

MAINE STATE LEGISLATURE

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ONE HUNDRED AND NINTH LEGISLATURE

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No. 1643

H. P. 1441

House of Representatives, May 30, 1979.

Reported by Mr. Rollins from the Committee on Agriculture. Printed under
Joint Rules No. 2.

EDWIN H. PERT, Clerk

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

MAINE PLANT AND SOIL AMENDMENT ACT

§ 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 name. "Brand name" means the term, designation, trademark, product name or other specific designation under which individual plant or soil amendments are distributed.

2. Bulk. "Bulk" means in nonpackaged form.

3. Commissioner. "Commissioner" means the Commissioner of Agriculture.

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 distributes.

6. **Ingredient form.** “Ingredient form” means the chemical compound such as salt, chelate, oxide, acid, etc., of an ingredient or the physical form of an ingredient.

7. **Investigational allowance.** “Investigational allowance” means an allowance for variations inherent in the taking, preparation, analysis or testing of an official sample of a plant or soil amendment.

8. **Label.** “Label” means any written, printed or graphic matter upon the immediate container or accompanying a plant or soil amendment.

9. **Labeling.** “Labeling” means any 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.

10. **Net weight.** “Net weight” means the weight of amending ingredients plus other ingredients as offered for sale, exclusive of the weight of any package or container.

11. **Official sample.** “Official sample” means any sample of plant or soil amendment taken by the commissioner and designated as “Official” by the commissioner.

12. **Other ingredients.** “Other ingredients” means any ingredients present in plant or soil amendments which are not plant-amending ingredients or soil-amending ingredients, respectively.

13. **Percent or percentage.** “Percent” or “percentage” means percent or percentage by weight.

14. **Person.** “Person” means individual, partnership, association, firm or corporation.

15. **Plant-amending ingredients.** “Plant-amending ingredients” 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 like materials, which may be exempted by rule.

16. **Plant amendment.** “Plant amendment” means any product distributed consisting of a plant amending-ingredient and other ingredients.

17. **Registrant.** “Registrant” means the person who registers plant or soil amendments under the provisions of this subchapter.

18. **Soil-amending ingredient.** "Soil-amending ingredient" means any substance which is intended to improve the chemical, biological or physical characteristics of the soil, except commercial fertilizers, plant-amending ingredients, agricultural liming materials, unmanipulated animal and vegetable manures, pesticides and other like material, exempted by rule.

19. **Soil amendment.** "Soil amendment" means any product distributed consisting of a soil-amending ingredient and other ingredients.

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

§ 777. Labeling

The following information shall appear on the face or display side of the container of any plant amendment or soil amendment offered for sale. It shall be 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.** The name of each amending ingredient and the amount of each expressed in terms commonly applied to the ingredients, and the total percent of other ingredients;
4. **Purpose of product.** Purpose of produce;
5. **Direction for application.** Direction for application; and
6. **Name and address of the registrant.** Name and address of the registrant.

No information shall appear on any package, label, delivery slip or advertising matter which is false or misleading.

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

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

§ 778. Registration

Each separately identified plant or soil amendment product shall be registered by the distributor before being distributed in this State. The application for registration shall be submitted to the commissioner on the form approved by him and shall be accompanied by a fee of \$25 per product. Upon approval by the

commissioner a copy of the approved registration shall be furnished to the applicant. All registrations shall expire on December 31st of each year. A registrant 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 and advertising literature do not differ in any respect.

Any material intended for use in promoting any plant or soil amendment which is developed subsequent to application for acquisition shall be submitted to the commission for approval prior to use. The material shall not be so used without the approval of the commissioner.

The commissioner may by rule set the minimum percentage of a plant or soil-amending ingredient that shall be present before a plant or soil amendment can be registered.

The fees shall be deposited with the Treasurer of State and are appropriated for carrying out this subchapter. These funds shall not lapse.

§ 779. Tonnage reporting

Every person who distributes a plant or soil amendment 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 in the State 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 is responsible for reporting the tonnage.

§ 780. Inspection; sampling; analysis; testing

The commissioner shall sample, inspect, analyze and test plant and soil amendment distributed within the State as he may deem necessary to determine whether the plant or soil amendments are in compliance with this subchapter. The commissioner may 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 to the records relating to their distribution.

The methods of analysis, testing 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 or tests shall be distributed by the commissioner as provided by rule.

§ 781. Disposition of misbranded or adulterated amendments

If the analyses or tests show that any plant or soil amendments are misbranded or adulterated, disposition of the amendment shall be in accordance with rules.

The commissioner may adopt rules establishing tolerable deficiencies for guaranteed analyses. He may also establish a schedule of assessments for exceeding the tolerable deficiencies. The assessments shall be against the registrant of a soil or plant amendment. The assessments shall bear a reasonable relationship to the commercial value of the deficiency.

Nothing contained in this section shall prevent any person from appealing to a court of competent jurisdiction for a judgment as to the justification of the assessments imposed.

The assessments shall in no manner be construed as limiting the consumer's right to bring a civil action in damage against the registrant paying the assessment.

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 amending ingredients. If no invoice is available or if the invoice fails to provide sufficient information, the commissioner may use other methods to determine values. The values so determined shall be used in determining and levying assessments.

The assessment shall in no manner be construed as limiting the department's right to bring a civil action for a penalty against the registrant.

The assessments and penalties received shall be deposited with the Treasurer of State and are appropriated for carrying out this subchapter. These funds shall not lapse.

§ 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. Not labeled. If it is not labeled as required in this subchapter; or
3. Nonconformance. If it does not conform to ingredient form or investigational allowances in the rules adopted by the commissioner.

§ 783. Stop sale

The commissioner may issue and enforce a written order to the owner or custodian of any plant or soil amendment to stop sale, use or removal, when the commissioner finds the plant or soil amendment is being offered for sale in violation of any of the provisions of this subchapter, until the subchapter has been complied with and the soil amendment is released in writing by the commissioner, or the violation has been otherwise legally disposed of. The issuance of the order shall not be considered licensing or an adjudicatory proceeding, as defined by the Maine Administrative Procedure Act, Title 5, chapter 375.

§ 784. Forfeiture for violations

Any person who violates any provision of this subchapter commits a civil violation for which a forfeiture of not less than \$200 shall be adjudged. Nothing in this subchapter shall be construed as requiring the commissioner to sue or to issue an order 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. In such a case the commissioner shall issue a written warning.

The commissioner may apply for a temporary or permanent injunction restraining any person from violating or continuing to violate this subchapter, notwithstanding the existence of other remedies at law. The injunction shall be issued without bond being required of the State.

§ 785. Rules and regulations

The commissioner is authorized pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, to adopt and enforce such rules as may be necessary for 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 the Maine Administrative Procedure Act, Title 5, chapter 375, the commissioner may refuse registration of any brand of plant or soil amendment if he finds the brand of plant or soil amendment violates this subchapter, and may investigate whether the registration of any plant or soil amendment should be cancelled, in which case he may apply to the Administrative Court for cancellation.

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

STATEMENT OF FACT

This new draft establishes regulation of products claimed or intended to improve chemical or physical characteristics of the soil or to improve seed germination, growth, yield or other desirable characteristics of plants. Excluded from this new draft's regulation are commercial fertilizers, agricultural liming materials, plant regulators, pesticides and other materials covered by specific laws or exempt by rule.