

CHAPTER 278

(Senate Bill 553)

AN ACT concerning

Chesapeake Bay Phosphorous Reduction Act of 2009

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

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

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

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

Article – Agriculture

6–201.

- (a) In this subtitle the following words have the meanings indicated.
- (b) A commercial fertilizer is “adulterated” if:

(1) Any poisonous, deleterious, or nonnutritive ingredient is added in sufficient amount to render it injurious to the health of plants, humans, or animal life or injurious to the environment;

(2) A valuable constituent is omitted or abstracted wholly or partially from it or any less valuable substance is substituted for it; or

(3) Its composition or quality falls below or differs from that which it is purported or is represented to contain by its labeling.

(c) “Brand” means the term, design, trademark, or other specific designation under which a commercial fertilizer or soil conditioner is distributed in the State.

(d) “Bulk fertilizer” means any commercial fertilizer distributed in a nonpackaged form.

(e) “Buyer’s mixture” means commercial fertilizer mixed on specific request of a purchaser according to a formula furnished by him.

(f) “Commercial fertilizer” means any substance containing a recognized plant nutrient used for its plant nutrient content and designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manure, marl, lime, wood ashes, and gypsum.

(g) “Custom–mix” means commercial fertilizer mixed on specific request of a purchaser according to a formula furnished by him.

(h) “Distribute” means to import, manufacture, produce, compound, mix, blend, barter, sell, offer for sale, consign, furnish, provide, or otherwise supply commercial fertilizer or soil conditioners as part of a commercial enterprise.

(i) “Fertilizer material” means a commercial fertilizer containing a recognized plant nutrient, which is used primarily for its plant nutrient content.

(j) “Grade” means the percentage of total nitrogen (N), available phosphoric acid (H_3PO_4), and soluble potash (K_2O) stated in whole numbers in the same terms, order, and percentages as in the “guaranteed analysis”. In the case of any “specialty fertilizer” or “mixed–to–order fertilizer” guarantees may be stated in decimal fractions of whole numbers.

(k) “Guaranteed analysis” means the minimum percentage of plant nutrient claimed as follows:

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

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

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

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

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

(l) “Gypsum” means any product that consists chiefly of calcium sulfate intended for use for agricultural purposes.

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

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

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

(P) “LOW PHOSPHOROUS FERTILIZER” MEANS FERTILIZER:

(1) CONTAINING NOT MORE THAN 5% OF AVAILABLE PHOSPHORIC ACID (H₃PO₄); AND

(2) THAT HAS AN APPLICATION RATE NOT TO EXCEED 0.25 POUND OF AVAILABLE PHOSPHORIC ACID (H₃PO₄)/1,000 SQUARE FEET/APPLICATION AND 0.5 POUND OF AVAILABLE PHOSPHORIC ACID (H₃PO₄)/1,000 SQUARE FEET/YEAR.

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) Manurial, soil enriching, or soil corrective purposes;
- (ii) Promoting or stimulating the growth of plants;
- (iii) Increasing the productivity of plants;
- (iv) Improving the quality of crops; or

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

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

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

[(x)] (Z) “Ton” means a net weight of two thousand pounds avoirdupois.

6–210.

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

- (1) The net weight;
- (2) The brand and grade under which the commercial fertilizer is distributed;
- (3) The guaranteed analysis giving the minimum percentage of every plant nutrient claimed to be contained in the fertilizer; and
- (4) Name and address of manufacturer.

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

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

- (1) Net weight;
- (2) The guaranteed analysis giving the minimum percentage of every plant nutrient claimed to be contained in the fertilizer; and
- (3) Name and address of the manufacturer. In addition, the amounts or kinds of materials used in the formulation may be shown.

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

(E) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, ON OR AFTER APRIL 1, 2011, A LAWN FERTILIZER WITH AN AVAILABLE PHOSPHORIC ACID (H₃PO₄) CONTENT GREATER THAN 5%:

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

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

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

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

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

- (1) Net weight or other measure prescribed as satisfactory by the Secretary;
- (2) The brand under which the soil conditioner is distributed;
- (3) An accurate statement of composition and purpose; and
- (4) Name and address of the registrant.

6-222.

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

(2) THIS SUBSECTION DOES NOT APPLY TO:

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

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

(B) (1) ON OR BEFORE APRIL 1, 2011, A MANUFACTURER OF LAWN FERTILIZER WHOSE PRODUCTS ARE SOLD IN THE STATE SHALL REDUCE BY 50% FROM 2006 LEVELS THE AMOUNT OF AVAILABLE PHOSPHORIC ACID (H₃PO₄) RESULTING FROM THE APPLICATION OF ITS LAWN CARE PRODUCTS WITHIN THE STATE.

(2) THE AMOUNT OF AVAILABLE PHOSPHORIC ACID (H₃PO₄) RESULTING FROM THE APPLICATION WITHIN THE STATE OF LAWN CARE PRODUCTS SOLD OR DISTRIBUTED BY A MANUFACTURER MAY NOT EXCEED AN AVERAGE OF 1.5% AVAILABLE PHOSPHORIC ACID (H₃PO₄) IF, PRIOR TO APRIL 1, 2010, THE MANUFACTURER DID NOT SELL OR DISTRIBUTE FERTILIZER IN THE STATE INTENDED FOR USE ON ESTABLISHED LAWNS OR GRASS.

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

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

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

Approved by the Governor, May 7, 2009.