

1969 Assembly Bill 637

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#### CHAPTER 460, LAWS OF 1969

AN ACT to repeal and recreate 94.64 of the statutes, relating to Wisconsin's fertilizer law.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

94.64 of the statutes is repealed and recreated to read:

94.64 FERTILIZER. (1) DEFINITIONS. As used in this section:

(a) "Fertilizer" means any substance, containing one or more recognized plant nutrients, which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, liming material, sewage sludge and wood ashes. The term includes fertilizer materials, mixed fertilizers, custom mixed fertilizers, specialty fertilizers and all other fertilizers or mixtures thereof, regardless of type or form.

(b) "Fertilizer material" means any substance containing nitrogen, phosphorus or potassium or any recognized plant nutrient, which is used as a fertilizer or for compounding mixed fertilizers.

(c) "Mixed fertilizer" means a fertilizer containing any combination or mixture of fertilizer materials designed for use or claimed to have value in promoting plant growth, including fertilizer-pesticide mixtures.

(d) "Custom mixed fertilizer" means a mixed fertilizer formulated according to individual specifications furnished by the consumer prior to mixing.

(e) "Specialty fertilizer" means any fertilizer distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, parks, cemeteries, greenhouses, nurseries, and may include fertilizers used for research or experimental purposes.

(f) "Bulk fertilizer" means fertilizer distributed in a nonpackaged form.

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(g) "Packaged fertilizer" means any type of fertilizer sold in closed containers.

(h) "Manufacture" means to process, granulate, compound, produce, mix, blend or alter the composition of fertilizer or fertilizer materials.

(i) "Distribute" means to import, consign, sell, offer for sale, solicit orders for sale, or otherwise supply fertilizer for sale or use in this state.

(j) "Guaranteed analysis" means the percentage of each plant nutrient guaranteed or claimed to be present.

(k) "Grade" means the percentage guarantee of total nitrogen, available phosphorus or available phosphoric acid, and soluble potassium or soluble potash stated in the same order as listed in this subparagraph.

(L) "Brand or product name" means a name term, design or trademark used in connection with one or more grades of fertilizer and which identifies the product as fertilizer.

(m) "Official sample" means a sample of fertilizer taken by a representative of the department in accordance with methods prescribed by department rules.

(n) "Ton" means a net ton of 2,000 pounds avoirdupois.

(o) "Per cent" and "percentage" mean the percentage by weight.

(p) "Label" means any written, printed or graphic matter on or attached to packaged fertilizer or which is used to identify fertilizer distributed in bulk or held in bulk storage.

(q) "Labeling" means all labels and other written, printed or graphic matter upon or accompanying fertilizer at any time, and includes advertising or sales literature.

(r) "Soil conditioner" means any substance or mixture, other than fertilizer as defined in par. (a), which is used or intended for use solely for the improvement of the physical nature of the soil and for which no claims are made for plant nutrient content. "Soil conditioner" does not include guaranteed plant nutrients, hormones, bacterial inoculents, and products used in directly influencing or controlling plant growth.

(2) LABELING. (a) Any packaged fertilizer, including packaged custom mixed fertilizer, distributed in this state shall have placed on or affixed to the package a label setting forth in clearly legible and conspicuous form the following information:

1. Name and address of the licensed manufacturer or distributor.
2. Brand or product name.
3. Grade.
4. Guaranteed analysis.
5. Net weight.

(b) Any fertilizer distributed in this state in bulk shall be accompanied by a written or printed invoice or statement to be furnished to purchaser at time of delivery containing in clearly legible and conspicuous form the following information:

1. Name and address of the licensed manufacturer or distributor.
2. Name and address of the purchaser.
3. Date of sale.
4. Brand or product name.
5. Grade.
6. Guaranteed analysis.
7. Net weight.

(c) In lieu of grade and guaranteed analysis, custom mixed fertilizer sold in bulk may be labeled to show the weight and grade of each ma-

terial in the mixture and total weight of the mixture. Grade shall be indicated if a grade is specified by the purchaser.

(d) All fertilizer in bulk storage shall be identified with a label attached to the storage bin or container giving the name or grade of the product.

(e) 1. Guaranteed analysis for the primary nutrients of nitrogen, phosphorus and potassium shall be expressed on the label in the following order and form:

Total Nitrogen (N) .....	—%
Available Phosphoric Acid (P <sub>2</sub> O <sub>5</sub> ) .....	—%
Soluble Potash (K <sub>2</sub> O) .....	—%

2. If elemental guarantees are required by department rule under sub. (9) (a), the guaranteed analysis shall be expressed in terms of percentage of available phosphorus and potassium.

3. Additional plant nutrients, besides nitrogen, phosphorus and potassium, claimed to be present in any form or manner shall be guaranteed on the elemental basis. Other beneficial substances or compounds, determinable by laboratory methods, may be guaranteed if approved by the department.

(3) FERTILIZER LICENSE. (a) No person shall manufacture or distribute fertilizer in this state without an annual license from the department, but no license shall be required of persons distributing only:

1. Fertilizer materials to manufacturers for further manufacturing;
2. Packaged fertilizer in the original container of a licensed manufacturer or distributor as packaged and labeled by him; and
3. Bulk fertilizer obtained for resale purposes from a licensee and labeled, as required under sub. (2) (b) 1, 4, 5 and 6, with label information furnished by him.

(b) Application for a fertilizer license shall be made on forms prescribed by the department and shall include a listing of business locations and mobile units used in the manufacture and distribution of fertilizer in this state and other information as the department requires. The application of a manufacturer shall be accompanied by a license fee of \$10 for each established business location where any manufacturing is done and for each mobile unit used for manufacturing or the mixing or blending of fertilizer in this state. The application of distributors not engaged in the manufacture or mixing or blending of fertilizer in this state and not otherwise exempt from a license under par. (a) shall be accompanied by a single license fee of \$10. Distributors engaged in the mixing or blending of fertilizer shall pay a license fee of \$10 for each business location where any mixing or blending is done and for each mobile unit used for the mixing or blending of fertilizer in this state. All licenses shall expire on June 30 of each year. No license shall be transferable and no credit or refund shall be granted for licenses issued or held for less than a full license year. No manufacturing plant or mobile unit shall be put into operation during the license year without payment of an additional fee of \$10 for each plant location or mobile unit.

(4) INSPECTION FEES. (a) An inspection fee of 10 cents per ton shall be paid to the department for all fertilizers sold or distributed in this state with a minimum fee of \$1 for 10 tons or less. This fee shall not be applicable to fertilizer materials or products sold to manufacturers or exchanged between them for manufacturing purposes or further processing.

(b) Payment of the inspection fee under par. (a) shall be made on the basis of semiannual tonnage reports setting forth the number of tons of fertilizer sold or distributed in this state. The reports shall cover the semiannual periods ending June 30 and December 31 of each year and shall

be filed with the department not later than 45 days after the close of each period. The time may be extended for cause an additional 30 days only on written request to the department. Remittance to cover the inspection fee at the rate prescribed in par. (a) shall accompany each tonnage report. Records upon which the statement of tonnage is based shall be subject to department audit.

(c) If more than one distributor is involved in the chain of distribution of fertilizer, the one who sells directly to the consumer or to a distributor exempted from a license under sub. (3) (a) is responsible for submitting the report and paying the inspection fee. Distributors exempt from a license shall not be responsible for the filing of tonnage reports or the payment of inspection fees for products purchased from a licensee.

(d) The license of any manufacturer or distributor who has failed to file reports or pay fees when due shall be subject to immediate suspension or revocation. Unpaid fees shall constitute a debt until paid. No license may be granted or renewed until the required reports are filed and the fees are paid. A penalty of 10% of the amount due, with a minimum penalty of \$10, shall be assessed against the licensee for all amounts not paid when due.

(e) Each licensee shall maintain, for a period of 2 years, a record of quantities and grades of fertilizer sold or distributed by him and shall make the records available for inspection and audit on request of the department.

(f) Tonnage equivalents shall be used for liquid fertilizer for payment of inspection fees and in statistical reports.

(5) STATISTICAL REPORTS. In addition to the filing of tonnage reports for inspection fees, each licensee shall furnish to the department a report of the tonnage of each grade of fertilizer sold in this state during the same reporting period, or from July 1 to December 31 and from January 1 to June 30 of each year. The statements shall be filed with the department within 45 days after the close of each period. Failure to file the reports when due shall be cause for immediate license revocation or denial of license renewal. The time may be extended for an additional 30 days for cause on written request to the department. No tonnage payments, tonnage reports or information furnished under this section shall be disclosed in such a way as to divulge the operations of any person.

(6) EXEMPTIONS. (a) Nothing in this section shall be construed as requiring the payment of inspection fees for sales or exchanges of fertilizers between manufacturers who mix fertilizer materials for sale or as preventing the free and unrestricted shipment of fertilizers for further processing to manufacturers licensed under this section.

(b) Soil conditioners are exempt from labeling, licensing, and inspection fee and tonnage report requirements under this section, but any labeling claims or representations made for such products shall be subject to regulation by department rule.

(c) This section does not apply to any carrier in respect to any fertilizer delivered or consigned to it by others for transportation in the ordinary course of its business as a carrier.

(7) PROHIBITIONS. It is unlawful for any person:

(a) To sell or distribute any fertilizer or soil conditioner in violation of the requirements of this section or rules issued thereunder.

(b) To make any guarantees, claims or representations in connection with the sale of fertilizer or soil conditioners or in their labeling which are false, deceptive or misleading.

(c) To manufacture or distribute any fertilizer without a license required by sub. (3).

(d) To make any false or misleading statement in an application for a license or in any inspection fee or statistical report, or in any other statement or report filed with the department.

(e) To sell any mixed fertilizer in which the sum of the guarantees for the nitrogen, available phosphoric acid and soluble potash totals less than 24%, except specialty fertilizers permitted to be sold by written order of the department.

(8) INSPECTION, SAMPLING AND ANALYSIS. (a) The department shall inspect, sample, and analyze fertilizers and soil conditioners distributed within the state at such time and place and to such extent as is necessary to determine compliance with this section.

(b) Department representatives and inspectors have authority to enter, at all reasonable times, any building, conveyance or premises used in the manufacture and distribution of fertilizers and soil conditioners in this state to determine compliance with this section and to stop any conveyance transporting fertilizer or soil conditioners for the purpose of inspecting and sampling the products and examining their labeling.

(c) Manufacturers or distributors of fertilizers and soil conditioners shall submit to the department on request, product samples, copies of labeling or any other data or information which the department requests concerning composition and claims and representations made for fertilizers and soil conditioners manufactured or distributed by them in this state.

(9) RULES. The department may, after public hearing, adopt reasonable rules:

(a) Requiring that the guaranteed analysis of phosphorus and potassium be expressed in the elemental form. If adopted, such rule shall not take effect prior to July 1, 1972, and shall provide for an additional period of at least 5 years during which both the oxide and the elemental guarantees for phosphorus and potassium may be given on the same label.

(b) Regulating the sale and labeling of fertilizer and soil conditioners, including warning or caution statements or directions for use in connection with the labeling of such products.

(c) Governing methods of sampling, testing, examining and analyzing fertilizer or soil conditioners.

(d) Prescribing tolerances for deficiencies found in percentages of plant nutrient guaranteed to be present.

(e) Prescribing the manner in which grade and guaranteed analysis shall be declared on the label.

(10) PUBLICATION. The department shall publish, at least annually, and in such form as it deems proper, information concerning the sales of fertilizers, together with other data on their production and use as it considers advisable, and a report of the results of the analyses based on official samples of fertilizers sold within the state compared with the analyses guaranteed on the product label. Information concerning the production and use of fertilizers shall be shown separately for the periods July 1 to December 31 and January 1 to June 30 of each year. No disclosure shall be made of the operations of any person.

(11) ENFORCEMENT. (a) *Stop sale orders.* The department may issue and enforce a written or printed stop sale order to the owner or custodian of any lot or container of fertilizer or soil conditioner distributed in violation of this section of rules issued thereunder. The order shall prohibit the sale or removal of the fertilizer or soil conditioner, except as authorized by the department, until it has been brought into compliance with the law or until a plan for disposition is agreed upon with the department in writing. The stop sale order shall have the effect of a special order under s. 93.18 and shall be subject to judicial review if, within 10 days

after service of the order a request for a hearing is made to the department.

(b) *Temporary holding orders.* A temporary holding order may be issued whenever the department has reason to believe any lot or container of fertilizer or soil conditioner may not be in compliance with the law pending further evaluation or laboratory examination and analysis. A temporary holding order shall be effective for no more than 15 days but may be extended for an additional 15-day period as may reasonably be necessary to complete sampling, analysis and evaluation of the fertilizer or soil conditioner and its labeling. The fertilizer or soil conditioner shall be released prior to the expiration of such temporary period if found to be in compliance with the law. If found to be in violation of the law, the temporary holding order shall be extended by notice, in writing, to the owner or custodian and a stop sale order issued prohibiting the further movement or disposition of the fertilizer or soil conditioner without consent of the department, subject to the right of hearing before the department is requested within 10 days after service of such notice and stop sale order.

(c) *Seizure, condemnation and sale.* Fertilizer or soil conditioner not in compliance with the provisions of this section shall be subject to seizure on complaint of the department to a court having jurisdiction. If the court finds that the product is in violation of this section and orders the seizure thereof, it shall be disposed of as the court directs. Disposition shall not be ordered by the court without first granting the owner or custodian, at his request, reasonable opportunity to reprocess or relabel the product under supervision of the department to bring it into compliance with this section.

(d) *Injunction.* Upon petition of the department any court having equity jurisdiction may grant a temporary or permanent injunction restraining any person from violating or continuing to violate this section or any rules thereunder notwithstanding the existence of other remedies at law.

(12) PENALTIES. (a) Any person who violates this section or any rule issued thereunder shall forfeit \$50 for the first violation and not less than \$200 nor more than \$500 for any subsequent violation. Any wilful violation shall constitute a misdemeanor and any person convicted thereof shall be fined not less than \$250 nor more than \$5,000 or imprisoned in the county jail not more than one year or both.

(b) It is the duty of each district attorney to whom any violation is reported to cause appropriate actions or proceedings to be instituted for the collection of forfeitures or enforcement of other remedies. In any enforcement action the court may, in addition to other penalties provided herein, order restitution to any party injured by the purchase of fertilizer sold in violation of the law.

Approved February 16, 1970.

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