ENGROSSED SENATE
BILL NO. 484

By: Lawler of the Senate

and

DeWitt of the House

An Act relating to agriculture; amending 2 O.S. 2001, Sections 8-77.1, as amended by Section 3, Chapter 383, O.S.L. 2002, 8-77.3, as last amended by Section 7, Chapter 242, O.S.L. 2003, and 8-77.5, as amended by Section 5, Chapter 383, O.S.L. 2002 (2 O.S. Supp. 2004, Sections 8-77.1, 8-77.3 and 8-77.5), which relate to the Oklahoma Fertilizer Act; preempting local regulation of fertilizer; modifying definition; eliminating certain exemption; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 2 O.S. 2001, Section 8-77.1, as amended by Section 3, Chapter 383, O.S.L. 2002 (2 O.S. Supp. 2004, Section 8-77.1), is amended to read as follows:

Section 8-77.1 A. Sections 8-77.1 through 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.

C. The Legislature hereby occupies and preempts the entire field of legislation in this state touching in any way the regulation and enforcement of the registration, labeling, sale, storage, transportation, distribution, notification of use, and use of fertilizer to the complete exclusion of any order, ordinance or

regulation by any municipality or other political subdivision of this state.

D. No political subdivision shall regulate the registration, packaging, labeling, sale, storage, distribution, use or application of fertilizer. No political subdivision shall adopt or continue in effect local orders, ordinances, or regulations in this field, except for those relating to taxation relating to registration, packaging, labeling, sale, storage, distribution, use or application of fertilizers. Local legislation in violation of this section is void and unenforceable.

SECTION 2. AMENDATORY 2 O.S. 2001, Section 8-77.3, as last amended by Section 7, Chapter 242, O.S.L. 2003 (2 O.S. Supp. 2004, Section 8-77.3), is amended to read as follows:

Section 8-77.3 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 fertilizer;

3. "Bulk fertilizer" means fertilizer distributed in a nonpackaged form;

4. "Commercial fertilizer" means fertilizer sold in bulk quantities or packages greater than thirty (30) pounds;

5. "Custom blend" means fertilizer formulated according to specifications furnished by the final consumer;

6. "Custom blender" means a person who mixes or commingles fertilizer into a custom blend and who distributes the special blend. A custom blender shall not be required to register each grade of fertilizer in the following circumstances:

a. the custom blend is formulated according to specifications furnished by the ultimate consumer prior to mixing, and

b. the custom blend is prepared by a lawn care or tree service company that mixes or commingles fertilizer and who applies the special blend for the ultimate consumer;

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;

8. "Distribute" means to import, consign, manufacture, blend, offer for sale, sell, barter, commercially apply, or supply fertilizer in this state including, but not limited to, the delivery of bagged, labeled and registered fertilizer to a nonregistrant that sells the fertilizer in this state;

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

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;

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

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 (1%) of total nitrogen, available phosphate, and soluble potash. Fertilizer materials, bone meal, manures, and similar materials may be guaranteed in fractional units;

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;

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 fertilizer;

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

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

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 fertilizer;

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

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;

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

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

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

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

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

25. "Specialty fertilizer" means fertilizer sold in packages of less than thirty (30) pounds;

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

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 3. AMENDATORY 2 O.S. 2001, Section 8-77.5, as amended by Section 5, Chapter 383, O.S.L. 2002 (2 O.S. Supp. 2004, 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 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 fertilizer~~ <u>All fertilizer dealers</u> 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 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 business location in the state.

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

D. No person, whose name appears on the label, shall distribute in this state fertilizer until it is registered with the Board by such person. 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 the Board.

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.

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;

4. Net weight for packaged fertilizer; and

5. Oklahoma fertilizer license number.

SECTION 4. This act shall become effective July 1, 2005.

SECTION 5. 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.

Passed the Senate the 23rd day of February, 2005.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2005.

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Presiding Officer of the House
of Representatives