

MAINE STATE LEGISLATURE

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N I N E T Y - N I N T H L E G I S L A T U R E

Legislative Document

No. 667

S. P. 254

In Senate, February 12, 1959

Referred to the Committee on Agriculture. Sent down for concurrence and ordered printed.

CHESTER T. WINSLOW, Secretary

Presented by Senator Hillman of Penobscot.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FIFTY-NINE

AN ACT to Create the Maine Fertilizer Law.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., c. 32, §§ 215-A to 215-J, additional. Chapter 32 of the Revised Statutes is amended by adding 10 new sections to be numbered 215-A to 215-J, to read as follows:

‘Maine Commercial Fertilizer Law.

Sec. 215-A. Title. Sections 215-A to 215-J shall be known as the “Maine Commercial Fertilizer Law”.

Sec. 215-B. Enforcing official. Sections 215-A to 215-J shall be administered by the Commissioner of Agriculture, hereinafter in sections 215-A to 215-J referred to as the “commissioner”.

Sec. 215-C. Definitions. When used in sections 215-A to 215-J:

I. The term “agricultural lime” means any substance that contains calcium or magnesium intended or sold for fertilizing purposes or for neutralizing soil acidity, and shall include gypsum if intended for agricultural use.

II. The term “brand” means a term, design or trade mark used in connection with one or several grades of commercial fertilizer.

III. The term “bulk fertilizers” means commercial fertilizer distributed in a non-packaged form.

IV. The term "commercial fertilizer" includes mixed fertilizer or fertilizer materials, or both.

V. The term "commissioner" means the Commissioner of Agriculture or his authorized agent.

VI. The term "distribute" means to offer for sale, sell, barter or otherwise supply commercial fertilizers. The term "distributor" means any person who distributes.

VII. The term "fertilizer material" means any substance containing nitrogen, phosphorus, potassium or any recognized plant nutrient element or compound which is used primarily for its plant nutrient content or for compounding mixed fertilizers except unmanipulated animal and vegetable manures.

VIII. The term "grade" means any commercial fertilizer having a specific and the same guarantee.

IX. "Guaranteed analysis":

A. Until July 1, 1960, and thereafter until the commissioner prescribes the alternative form of "guaranteed analysis" in accordance with paragraph

B, the term "guaranteed analysis" shall mean the minimum percentage of plant nutrients claimed in the following order and form;

- Total Nitrogen (N) per cent
- Available Phosphoric Acid (P₂O₅) per cent
- Soluble Potash (K₂O) per cent
- Magnesium (mg) per cent

B. At any time after July 1, 1960, that the commissioner finds, after public hearing following due notice, that the requirement for expressing the guaranteed analysis of phosphorus and potassium in the oxide form does impose an economic hardship on distributors and users of fertilizer by reason of conflicting labeling requirements among the states, he may require by regulation thereafter the "guaranteed analysis" shall be in the following form:

- Total Nitrogen (N) per cent
- Available Phosphorus (P) per cent
- Soluble Potassium (K) per cent

provided that the effective date of said regulation shall be not less than 6 months following the issuance thereof, and provided, further, that for a period of 2 years following the effective date of said regulation, the equivalent of phosphorus and potassium may also be shown in the form of phosphoric acid and potash. After the effective date of a regulation issued under this section, requiring that phosphorus and potassium be shown in the elemental form, the guaranteed analysis for nitrogen, phosphorus and potassium, or any other elements as permitted by the commissioner or regulations, shall constitute the grade.

C. The term "guaranteed analysis", whether in the form specified in paragraphs A or B, includes:

1. For unacidulated mineral phosphatic materials and basic slag, both total and available phosphorus or phosphoric acid and the degree of fineness. For bone, tankage and other organic phosphatic materials, total phosphorus or phosphoric acid.
2. Additional plant nutrients expressed as the elements, when permitted by the commissioner.
3. Potential basicity or acidity expressed in terms of calcium carbonate equivalent in multiples of 100 pounds per ton, when permitted by regulation.
4. For agricultural lime the minimum percentages of total calcium and total magnesium, and for gypsum the minimum percentage of calcium and sulfur.

X. The term "mixed fertilizers" means any combination or mixture of fertilizer materials designed for use or claimed to have value in promoting plant growth.

XI. The term "official sample" means any sample of commercial fertilizer taken by the commissioner.

XII. The term "per cent" or "percentage" means the percentage by weight.

XIII. The term "person" includes individual, partnership, association, firm and corporation.

XIV. The term "registrant" means the person who registers commercial fertilizer under sections 215-A to 215-J.

XV. The term "ton" means a net weight of 2,000 pounds avoirdupois.

XVI. Words importing the singular number may extend and be applied to several persons or things and words importing the plural number may include the singular.

Sec. 215-D. Registration. Each brand and grade of commercial fertilizer shall be registered before being offered for sale, sold or distributed in this State. The application for registration shall be submitted to the commissioner on form furnished by the commissioner and shall be accompanied by a fee of \$9 per plant food element guaranteed. Upon approval by the commissioner, a copy of the registration shall be furnished to the applicant. All registrations expire on December 31st of each year. The application shall include the following information:

- I. The net weight;
- II. The brand and grade;
- III. The guaranteed analysis;

IV. The name and address of the registrant.

The fees so collected by the commissioner shall be deposited with the Treasurer of State and appropriated for carrying out sections 215-A to 215-J, including the cost of inspection, sampling and analysis of commercial fertilizer. Such funds shall not lapse, but shall remain a continuing carrying account.

A distributor shall not be required to register any brand and grade of commercial fertilizer which is already registered under sections 215-A to 215-J by another person.

The plant nutrient content of each and every brand and grade of commercial fertilizer must remain uniform for the period of registration.

Sec. 215-E. Labeling. Any commercial fertilizer distributed in this State in containers shall have placed on or affixed to the container a label setting forth in clearly legible form the information required by section 215-D, subsections I to IV.

If distributed in bulk, a written or printed statement of the information required by section 215-D, subsections I to IV, shall accompany delivery and be supplied to the purchaser at time of delivery.

Sec. 215-F. Inspection, sampling and analysis. It shall be the duty of the commissioner to inspect and sample for analysis in accordance with section 208, commercial fertilizers distributed within this State at such time and place to such an extent as he may deem necessary to determine whether such commercial fertilizers are in compliance with sections 215-A to 215-J. The commissioner is authorized to enter upon any public or private premises during regular business hours in order to have access to commercial fertilizers subject to sections 215-A to 215-J and the rules and regulations pertaining thereto.

The methods of sampling, sample preparation and analysis shall be those adopted from sources such as the Journal of the Association of Official Agricultural Chemists. The commissioner, in determining for administrative purposes whether a commercial fertilizer is deficient in any component, shall be guided solely by the official sample as defined and obtained and analyzed as provided for in this section.

When the inspection and analysis of an official sample indicate a commercial fertilizer has been adulterated or misbranded, the results of analysis shall be forwarded by the commissioner to the distributor or manufacturer. Upon request within 30 days, the commissioner shall furnish to the registrant a portion of the sample concerned.

Sec. 215-G. Misbranding. No person shall distribute misbranded fertilizer. A commercial fertilizer shall be deemed to be misbranded:

I. If false or misleading statements concerning its agricultural value are made on the container or in any advertising matter accompanying or associated with the commercial fertilizer;

II. If it is distributed under the name of another fertilizer;

III. If its container is not labeled as required in section 215-E and in regulations prescribed under sections 215-A to 215-J;

IV. If any word, statement or other information required by or under authority of sections 215-A to 215-J to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs or devices in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

V. If it is a grade of commercial fertilizer which is not registered with the commissioner and the prescribed fee paid in accordance with sections 215-A to 215-J.

Sec. 215-H. Adulteration. No person shall distribute an adulterated commercial fertilizer. A commercial fertilizer shall be deemed to be adulterated:

I. If its weight, composition, quality, strength or purity do not conform in each particular to the claims made upon the affixed guaranty;

II. If it contains any material in sufficient amount to be deleterious to growing plants;

III. If it is found to contain any pulverized leather, hair, ground hoofs, horns, wool waste, peat, garbage tankage or any nitrogenous ingredients derived from any inert material whatsoever, unless the same has been so treated as to be available as plant food as determined by the methods adopted by the Association of Official Agricultural Chemists, without an explicit printed statement of fact, conspicuously affixed to the package of such fertilizer and accompanying and going with every lot or package of the same, in which fertilizer the above named materials aid in making up the required or guaranteed analysis.

Sec. 215-I, Regulations, standards and definitions. The commissioner is charged with the enforcement of sections 215-A to 215-J, and after due public hearing, is empowered to promulgate and adopt such reasonable rules and regulations as may be necessary to carry into effect the full intent and meaning of sections 215-A to 215-J. The commissioner is empowered to adopt regulations establishing definitions and standards for commercial fertilizer ingredients and such other regulations as may be necessary for the enforcement of any provisions of sections 215-A to 215-J.

I. "Withdrawal from sale" orders. When the commissioner has reasonable cause to believe a commercial fertilizer is being distributed in violation of any of the provisions of sections 215-A to 215-J, or of any of the prescribed regulations under sections 215-A to 215-J, he may issue and enforce a written or printed "withdrawal from sale" order warning the distributor not to dispose of the fertilizer in any manner until written permission is given by the commissioner or the court. The commissioner shall release the commercial fertilizer so withdrawn when the provisions and regulations have been complied

with and all costs and expenses incurred in the withdrawal have been paid. If compliance is not obtained within 30 days, the commissioner may begin proceedings for condemnation.

II. Condemnation and confiscation. Any lot of commercial fertilizer not in compliance with sections 215-A to 215-J, shall be subject to seizure on complaint of the commissioner to a court of competent jurisdiction in the area in which said commercial fertilizer is located. In the event the court finds the said commercial fertilizer to be in violation of the provisions of sections 215-A to 215-J, and orders the condemnation of said commercial fertilizer, it shall be disposed of in any manner consistent with the quality of the commercial fertilizer and the laws of the State. In no instance shall the disposition of said commercial fertilizer be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial fertilizer or for permission to process or relabel said commercial fertilizer to bring it into compliance with sections 215-A to 215-J.

Sec. 215-J. Penalties. Any person, firm, or corporation violating any of the provisions of sections 215-A to 215-J, or any rule or regulation duly promulgated thereunder, or neglecting or refusing to comply with the provisions thereof shall be punished by a fine of not more than \$100 for the first offense and not more than \$200 for each subsequent offense.

Nothing in sections 215-A to 215-J shall be construed as requiring the commissioner to report for prosecution or for the institution of seizure proceedings as a result of minor violations of the provisions of sections 215-A to 215-J, when he believes that the public interests will be best served by a suitable notice of warning in writing.'

Sec. 2. R. S., c. 32, § 4, amended. Section 4 of chapter 32 of the Revised Statutes, as amended by section 2 of chapter 331 of the public laws of 1957, is further amended to read as follows :

'**Sec. 4. Hearing in case of violation.** When the commissioner becomes cognizant of the violation of any provision of sections 3 to 9, 32 to 38, 142 to 145, 180 to 215, 215-A to 215-J, 216 to 236, 236-A to 236-K, 237 to 247, 256 to 272 and 274 to 285, he shall cause notice of such fact, stating the date, hour and place of hearing, with a copy of the findings or, in case of a packer of food, a copy of the charge to be preferred, to be given to the person concerned and the person from whom the sample was obtained, and the person whose name appears upon the label, if a resident of the State, who shall be given an opportunity to be heard under such rules and regulations as may be prescribed by the said commissioner. When the hearing relates to the packing of apples, it shall be held in the county where the inspection was made.'

Sec. 3. R. S., c. 32, § 181, amended. The 2nd paragraph of section 181 of chapter 32 of the Revised Statutes is repealed as follows :

'The term "commercial fertilizer" as used herein shall be held to include all materials used for fertilizing purposes except unprocessed animal manure.'

Sec. 4. R. S., c. 32, §§ 184, 185 and 186, repealed. Sections 184, 185 and 186 of chapter 32 of the Revised Statutes, as amended by sections 1 and 2 of chapter 77 of the public laws of 1955, are repealed.

Sec. 5. R. S., c. 32, § 188, repealed. Section 188 of chapter 32 of the Revised Statutes, as amended by section 5 of chapter 331 of the public laws of 1957, is repealed.

Sec. 6. R. S., c. 32, § 189, sub-§ I, repealed. Subsection I of section 189 of chapter 32 of the Revised Statutes, as renumbered by section 7 of chapter 331 of the public laws of 1957, is repealed.

Sec. 7. R. S., c. 32, § 190, sub-§ I, repealed. Subsection I of section 190 of chapter 32 of the Revised Statutes, as renumbered by section 9 of chapter 331 of the public laws of 1957, is repealed.

Sec. 8. R. S., c. 32, §§ 209, 210 and 211, repealed. Sections 209, 210 and 211 of chapter 32 of the Revised Statutes are repealed.

Sec. 9. R. S., c. 16, § 234, amended. The 2nd sentence of section 234 of chapter 16 of the Revised Statutes is amended to read as follows:

‘With the filing of said statement, each such person, firm or corporation shall pay to the State Tax Assessor a fee of ~~re~~ 4c a ton of 2,000 pounds for mixed fertilizer so sold.’

Sec. 10. R. S., c. 16, § 235, amended. Section 235 of chapter 16 of the Revised Statutes is amended to read as follows:

‘**Sec. 235. Disposition of fees.** The fees so collected by the State Tax Assessor shall be deposited with the Treasurer of State and appropriated for carrying out the provisions of ~~sections 184 and 186 of~~ chapter 32, **sections 215-A to 215-J**, including the cost of inspection, sampling and analysis of commercial fertilizer. Such funds shall not lapse but shall remain a continuing carrying account.’

Sec. 11. Effective Date. The provisions of this act shall become effective January 1, 1960.