
26 **OF THE ECONOMIC DEVELOPMENT ARTICLE.**

27 [(v)] (X) (1) “Soil conditioner” means any substance or mixture of
28 substances intended for sale, offered for sale, or sold for:

29 (i) Manurial, soil enriching, or soil corrective purposes;

30 (ii) Promoting or stimulating the growth of plants;

31 (iii) Increasing the productivity of plants;

32 (iv) Improving the quality of crops; or

1 (v) Producing any chemical or physical change in the soil,
2 except a commercial fertilizer, unmanipulated animal and vegetable manures,
3 agricultural liming material, and gypsum.

4 (2) "Soil conditioner" includes but is not limited to materials such as
5 compost, peat, vermiculite, or perlite, that are incorporated into the soil.

6 [(w)] (Y) "Specialty fertilizer" means a commercial fertilizer distributed
7 primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf
8 courses, municipal parks, cemeteries, greenhouses, and nurseries, and may include
9 commercial fertilizers used for any research or experimental purpose.

10 [(x)] (Z) "Ton" means a net weight of two thousand pounds avoirdupois.
11 6-210.

12 (a) Each brand and grade of commercial fertilizer distributed in the State
13 shall be accompanied by a legible label bearing the following information:

14 (1) The net weight;

15 (2) The brand and grade under which the commercial fertilizer is
16 distributed;

17 (3) The guaranteed analysis giving the minimum percentage of every
18 plant nutrient claimed to be contained in the fertilizer; and

19 (4) Name and address of manufacturer.

20 (b) If distributed in bulk, a written or printed statement of the information
21 required by subsection (a) of this section shall accompany delivery and be supplied to
22 the purchaser at the time of delivery.

23 (c) Any fertilizer mixed or blended according to a formula furnished by a
24 purchaser shall be marked plainly or tagged with the words "buyer's mixture", or
25 "mixed-to-order", or "custom-mix" together with a statement containing the following
26 information:

27 (1) Net weight;

28 (2) The guaranteed analysis giving the minimum percentage of every
29 plant nutrient claimed to be contained in the fertilizer; and

30 (3) Name and address of the manufacturer. In addition, the amounts
31 or kinds of materials used in the formulation may be shown.

1 (d) A specialty fertilizer shall be labeled to contain all information required
2 by subsection (a) of this section in a legible and conspicuous manner on at least one
3 side of the container. If it does not appear on the face or display side of the container,
4 it shall appear on the upper third of the side used.

5 (E) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
6 SUBSECTION, ON OR AFTER APRIL 1, 2011, A LAWN FERTILIZER WITH AN
7 AVAILABLE PHOSPHORIC ACID (H_3PO_4) CONTENT GREATER THAN 5%:

8 (I) MAY NOT BE LABELED FOR USE ON ESTABLISHED
9 LAWNS OR GRASS;

10 (II) MAY NOT BE LABELED WITH SPREADER SETTINGS; AND

11 (III) SHALL BE MARKED WITH THE WORDS "NOT FOR USE
12 ON ESTABLISHED LAWNS OR GRASS" IN AT LEAST A THREE-QUARTER
13 INCH FONT AND IN A LEGIBLE AND CONSPICUOUS MANNER ON THE FRONT SIDE
14 OF THE CONTAINER.

15 (2) THIS SUBSECTION DOES NOT APPLY TO SEED STARTER
16 FERTILIZER FOR USE ON NEWLY ESTABLISHED LAWNS OR TURF.

17 [(e)] (F) Each brand of soil conditioner distributed in the State shall be
18 accompanied by a legible label bearing the following information:

19 (1) Net weight or other measure prescribed as satisfactory by the
20 Secretary;

21 (2) The brand under which the soil conditioner is distributed;

22 (3) An accurate statement of composition and purpose; and

23 (4) Name and address of the registrant.

24 **6-222.**

25 (A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
26 SUBSECTION, ON OR AFTER APRIL 1, 2011, A PERSON MAY NOT SELL OR
27 DISTRIBUTE FOR USE OR SALE AT A RETAIL ESTABLISHMENT IN THE STATE ANY
28 FERTILIZER INTENDED FOR USE ON ESTABLISHED LAWNS OR GRASS UNLESS IT
29 IS LOW PHOSPHOROUS FERTILIZER.

30 (2) THIS SUBSECTION DOES NOT APPLY TO:

1 (I) A LANDSCAPING CONTRACTOR WHO IS LICENSED
2 UNDER TITLE 8 OF THE BUSINESS REGULATION ARTICLE; OR

3 (II) A SALESPERSON, EMPLOYEE, OR OTHER AGENT OF A
4 LANDSCAPING CONTRACTOR WHO IS LICENSED UNDER TITLE 8 OF THE
5 BUSINESS REGULATION ARTICLE.

6 (B) (1) ON OR BEFORE APRIL 1, 2011, A MANUFACTURER OF LAWN
7 FERTILIZER WHOSE PRODUCTS ARE SOLD IN THE STATE SHALL REDUCE BY 50%
8 FROM 2006 LEVELS THE AMOUNT OF AVAILABLE PHOSPHORIC ACID (H_3PO_4)
9 RESULTING FROM THE APPLICATION OF ITS LAWN CARE PRODUCTS WITHIN THE
10 STATE.

11 (2) THE AMOUNT OF AVAILABLE PHOSPHORIC ACID (H_3PO_4)
12 RESULTING FROM THE APPLICATION WITHIN THE STATE OF LAWN CARE
13 PRODUCTS SOLD OR DISTRIBUTED BY A MANUFACTURER MAY NOT EXCEED AN
14 AVERAGE OF 1.5% AVAILABLE PHOSPHORIC ACID (H_3PO_4) IF, PRIOR TO APRIL
15 1, 2010, THE MANUFACTURER DID NOT SELL OR DISTRIBUTE FERTILIZER IN THE
16 STATE INTENDED FOR USE ON ESTABLISHED LAWNS OR GRASS.

17 (3) BEGINNING IN 2011, A MANUFACTURER OF FERTILIZER
18 WHOSE PRODUCTS ARE SOLD IN THE STATE SHALL REPORT THE POUNDS OF
19 PHOSPHORUS IN ITS LAWN CARE PRODUCTS SOLD AT RETAIL LOCATIONS IN THE
20 STATE TO THE DEPARTMENT AT THE END OF EACH CALENDAR YEAR.

21 (C) THE DEPARTMENT MAY ADOPT REGULATIONS TO IMPLEMENT THIS
22 SECTION.

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 October 1, 2009.