STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

SENATE BILL 479 By: Lawler

AS INTRODUCED

An Act relating to agriculture; amending 2 O.S. 2001, Sections 8-85.3, 8-85.4, 8-85.5, as amended by Section 8, Chapter 383, O.S.L. 2002, 8-85.8, 8-85.10, and 9-24 (2 O.S. Supp. 2004, Section 8-85.5), which relate to definitions, labeling, registration, violations, promulgation of rules, and suspension or revocation of charter; modifying and adding definitions; requiring certain soil amending ingredients to be subject to certain inspection and analysis; authorizing the Board to establish and assess certain penalties; clarifying language; authorizing the State Board of Agriculture to promulgate certain rules; stating parameters of certain lien on certain property of warehouseman; stating amount of lien; and providing an 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 plants, animals, or aquatic life when applied in accordance with the directions for use shown on the label; or if adequate warning statements and directions for use, necessary to protect plants, animals, or aquatic life are not shown on the label,

b. its composition falls below purported labeling requirements, or

c. it contains noxious weed seed;

3. "Bulk" means in nonpackaged form;

4. "Distribute" means to import, consign, manufacture, blend, offer for sale, sell, barter, or to supply soil amendments to any person in this state;

5. "Distributor" means any person who imports, consigns, manufactures, blends, sells, offers for sale, barters or supplies soil amendments in this state;

6. "Inert ingredient" or "other ingredient" means the ingredients with no beneficial effect that are present in the product;

7. "Label" means the display of written, printed, or graphic matter upon the immediate container of a soil amendment;

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

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

10. "Misbranded" means and shall apply if:

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

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

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

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

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

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

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

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

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

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

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

1. The net weight of the contents;

2. The name of the product;

3. The guaranteed analysis~~, including the name and the percentage of each active ingredient, and the percentage of inert ingredients~~ listed in order of decreasing volume, if they compromise at least three percent (3%) or more of the total volume of the product;

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

5. Adequate directions for use; and

6. The name and address of the registrant.

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

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

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

E. The Board may allow a soil amending ingredient to be listed or guaranteed on the label or labeling if satisfactory supportive data is provided the Board to substantiate the value and usefulness of the soil amending ingredients. The Board may rely on outside sources including but not limited to the Director of the

Agricultural Experiment Station for assistance in evaluating the data submitted.

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

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

SECTION 3. AMENDATORY 2 O.S. 2001, Section 8-85.5, as amended by Section 8, Chapter 383, O.S.L. 2002 (2 O.S. Supp. 2004, 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 and rules promulgated pursuant thereto, except net weight of product.

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

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~~ product that ~~have~~ has not been registered, the registration was falsely submitted, or the registration was late, the Board may establish and

assess a penalty ~~of One Hundred Dollars ($100.00) per product shall be assessed~~. The penalty shall be assessed per product and be added to the registration fee and payment shall be made within thirty (30) days after receipt of notice.

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

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

1. To distribute a soil amendment that is not registered with the State Board of Agriculture;

2. To distribute a soil amendment that is not labeled;

3. To distribute a soil amendment that is misbranded;

4. To distribute a soil amendment that is adulterated;

5. To fail to comply with a stop sale, stop use, or removal order; or

6. To ~~fail to pay the inspection fee~~ violate any other violation of the Soil Amendment Act.

SECTION 5. AMENDATORY 2 O.S. 2001, Section 8-85.10, is amended to read as follows:

Section 8-85.10 The State Board of Agriculture shall promulgate rules necessary to administer the Soil Amendment Act, including but not limited to methods of sampling, methods of analysis, designation of ~~ingredient forms~~ ingredients, and promulgate definitions of identity of products, acceptable ingredients for registration, and labeling formats.

SECTION 6. AMENDATORY 2 O.S. 2001, Section 9-24, is amended to read as follows:

Section 9-24. A. Upon the suspension, ~~or~~ revocation, or surrender of the state charter, federal license, or bond of a warehouseman, the State Board of Agriculture may file a lien against all assets of the warehouseman with the county clerk of any county in which the warehouseman has property. The lien shall be a lien

upon all property of the warehouseman and shall, regardless of the time of filing or perfection, have priority over all other claims and liens of any person or entity upon such property including liens for taxes, and may be collected by any manner allowed by law including levy upon such property in the same manner as the levy of an execution. While the amount stated in the initial lien filing may be estimated by the Board, the ultimate amount of the lien shall be the aggregate of the following:

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

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

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

4. Costs, if any.

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

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

D. Upon suspension of the charter, the Board may seize all commodities under the control of the warehouseman, including commodities stored or forwarded to other locations. The Board, upon revocation or surrender of the charter, shall seize all commodity stocks of the warehouseman including any commodities stored or forwarded to other locations and sell the commodities. Funds

generated by the sale of seized commodities shall be distributed in the following manner:

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

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

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

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

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

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

2. Failure by the bonding company to surrender the funds shall result in a nonrefundable penalty assessment payable to the Board of one percent (1%) per month plus interest of one percent (1%) per month of the face amount of the bond commencing with the date of

loss and continuing until the surety funds are surrendered. The Board shall account for all the surety received until all depositor claims against the charter holder are paid as provided in the Public Warehouse and Commodity Indemnity Act. When all claims have been paid, all unexpended bond surety funds including accrued interest, except penalties, shall be returned to the bonding company.

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

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

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

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

SECTION 7. This act shall become effective November 1, 2005.