

CS for SB 479

THE STATE SENATE  
Monday, February 28, 2005

Committee Substitute for  
Senate Bill No. 479

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 479 - By: LAWLER of the Senate and McMULLEN of the House.

[ agriculture - lien - effective date ]

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

SECTION 1. AMENDATORY 2 O.S. 2001, Section 8-85.3, is amended to read as follows:

Section 8-85.3 As used in the Soil Amendment Act:

1. "Active ingredient" or "soil amending ingredient" means:

a. the ingredient or ingredients ~~which~~ that affect the physical, chemical, or other characteristics of the soil and improve soil condition, or

b. any natural or synthetic substance when applied to plants or seeds that is intended to improve crop production, germination, growth, yield, product quality, reproduction, flavor or other desirable characteristics of plants;

2. "Adulterated" means and shall apply to any soil amendment if:

a. it contains any deleterious or harmful agent in sufficient amount to render it injurious to beneficial

1 plants, animals, or aquatic life when applied in  
2 accordance with the directions for use shown on the  
3 label; or if adequate warning statements and  
4 directions for use, necessary to protect plants,  
5 animals, or aquatic life are not shown on the label,  
6 b. its composition falls below purported labeling  
7 requirements, or  
8 c. it contains noxious weed seed;  
9 3. "Bulk" means in nonpackaged form;  
10 4. "Distribute" means to import, consign, manufacture, blend,  
11 offer for sale, sell, barter, or to supply soil amendments to any  
12 person in this state;  
13 5. "Distributor" means any person who imports, consigns,  
14 manufactures, blends, sells, offers for sale, barter or supplies  
15 soil amendments in this state;  
16 6. "Inert ingredient" or "other ingredient" means the  
17 ingredients with no beneficial effect that are present in the  
18 product;  
19 7. "Label" means the display of written, printed, or graphic  
20 matter upon the immediate container of a soil amendment;  
21 8. "Labeling" means all written, printed, or graphic matter  
22 upon or accompanying any soil amendment, and all advertisements,

1 brochures, posters, television, or radio announcements used in  
2 promoting the sale of a soil amendment;

3 9. "Manufacturer" means any person who produces, compounds,  
4 mixes, or blends soil amendments;

5 10. "Misbranded" means and shall apply if:

6 a. any soil amendment bears a label that is false or  
7 misleading in any particular,

8 b. any soil amendment is distributed under the name of  
9 another soil amendment,

10 c. any material is represented as a soil amendment or is  
11 represented as containing a soil amendment, unless the  
12 soil amendment conforms to the definition of identity,  
13 if any, prescribed by rules,

14 d. the ~~percentage~~ of active ingredient in any soil  
15 amendment is not shown in the approved ingredient  
16 form, or

17 e. the labeling on any soil amendment is false or  
18 misleading in any particular;

19 11. "Name" means the specific designation under which the  
20 individual product is offered for sale;

21 12. "Percent" or "percentage" means ~~by~~ the portion of each one  
22 hundred (100) units of weight;

1       13. "Registrant" means any person who registers a soil  
2 amendment under the provisions of the Soil Amendment Act; and

3       14. "Soil amendment" means any substance which is intended to  
4 improve the physical, chemical, or other characteristics of the  
5 soil, horticultural growing media, or any natural or synthetic  
6 substance applied to plants or seeds that is intended to ~~or~~ improve  
7 crop production, germination, growth, yield, product quality,  
8 reproduction, flavor or other desirable characteristics of plants  
9 except the following: commercial fertilizers, agricultural liming  
10 materials, agricultural gypsum, unmanipulated animal manures,  
11 unmanipulated vegetable manures, and pesticides; provided, that  
12 commercial fertilizer shall be included if it is represented to  
13 contain, as an active ingredient, a substance other than a  
14 recognized plant food element or is represented as promoting plant  
15 growth by other than supplying a recognized plant food element.

16       SECTION 2.       AMENDATORY       2 O.S. 2001, Section 8-85.4, is  
17 amended to read as follows:

18       Section 8-85.4 A. Each container of a soil amendment shall be  
19 labeled on the face or display side in a readable and conspicuous  
20 form to show the following information:

- 21       1. The net weight of the contents;
- 22       2. The name of the product;

1           3. The guaranteed analysis, ~~including the name and the~~  
2 ~~percentage of each active ingredient, and the percentage of inert~~  
3 ~~ingredients;~~

4           4. A statement as to the purpose of the product;

5           5. Adequate directions for use; and

6           6. The name and address of the registrant.

7           B. Bulk lots shall be labeled by attaching a copy of the label  
8 to the invoice that shall be furnished to the purchaser.

9           C. The State Board of Agriculture may require proof of claims  
10 made for any soil amendment. If no claims are made,    the Board may  
11 require proof of usefulness and value of the soil amendment. For  
12 evidence of proof the Board may rely on experimental data,  
13 evaluations, or advice supplied from sources including but not  
14 limited to the Director of the Agricultural Experiment Station. The  
15 experimental design shall be related to Oklahoma conditions for  
16 which the product is intended. The Board may accept or reject other  
17 sources of proof as additional evidence in evaluating soil  
18 amendments.

19           D. No soil amending ingredient may be listed or guaranteed on  
20 the labels or labeling of soil amendments without Board approval.

21           E. The Board may allow a soil amending ingredient to be listed  
22 or guaranteed on the label or labeling if satisfactory supportive  
23 data is provided the Board to substantiate the value and usefulness

1 of the soil amending ingredients. The Board may rely on outside  
2 sources including but not limited to the Director of the  
3 Agricultural Experiment Station for assistance in evaluating the  
4 data submitted.

5 F. ~~When~~ If the Board approves the listing of guarantee of a  
6 soil amending ingredient ~~is permitted to be listed or guaranteed,~~ it  
7 ~~must~~ shall be ~~determinable by laboratory methods and is~~ subject to  
8 inspection and analysis.

9 G. The Board may prescribe methods and procedures of inspection  
10 and analysis of the soil amending ingredient. The Board may  
11 stipulate, by rule, the quantities of the soil amending ingredient  
12 or soil amending ingredients required in soil amendments.

13 SECTION 3. AMENDATORY 2 O.S. 2001, Section 8-85.5, as  
14 amended by Section 8, Chapter 383, O.S.L. 2002 (2 O.S. Supp. 2004,  
15 Section 8-85.5), is amended to read as follows:

16 Section 8-85.5 A. Each soil amendment product shall be  
17 registered with the State Board of Agriculture before it is  
18 distributed in this state. Application for registration shall be  
19 submitted to the Board, on a form ~~prepared for that purpose,~~ showing  
20 the information required on the label, as provided in Section 8-85.4  
21 of this title and rules promulgated pursuant thereto, except net  
22 weight of product.

1 B. The registrant shall pay a registration fee ~~shall be One~~  
2 ~~Hundred Dollars (\$100.00) for each product~~ as established by the  
3 Board.

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

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

10 E. If the Board finds any soil amendment ~~products~~ product that  
11 ~~have~~ has not been registered, the registration was falsely  
12 submitted, or the registration was late, the Board may establish and  
13 assess a penalty of One Hundred Dollars (\$100.00) per product shall  
14 ~~be assessed.~~ The penalty shall be assessed per product and be added  
15 to the registration fee and payment shall be made within thirty (30)  
16 days after receipt of notice.

17 SECTION 4. AMENDATORY 2 O.S. 2001, Section 8-85.8, is  
18 amended to read as follows:

19 Section 8-85.8 It shall be a violation of the Soil Amendment  
20 Act for any person:

- 21 1. To distribute a soil amendment that is not registered with  
22 the State Board of Agriculture;
- 23 2. To distribute a soil amendment that is not labeled;

- 1        3. To distribute a soil amendment that is misbranded;
- 2        4. To distribute a soil amendment that is adulterated;
- 3        5. To fail to comply with a stop sale, stop use, or removal
- 4 order; or
- 5        6. To ~~fail to pay the inspection fee~~ violate any other
- 6 violation of the Soil Amendment Act.

7        SECTION 5.        AMENDATORY        2 O.S. 2001, Section 8-85.10, is

8 amended to read as follows:

9        Section 8-85.10 The State Board of Agriculture shall promulgate

10 rules necessary to administer the Soil Amendment Act, including but

11 not limited to methods of sampling, methods of analysis, designation

12 of ~~ingredient forms~~ ingredients, and promulgate definitions of

13 identity of products, acceptable ingredients for registration, and

14 labeling formats.

15        SECTION 6.        AMENDATORY        2 O.S. 2001, Section 9-24, is

16 amended to read as follows:

17        Section 9-24. A. Upon the suspension, ~~or~~ revocation, or

18 surrender of the state charter, federal license, or bond of a

19 warehouseman, the State Board of Agriculture may file a lien against

20 all assets of the warehouseman with the county clerk of any county

21 in which the warehouseman has property. The lien shall be a lien

22 upon all property of the warehouseman and shall, regardless of the

23 time of filing or perfection, have priority over all other claims

1 and liens of any person or entity upon such property including liens  
2 for taxes, and may be collected by any manner allowed by law  
3 including levy upon such property in the same manner as the levy of  
4 an execution. While the amount stated in the initial lien filing  
5 may be estimated by the Board, the ultimate amount of the lien shall  
6 be the aggregate of the following:

7 1. The amount incurred by the Board for the conduct of salvage  
8 operations respecting the warehouseman;

9 2. All amounts paid by the Board to claimants of the  
10 warehouseman from the Oklahoma Commodity Storage Indemnity Fund;

11 3. Accrued interest on paragraphs 1 and 2 of this subsection at  
12 the rate of ten percent (10%) per annum; and

13 4. Costs, if any.

14 B. The Board shall publish notice for two (2) consecutive weeks  
15 in a newspaper of general circulation in the area of the public  
16 warehouse when the warehouse charter is suspended, ~~or~~ revoked, or  
17 surrendered.

18 C. When the charter of a warehouseman is renewed after  
19 suspension, ~~or~~ revocation, or surrender, the Board shall publish  
20 notice for two (2) consecutive weeks in a newspaper of general  
21 circulation in the area of the public warehouse that the warehouse  
22 is in compliance with the Public Warehouse and Commodity Indemnity  
23 Act.

1 D. Upon suspension of the charter, the Board may seize all  
2 commodities under the control of the warehouseman, including  
3 commodities stored or forwarded to other locations. The Board, upon  
4 revocation or surrender of the charter, shall seize all commodity  
5 stocks of the warehouseman including any commodities stored or  
6 forwarded to other locations and sell the commodities. Funds  
7 generated by the sale of seized commodities shall be distributed in  
8 the following manner:

9 1. The Board shall receive an amount equal to the cost of  
10 salvage operations;

11 2. All remaining funds shall be proportioned among all  
12 producers storing commodities with the warehouseman. No person  
13 shall receive payment of funds greater than the fair market value of  
14 the commodity lost by the producer on the date of seizure;

15 3. Funds generated in excess of the payments required by the  
16 Public Warehouse and Commodity Indemnity Act shall be deposited in  
17 the Indemnity; and

18 4. The persons responsible for violations of the Public  
19 Warehouse and Commodity Indemnity Act resulting in a charter  
20 revocation or commodity seizure shall not be eligible to claim or  
21 recover proceeds from the sale or interest accrued on the proceeds  
22 from the sale of seized commodities unless approved by the Board.

1           E. A person storing commodities with a warehouseman not holding  
2 a valid charter or federal license is not eligible to file a claim  
3 or recover damages under the Public Warehouse and Commodity  
4 Indemnity Act.

5           F. 1. Upon revocation of the warehouse charter, the Board  
6 shall identify any loss to the depositors and obtain proof. The  
7 Board shall immediately notify any bonding company providing a bond  
8 for a loss. As soon as practicable, the Board shall communicate the  
9 amount of the loss, proof, and the date of loss and seizure to the  
10 bonding company. The bonding company shall within thirty (30)  
11 calendar days remit to the Board the amount of the loss or the face  
12 amount of the bond, whichever is less.

13           2. Failure by the bonding company to surrender the funds shall  
14 result in a nonrefundable penalty assessment payable to the Board of  
15 one percent (1%) per month plus interest of one percent (1%) per  
16 month of the face amount of the bond commencing with the date of  
17 loss and continuing until the surety funds are surrendered. The  
18 Board shall account for all the surety received until all depositor  
19 claims against the charter holder are paid as provided in the Public  
20 Warehouse and Commodity Indemnity Act. When all claims have been  
21 paid, all unexpended bond surety funds including accrued interest,  
22 except penalties, shall be returned to the bonding company.

1           3. The provisions of this section shall not prohibit the Board  
2 from pursuing any other remedy provided by law.

3           G. The Board shall establish a date of loss which shall be the  
4 same as the date of seizure for all claims of loss against a  
5 warehouseman. The Board shall publish the date of loss as set forth  
6 in subsection B of this section and shall notify by registered mail  
7 all depositors who may have a claim against a warehouseman of the  
8 date of loss and deadline for filing claims.

9           H. To be eligible to file a claim of loss and receive payment  
10 as provided in the Public Warehouse and Commodity Indemnity Act, a  
11 person shall establish ownership or title to commodities stored or  
12 warehoused with the warehouseman against whom the loss is alleged.  
13 Evidence of ownership or title shall include uncanceled warehouse  
14 receipts or scale tickets. The Board shall determine the  
15 sufficiency of evidence of ownership or title.

16           I. Depositors shall, within sixty (60) days of the order of the  
17 Board establishing the date of loss, file a written claim of loss  
18 with the Board. Depositors may submit a written request to the  
19 Board for a sixty-day extension of the filing period, if the  
20 depositors can show they were not provided notification and  
21 reasonable time to file the claim. If the claim of loss is not  
22 filed within the allotted time, the depositor shall forfeit all  
23 rights to remuneration or payment.

1           SECTION 7. This act shall become effective November 1, 2005.  
2   COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-16-05 - DO  
3   PASS, As Amended and Coauthored.