

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 772

H. P. 585

House of Representatives, February 23, 1979

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

EDWIN H. PERT, Clerk

Presented by Mr. Austin of Bingham.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

**AN ACT To Regulate the Distribution, Labeling and Sale of Plant and Soil
Amendments.**

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

Sec. 1. 7 MRSA, c. 103, sub-c. V-B is enacted to read:

SUBCHAPTER V-B

PLANT AND SOIL AMENDMENTS

§ 775. Title

This Act shall be known as the “Maine Plant and Soil Amendment Act.”

§ 776. Definitions

As used in this subchapter, unless the context indicates otherwise, the following terms shall have the following meanings.

1. Brand. “Brand” means the term, designation, trademark, product name or other specific designation under which individual plant or soil amendments are offered for sale.

2. Bulk. “Bulk” means in nonpackaged form.

3. Commissioner. “Commissioner” means the Commissioner of Agriculture or his authorized agent.

4. **Distribute.** "Distribute" means to import, consign, manufacture, produce, compound, mix or blend plant or soil amendments, or offer for sale, sell, barter or otherwise supply plant or soil amendments in this State.

5. **Distributor.** "Distributor" means any person who imports, consigns, manufactures, produces, compounds, mixes or blends plant or soil amendments, or who offers for sale, sells, barter or otherwise supplies plant or soil amendments in this State.

6. **Investigational allowance.** "Investigational allowance" means an allowance for variations inherent in the taking, preparation and analysis of an official sample or plant or soil amendment.

7. **Label.** "Label" means the display of all written, printed or graphic matter upon the immediate container or statement accompanying a plant or soil amendment.

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

9. **Minimum percentage.** "Minimum percentage" means that percent of plant or soil amending ingredient that shall be present in a product before the product will be accepted for registration when mentioned in any form or manner.

10. **Official sample.** "Official sample" means any sample of plant or soil amendment taken by the commissioner or his agent and designated as "Official" by the commissioner.

11. **Other ingredients.** "Other ingredients" means the nonplant or soil amending ingredients present in plant or soil amendments.

12. **Percent or percentage.** "Percent" or "percentage" means by weight.

13. **Person.** "Person" means individual, partnership, association, firm or corporation.

14. **Plant amendment.** "Plant amendment" means any substance applied to plants or seeds which is intended to improve germination, growth, yield, product quality, reproduction, flavor or other desirable characteristics of plants, except commercial fertilizers, soil amendments, agricultural liming materials, animal and vegetable manures, pesticides, plant regulators and other materials which may be exempted by regulation.

15. **Registrant.** "Registrant" means the person who registers plant or soil amendments under the provisions of this subchapter.

16. **Soil amendment.** "Soil amendment" means any substance which is intended to improve the chemical, biological or physical characteristics of the soil, except commercial fertilizers, agricultural liming materials, unmanipulated

animal manures, unmanipulated vegetable manures, pesticides and other material exempted by regulation.

17. Soil ingredient form. "Soil ingredient form" means the chemical compound such as salt, chelate, oxide, acid, etc., of an ingredient or the physical form of an ingredient.

18. Soil amending ingredient. "Soil amending ingredient" means a substance which will improve the physical characteristics of the soil.

19. Ton. "Ton" means a net weight of 2,000 pounds avoirdupois.

20. Weight. "Weight" means the weight of material as offered for sale.

§ 777. Labeling

The following information shall appear on the face or display side of the container in a readable and conspicuous form and shall be considered the label. If distributed in bulk, a written or printed statement of the required information shall accompany delivery and be supplied to the purchaser at time of delivery:

1. Net weight. Net weight;
2. Brand name. Brand name;
3. Guaranteed analysis. Guaranteed analysis;
 - A. Name and percentage of amending ingredient;
4. Total percent of other ingredients. Total percent of other ingredients;
5. Purpose of product. Purpose of product;
6. Direction for application. Direction for application; and
7. Name and address of the registrant. Name and address of the registrant.

No information or statement shall appear on any package, label, delivery slip or advertising matter which is false or misleading to the purchaser as to the use, value, quality, analysis, type or composition of the plant or soil amendment.

The commissioner may require proof of claims made for any plant or soil amendment. If no claims are made he may require proof of usefulness and value of the plant or soil amendment. For evidence of proof the commissioner may rely on experimental data, evaluations or advice supplied from such sources as the Director of the Maine Agricultural Experiment Station. The experimental design shall be related to Maine conditions for which the product is intended. The commissioner may accept or reject other sources of proof as additional evidence in evaluating soil amendments.

No plant or soil amending ingredient shall be listed or guaranteed on the labels or labeling of plant or soil amendments without the permission of the commissioner. He may allow a plant or soil amending ingredient to be listed or guaranteed on the label or labeling if satisfactory supportive data is provided the

commissioner to substantiate the value and usefulness of the plant or soil amending ingredients. The commissioner may rely on outside sources such as the Director of the Maine Agricultural Experiment Station for assistance in evaluating the data submitted. When a plant or soil amending ingredient is permitted to be listed or guaranteed it shall be determinable by laboratory methods and is subject to inspection and analysis. The commissioner shall prescribe methods and procedures of inspection and analysis of the plant or soil amending ingredient. He shall stipulate, by regulation, the quantities of the plant or soil amending ingredient required in plant or soil amendments.

The commissioner may allow labeling by volume rather than weight in packaging of plant or soil amendments.

§ 778. Registration

Each separately identified product shall be registered before being distributed in this State. The application for registration shall be submitted to the commissioner on the form furnished or approved by him and shall be accompanied by a fee of \$25 per product. 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. Each manufacturer shall submit to the commissioner a copy of labels and advertising literature with the registration request for each soil amendment.

A distributor shall not be required to register any brand of plant or soil amendment which is already registered under this subchapter by another person, providing the label does not differ in any respect.

Before registering any plant or soil amendment the commissioner may require evidence to substantiate the claims made for the plant or soil amendment and proof of the value and usefulness of the plant or soil amendment as provided in this subchapter.

The commissioner may by regulation set the minimum amount of a plant or soil amending ingredient that shall be present before a plant or soil amendment can be registered and sold.

The fees so collected by the commissioner shall be deposited with the Treasurer of State and appropriated for carrying out this subchapter, including the cost of inspection, sampling and analysis. These funds shall not lapse, but shall remain a continuing carrying account.

§ 779. Tonnage reporting

Every person who distributes a plant or soil amendment in the State shall file with the commissioner on or before September 1st in each year, on forms supplied by him, the number of tons of each plant or soil amendment sold during the 12 months preceding July 1st of the current year.

When more than one distributor is involved in the distribution of a plant or soil amendment product, the last registrant who distributes to a nonregistrant, dealer or consumer is responsible for reporting the tonnage.

§ 780. Inspection; sampling; analysis

It is the duty of the commissioner, who may act through his authorized agent, to sample, inspect, make analyses of, and test plant and soil amendments distributed within the State at any time and place and to such an extent as he may deem necessary to determine whether the plant or soil amendments are in compliance with this subchapter. The commissioner, individually or through his agent, is authorized to enter upon any public or private premises or carriers during regular business hours in order to have access to plant or soil amendments subject to this subchapter and the rules and regulations pertaining thereto, and to the records relating to their distribution.

The methods of analysis and sampling shall be those adopted by the commissioner from sources such as the Association of Official Analytical Chemists, or other sources acceptable to the commissioner.

The results of official analyses of plant or soil amendments and portions of official samples shall be distributed by the commissioner as provided in the regulations.

§ 781. Penalties for deficient analysis

If the analysis shall show that any plant or soil amendment falls short of the guaranteed analysis in any one plant or soil amending ingredient or total plant or soil amending ingredients, disposition of deficient products shall be made in accordance with regulations.

For the purpose of determining commercial values to be applied under this section, the commissioner shall determine from the registrant's sales invoice the values charged for the plant or soil amendments. If no invoice is available or if the invoice fails to provide sufficient information the commissioner may use other methods to determine values.

§ 782. Misbranding

No person shall distribute a misbranded plant or soil amendment. A plant or soil amendment shall be deemed to be misbranded if:

1. False labeling. Its labeling is false or misleading in any particular;
2. Distributed under the name of another plant. If it is distributed under the name of another plant or soil amendment;
3. Not labeled. If it is not labeled as required in this subchapter and in accordance with regulations prescribed thereunder;
4. Representation as a plant or soil amendment. If it purports to be or is represented as a plant or soil amendment or represented as containing a plant or

soil amendment unless the plant or soil amendment conforms to the definitions of identity, if any, prescribed by regulation of the commissioner; in the adopting of these regulations, the commissioner shall give due regard to commonly accepted definitions and official terms such as those issued by the Association of American Plant Food Control Officials; or

5. Nonconformance. If it does not conform to ingredient form, minimums, labeling and investigational allowances in the regulations adopted by the commissioner.

§ 783. Stop sale

The commissioner may issue and enforce a written or printed "stop sale, use or removal" order to the owner or custodian of any lot of plant or soil amendment and to hold at a designated place when the commissioner finds the plant or soil amendment is being offered or exposed for sale in violation of any of the provisions of this subchapter until the law has been complied with and the soil amendment is released in writing by the commissioner, or the violation has been otherwise legally disposed of by written authority. The commissioner shall release the plant or soil amendment so withdrawn when the requirements of this subchapter have been complied with and all costs and expenses incurred in connection with the withdrawn have been paid. The issuance of such an order shall not be considered licensing or an adjudicatory proceeding, as defined by Title 5, chapter 375.

§ 784. Forfeiture for violations

Any person who violates any provision of this subchapter or the rules and regulations promulgated thereunder commits a civil violation for which a forfeiture of not less than \$100 nor more than \$200 may be adjudged. Nothing in this subchapter shall be construed as requiring the commissioner or his authorized agent to report for suit or for the institution of seizure proceedings as a result of minor violations of this subchapter when he believes that the public interest will best be served by a suitable written warning.

The commissioner is hereby authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this subchapter or any rule or regulation promulgated thereunder, notwithstanding the existence of other remedies at law. The injunction is to be issued without bond.

§ 785. Rules and regulations

The commissioner is authorized pursuant to due publication and notice and in a manner consistent with Title 5, chapter 375, to adopt and enforce such rules and regulations relating to sampling, analytical methods, form, minimum percentages, plant and soil amending ingredients, exempted materials, investigational allowances, definitions, records, labels, labeling, liability bond, misbranding, mislabeling and the distribution of plant or soil amendments as may be necessary to carry into effect the full intent and meaning of this subchapter.

§ 786. Adulteration

No person shall distribute an adulterated plant or soil amendment. A plant or soil amendment shall be deemed to be adulterated if:

1. Deleterious or harmful agent. It contains any deleterious or harmful agent in sufficient amount to render it injurious to beneficial plant, animal or aquatic life when applied in accordance with directions for use on the label, or if adequate warning statements and directions for use, which may be necessary to protect plant, animal or aquatic life are not shown upon the label;

2. Inferior composition. If its composition falls below or differs from that which it is purported to possess by its labeling; or

3. Unwanted crop or weed seed. If it contains unwanted crop or weed seed or primary noxious or secondary noxious weed seed.

§ 787. Cancellation or refusal of registration

Consistent with Title 5, chapter 375, the commissioner is authorized and empowered to refuse registration of any brand of plant or soil amendment if he finds the brand of plant or soil amendment violates any section of this subchapter or the rules and regulations promulgated thereunder, and to cancel the registration of any brand of plant or soil amendment upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in the evasions or attempted evasions of this subchapter, or any rules or regulations promulgated thereunder.

Sec. 2. Effective date. This Act shall become effective January 1, 1980.

STATEMENT OF FACT

This bill is designed to regulate products claimed or intended to improve chemical or physical characteristics of the soil and to improve seed germination, growth, yield or other desirable characteristics of plants except commercial fertilizers, pesticides and other materials covered by specific laws or exempt by regulations.