

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 908

By: Muegge of the Senate

and

Pope (Clay) of the House

COMMITTEE SUBSTITUTE

An Act relating to agriculture; designating milk as the state beverage; amending 2 O.S. 2001, Sections 8-77.1, 8-77.3, 8-77.5, 8-77.7, 8-80.7 and 8-85.5, which relate to the Oklahoma Agricultural Code; amending short title; modifying definitions relating to the Oklahoma Fertilizer Act; providing for fees and registration of commercial and special fertilizer; providing for length of registrations for both fertilizers; providing for termination of certain registration; specifying penalty; modifying certain fees and registration requirements; requiring certain semiannual reports; providing for and modifying contents; increasing certain fees; clarifying language; prohibiting certain disclosure of information; requiring maintenance of accurate records; requiring certain fee and requiring certain report for agricultural liming material; increasing fees for registration of soil amendment products; specifying certain penalties; repealing 2 O.S. 2001, Section 8-77.8, which relates to certain distribution reports for fertilizer and inspection fees and 2 O.S. 2001, Section 8-85.6, which relates to reports for certain soil amendment products; providing for noncodification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

Milk is hereby designated and adopted as the state beverage of the State of Oklahoma.

SECTION 2. AMENDATORY 2 O.S. 2001, Section 8-77.1, is amended to read as follows:

Section 8-77.1 A. Sections ~~105~~ 8-77.1 through ~~121~~ 8-77.18 of this subarticle shall be known and may be cited as the "Oklahoma Fertilizer Act".

B. The purpose of the Oklahoma Fertilizer Act is to provide assurances to the consumer that fertilizer products are properly identified, and that the quality represented by the manufacturer is accurate as well as for regulation of the storage, use, and application of fertilizer to protect the consumer and the environment.

SECTION 3. AMENDATORY 2 O.S. 2001, Section 8-77.3, is amended to read as follows:

Section 8-77.3 ~~When~~ As used in the Oklahoma Fertilizer Act:

1. "Brand" means a term, design, or trademark used in connection with one or several grades of fertilizer;
2. "Broker" means a person who negotiates sales and purchases between a manufacturer, distributor, final consumer, or retailer of ~~commercial~~ fertilizer;
3. "Bulk fertilizer" means fertilizer distributed in a ~~non-~~packaged nonpackaged form;
4. "Commercial fertilizer" means fertilizer sold in bulk quantities or packages greater than thirty (30) pounds;
5. "Custom blend" means a fertilizer formulated according to specifications furnished by the final consumer;
- ~~5.~~ 6. "Custom blender" means a person who mixes or commingles ~~commercial~~ fertilizer into a custom blend and who distributes the special blend. A custom blender shall not be required to register each grade of fertilizer formulated according to specifications which are furnished by the final consumer prior to mixing;
- ~~6.~~ 7. "Deficiency" means the amount of nutrient found by analysis less than that guaranteed, which may result from a lack of nutrient ingredients or from lack of uniformity;

~~7.~~ 8. "Distribute" means to import, consign, manufacture, blend, offer for sale, sell, barter, commercially apply, or supply fertilizer in this state;

~~8.~~ 9. "Distributor" means any person who distributes fertilizer;

~~9.~~ 10. "Fertilizer" means any substance containing one or more recognized plant nutrients which are used for its plant nutrient content and is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, and wood ashes;

~~10.~~ 11. "Fertilizer dealer" means any person operating a business that is engaged in the distribution or sale of ~~a commercial~~ fertilizer. The term "fertilizer dealer" shall not include an ultimate consumer who is engaged in the physical act of application of ~~a commercial fertilizer or a retail store selling only bagged registered commercial fertilizer~~;

~~11.~~ 12. "Grade" means the percentage of total nitrogen, available phosphate, and soluble potash stated in whole numbers. Specialty fertilizer may be guaranteed in fractional units of less than one percent of total nitrogen, available phosphate, and soluble potash. Fertilizer materials, bone meal, manures, and similar materials may be guaranteed in fractional units;

~~12.~~ 13. "Guaranteed analysis" means the minimum percentage of plant nutrients claimed in the following order and form:

Total Nitrogen (N)	_____ %
Available Phosphate (P2O5)	_____ %
Soluble Potash (K2O)	_____ %.

When any plant nutrients, substances, or compounds are guaranteed, they shall be subject to inspection and analysis;

~~13.~~ 14. "Guarantor" means the person responsible to the State Board of Agriculture for any claims or guarantees associated with the manufacture, distribution, and use of a ~~commercial~~ fertilizer;

~~14.~~ 15. "Investigational allowance" means an allowance for variations inherent in the taking, preparation, and analysis of an official sample of fertilizer;

~~15.~~ 16. "Label" means the display of all written, printed, or graphic matter, upon the immediate container, or a statement accompanying a fertilizer;

~~16.~~ 17. "Labeling" means all written, printed, or graphic matter, upon or accompanying any fertilizer, or advertisements, brochures, posters, or television and radio announcements used in promoting the sale of a fertilizer;

~~17.~~ 18. "Licensee" means the person receiving a license to distribute a fertilizer under the provisions of the Oklahoma Fertilizer Act;

~~18.~~ 19. "Manipulated manures" means substances composed primarily of animal excreta, plant remains, or mixtures of these substances which have been processed by natural or mechanical drying or composting and no other chemicals have been added;

~~19.~~ 20. "Mixed fertilizer" means a fertilizer containing any combination or mixture of fertilizer materials;

~~20.~~ 21. "Official sample" means any sample of fertilizer taken by an authorized agent of the Board;

~~21.~~ 22. "Percent" or "percentage" means the portion of each hundred units of weight;

~~22.~~ 23. "Primary nutrient" means total nitrogen, available phosphate, and soluble potash;

~~23.~~ 24. "Registrant" means the person registering fertilizer under the provisions of the Oklahoma Fertilizer Act;

~~24.~~ 25. "Specialty fertilizer" means a fertilizer ~~distributed for non-farm use~~ sold in packages of less than thirty (30) pounds;

~~25.~~ 26. "Ton" means a net weight of two thousand (2,000) pounds avoirdupois; ~~and~~

~~26.~~ 27. "Ultimate consumer" means a person who receives fertilizer for personal use. The term "ultimate consumer" shall not include a person distributing fertilizer for profit to the general public; and

28. "Unmanipulated manures" means substances composed primarily of excreta, plant remains, or mixtures of these substances which have not been processed in any manner.

SECTION 4. AMENDATORY 2 O.S. 2001, Section 8-77.5, is amended to read as follows:

Section 8-77.5 A. The annual license fee for persons operating a business engaged in the distribution or sale of ~~a commercial~~ fertilizer shall be Fifty Dollars (\$50.00) and expire on a date to be determined by the State Board of Agriculture.

B. Any person operating a business that is engaged in the distribution, or sale of ~~a commercial~~ fertilizer shall obtain a license from the Board for each business location. The provisions of this subsection shall not apply to the ultimate consumer engaged in the physical act of application of a ~~commercial~~ fertilizer ~~or to a retail store selling only bagged registered commercial fertilizer.~~

C. An application for license shall include:

1. The name and address of licensee; and

2. The name and address of each ~~distribution point~~ business location in the state.

The licensee shall inform the Board in writing of additional ~~distribution points~~ business locations established during the period of the license.

D. No person shall distribute in this state ~~a commercial or specialty~~ fertilizer until it is registered with the Board by the distributor whose name appears on the label. An application for each brand and product name of each grade of fertilizer shall be made on a form furnished by the Board. Upon the approval of an application by the Board, a copy of the registration shall be

furnished to the applicant. A distributor shall not be required to register any fertilizer which is already registered under the Oklahoma Fertilizer Act by another person, provided the label does not differ in any respect.

E. Registrations for commercial fertilizer products sold in bulk quantities or packages of greater than thirty (30) pounds shall be permanent unless cancelled by the registrant or by the Board.

~~E.~~ F. 1. Registrations for specialty fertilizer products sold in packages of less than thirty (30) pounds shall pay a one-hundred-dollar registration fee for each product.

2. Specialty fertilizer product registrations shall expire on June 30 of each year.

3. If the Board finds any specialty fertilizer products that have not been registered, a penalty of One Hundred Dollars (\$100.00) per product will be assessed. The penalty shall be added to the registration fee and payment shall be made within thirty (30) days after receipt of notice.

G. A custom blender shall not be required to register each grade of fertilizer formulated according to specifications which are furnished by the final consumer prior to mixing, but shall be required to be licensed and shall be the guarantor of that custom blend.

~~F.~~ H. An application for registration shall include the following:

1. The brand and grade;
2. The guaranteed analysis;
3. Name and address of the registrant; ~~and~~
4. Net weight for packaged fertilizer; and
5. Oklahoma fertilizer license number.

SECTION 5. AMENDATORY 2 O.S. 2001, Section 8-77.7, is amended to read as follows:

Section 8-77.7 A. ~~An~~ Each registrant distributing fertilizer in this state shall file with the State Board of Agriculture, not later than the last day of January and July of each year, a semiannual inspection fee report setting forth, under oath, the number of tons sold or distributed during the period and pay an inspection fee of sixty-five (\$0.65) cents per ton of which thirty cents (\$0.30) per ton shall be forwarded directly to a special Soil Fertility Research Account in the Plant and Soil Sciences Department of the Division of Agricultural Sciences and Natural Resources at Oklahoma State University for the sole purpose of conducting soil fertility research involving groundwater protection from plant food nutrients. Oklahoma State University shall present an annual report to the Agriculture Committees of the Legislature on the use of the special Soil Fertility Research Account Fund.

B. Each registrant distributing commercial fertilizer in this state shall file with the State Board of Agriculture not later than the last day of January, ~~April,~~ and July, ~~and October~~ of each year, a ~~quarterly statement~~ semiannual tonnage report stating under oath, ~~setting forth the:~~

1. The number of net tons of ~~commercial~~ fertilizer distributed during the preceding ~~three (3)~~ six (6) calendar months. ~~The inspection fee and tonnage report shall be due within thirty (30) days following the close of the filing period and upon return of the statement the licensee shall pay the inspection fee;~~

2. The amount in tons of each grade of fertilizer distributed during the preceding six (6) calendar months; and

3. Whether the fertilizer was distributed in bag, bulk, or liquid.

C. If no fertilizer was sold or distributed in this state for the ~~quarter~~ semiannual period, the registrant shall submit a statement reflecting that information and shall remit a minimum fee of ~~Five Dollars (\$5.00)~~ Ten Dollars (\$10.00). If the inspection fee

and tonnage report ~~is~~ are not filed and the payment of the inspection fee is not made within thirty (30) days after the end of the specified filing period, a collection fee of ten percent (10%) of the inspection fee due or a minimum ~~Five Dollars (\$5.00)~~, of Ten Dollars (\$10.00) shall be assessed and added to the amount due.

~~C.~~ D. Sales or exchanges between importers, manufacturers, distributors, registrants, or licensees are exempt.

~~D.~~ E. When more than one person is involved in the distribution of a fertilizer, the last person who has the fertilizer registered and who distributed the fertilizer to a nonregistrant dealer or consumer is responsible for reporting the tonnage and paying the inspection fee, unless the report and payment is made by a prior distributor or manufacturer of the fertilizer.

~~E.~~ F. If the Board finds any deficient inspection fees due as a result of an audit of the records of any person subject to the provisions of the Oklahoma Fertilizer Act, the Board shall assess a penalty fee of ten percent (10%) of the amount due, with a maximum not to exceed Two Thousand Dollars (\$2,000.00) or a minimum of One Hundred Dollars (\$100.00) whichever is greater. The audit penalty shall be added to the deficient inspection fees due and payment shall be made within thirty (30) days of notice of the deficiency.

G. No information furnished to the Board under this section shall be disclosed in a way which divulges proprietary information about the operation of any person.

H. Each registrant, distributor, or manufacturer shall keep accurate records of the tonnage of fertilizer distributed in this state.

SECTION 6. AMENDATORY 2 O.S. 2001, Section 8-80.7, is amended to read as follows:

Section 8-80.7 A. For the purpose of helping to defray the expenses of inspection, administering, and carrying out the provisions of the Oklahoma Agricultural Liming Materials Act, an

inspection fee of ten cents (\$0.10) per ton shall be paid to the State Board of Agriculture on all agricultural liming material sold or distributed for use within this state.

B. All agricultural liming material fees collected shall be deposited in the State Department of Agriculture Revolving Fund.

C. Manufacturers, importers, and other guarantors distributing agricultural liming materials in the state shall file with the Board not later than the last day of January and July of each year, a semiannual report on forms furnished by the Board setting forth, ~~by counties,~~ the number of net tons of agricultural liming material distributed in this state during the preceding six (6) calendar months. This report shall be accompanied by payment of the inspection fee. If no lime was sold or distributed in this state for the semiannual period, manufacturers shall submit a statement reflecting that information and shall remit a minimum fee of Five Dollars (\$5.00). The Board shall have authority to audit records of each person to determine the accuracy of these reports.

D. Any agricultural liming material on which the inspection fee has not been paid shall be subject to a stop-sale, removal order, or seizure.

E. The Board may publish and distribute semiannually or annually to each person, distributor, registrant, licensee, and other interested persons a report showing the tons of agricultural liming material sold in ~~each county of~~ Oklahoma. This report shall in no way divulge the operation of any registrant, distributor, or licensee.

SECTION 7. AMENDATORY 2 O.S. 2001, Section 8-85.5, is amended to read as follows:

Section 8-85.5 A. Each soil amendment product shall be registered with the State Board of Agriculture before it is distributed in this state. Application for registration shall be submitted to the Board, on a form prepared for that purpose, showing

the information required on the label, as provided in Section 8-85.4 of this title, except net weight of product.

B. The registration fee shall be ~~Twenty-five Dollars (\$25.00)~~ One Hundred Dollars (\$100.00) for each product.

C. All registrations shall expire on December 31 of the year for which the soil amendment product is registered.

D. The applicant shall submit with the application for registration a copy of the label and a copy of all advertisements, brochures, posters, and television and radio announcements to be used in promoting the sale of the soil amendment.

E. If the Board finds any soil amendment products that have not been registered, a penalty of One Hundred Dollars (\$100.00) per product shall be assessed. The penalty shall be added to the registration fee and payment shall be made within thirty (30) days after receipt of notice.

SECTION 8. REPEALER 2 O.S. 2001, Sections 8-77.8 and 8-85.6, are hereby repealed.

SECTION 9. This act shall become effective July 1, 2002.

SECTION 10. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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