

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 550

Short Title: Fertilizer Law Amendments.

(Public)

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Sponsors: Senators Albertson; and Parnell.

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Referred to: Agriculture, Marine Resources, and Wildlife.

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March 24, 1993

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA COMMERCIAL FERTILIZER  
LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-666 reads as rewritten:

"§ 106-666. 'Stop sale,' etc., orders.

(a) ~~It shall be the duty of the Commissioner to~~ When the Commissioner finds  
that a lot of commercial fertilizer is being offered or exposed for sale in violation of any  
of the provisions of this Article, the Commissioner shall issue and enforce a written or  
printed 'stop sale, use, or removal' order to the owner or custodian of any lot of  
commercial fertilizer and ~~to hold~~ shall cause the fertilizer to be held at a designated  
place ~~when the Commissioner finds said commercial fertilizer is being offered or~~  
~~exposed for sale in violation of any of the provisions of this Article~~ until (i) the law has  
been complied with and ~~said~~ the commercial fertilizer is released in writing by the  
Commissioner or ~~said~~ (ii) the violation has been otherwise legally disposed of by  
written authority. The Commissioner shall release the commercial fertilizer so  
withdrawn when the requirements of the provisions of this Article have been complied  
with and upon payment of all costs and expenses incurred in connection with the  
withdrawal.

(b) If any manufacturer, dealer, or agent fails to pay a penalty owed on  
commercial fertilizer within 90 days after notice of assessment by the Commissioner,  
the Commissioner may issue and enforce a written or printed 'stop sale, use, or removal'  
order to that manufacturer, dealer, or agent and shall cause any commercial fertilizer

1 distributed and offered by that manufacturer, dealer, or agent for sale in the State to be  
2 held until (i) the penalties are paid in full and the commercial fertilizer is released in  
3 writing by the Commissioner or (ii) the penalties have been otherwise legally disposed  
4 of by written authority. The Commissioner shall release the commercial fertilizer so  
5 withdrawn when the requirements of the provisions of this Article have been complied  
6 with and upon payment of all costs and expenses incurred in connection with the  
7 withdrawal."

8 Sec. 2. G.S. 106-673 reads as rewritten:

9 **"§ 106-673. Authority of Board of Agriculture to make rules and regulations.**

10 Because legislation with regard to commercial fertilizer sold or offered for sale in  
11 this State must be ~~adopted~~adapted to complex conditions and standards involving  
12 numerous details with which the General Assembly cannot deal directly and in order to  
13 effectuate the purposes and policies of this Article, and in order to insure the  
14 manufacturer, distributor, and consumer of the correct quality and quantity of all  
15 commercial fertilizer sold or offered for sale in this State, the Board of Agriculture shall  
16 have the authority to make rules and regulations with respect ~~to~~to:

- 17 (1) The maximum chlorine guarantee permitted for tobacco fertilizer;
- 18 (2) The maximum chlorine guarantee permitted in tobacco top dressers;
- 19 (3) Which grades of fertilizer may be branded top dressers;
- 20 (4) The labeling of the grade of fertilizer when such fertilizer is sold in  
21 plain or unbranded bags;
- 22 (5) The labeling requirements for all containers of liquid commercial  
23 fertilizer for direct application to the soil;
- 24 (6) The bag sizes which may be used in the sale of commercial fertilizer;
- 25 (7) The labeling requirements for packages containing a combination of  
26 any nonfertilizer material and mixed tobacco fertilizer;
- 27 (8) Registration and labeling requirements for grades and brands of  
28 fertilizer carrying any guarantee of boron; the tolerance allowances for  
29 the percentage of boron in fertilizer mixtures;
- 30 (9) The required composition for boron-landplaster mixtures before they  
31 may be registered and sold for use on peanuts in this State; the labeling  
32 requirements for each container of such mixture;
- 33 (10) The monetary penalties assessed for excesses or deficiencies of boron  
34 and all other minor elements above or below the tolerances allowed;
- 35 (11) The registration and labeling of general crop grades and tobacco  
36 grades;
- 37 (12) The method, and the time limitations for the reporting to the  
38 Commissioner of Agriculture of the tonnage of each grade of fertilizer  
39 shipped to each destination in the State by each manufacturer or firm  
40 having fertilizer registered in this State;
- 41 (13) The required composition, before such mixtures may be registered and  
42 sold in this State, of fertilizer-pesticide, landplaster-pesticide, and  
43 fertilizer-landplaster-pesticide, when to be used for peanuts alone;

- 1 (14) The labeling and bag requirements of fertilizer-landplaster-pesticide  
 2 mixtures;
- 3 (15) The standards and requirements which must be met before fertilizer-  
 4 pesticide mixtures may be registered in this State. These requirements  
 5 may include, but are not limited to, approval in North Carolina of both  
 6 the pesticide and the fertilizer grades, approval of the mixture by the  
 7 Board of Agriculture, and any labeling requirements;
- 8 (16) The standards and requirements which must be complied with before  
 9 fertilizers-pesticides may, without registering the mixture, be mixed  
 10 for direct application at the farmer's request;
- 11 (17) Requests for mixing any pesticide with fertilizer, for products not  
 12 previously approved by the Board of Agriculture;
- 13 (18) Packaging requirements for fertilizer-pesticide mixtures sold either in  
 14 bulk or in bags, such that dusting, spillage, sifting, or a loss of any  
 15 fertilizer-pesticide mixture will not occur;
- 16 (19) The percentages of nitrogen required to be in nitrogen solutions, before  
 17 such solutions may be registered and sold in this State;
- 18 (20) The labeling of fertilizer products to ascertain their compliance to the  
 19 Fertilizer or Lime and Landplaster Law;
- 20 (21) Requesting substantiating data to back up claims made about a  
 21 fertilizer product; registration may be denied if such data is not  
 22 furnished;
- 23 (22) The denial of approval of the registration of fertilizer products when  
 24 such products will not, when used as directed, supply deficient needs  
 25 of a plant;
- 26 (23) Safety requirements for the movement, handling and storage of fluid  
 27 fertilizers;
- 28 (24) Standards and requirements for equipment and tanks for handling  
 29 liquid fertilizer;
- 30 (25) Refusing registration as a result of information or recommendations  
 31 from the director of research stations;
- 32 (26) Establishing minimum guarantees permissible for registering  
 33 secondary elements and micronutrients; ~~and~~
- 34 (27) Establishing minimum standards for containment of fertilizer materials  
 35 in storage to prevent contamination of groundwater and surface ~~water~~.  
 36 water; and
- 37 (28) Standards and labeling requirements for specialty fertilizers."

38 Sec. 3. G.S. 106-657 reads as rewritten:

39 **"§ 106-657. Definitions.**

40 When used in this Article:

- 41 (1) The term 'brand name' means the name under which any individual  
 42 mixed fertilizer or fertilizer material is offered for sale, and may  
 43 include a trademark, but shall not include any numeral other than the  
 44 grade of the fertilizer.

- 1 (2) The term 'bulk fertilizer' means a commercial fertilizer distributed in  
2 non-package form.
- 3 (3) The term 'commercial fertilizer' includes both fluid and dry mixed  
4 fertilizer and/or fertilizer materials.
- 5 (4) The term 'contractor' means any person, firm, corporation, wholesaler,  
6 retailer, distributor or any other person, who for hire or reward applies  
7 commercial fertilizer to the soil or crop of a consumer; provided, that  
8 this shall not apply to any consumer applying commercial fertilizer to  
9 only the land or crop that he owns or to which he otherwise holds  
10 rights, for the production of his own crops.
- 11 (5) The term 'distributor' means any person who offers for sale, sells,  
12 barter, or otherwise supplies mixed fertilizer or fertilizer materials.
- 13 (6) The term 'fertilizer material' means any substance containing either  
14 nitrogen, phosphorus, potassium, or any other recognized plant food  
15 element or compound which is used primarily for its plant food content  
16 or for compounding mixed fertilizers. Not included in this definition  
17 are all types of unmanipulated animal and vegetable manures and  
18 mulches for which no plant food content is claimed.
- 19 (7) The term 'fluid fertilizer' means a nonsolid commercial fertilizer.
- 20 (8) The term 'fortified mulch' means substances composed primarily of  
21 plant remains or mixtures of such substances to which plant food has  
22 been added and for which plant food is claimed.
- 23 In 'fortified mulches' the minimum percentages of total nitrogen,  
24 available ~~phosphoric acid~~, phosphate and soluble or available potash  
25 are to be guaranteed and the guarantee stated in multiples of quarter  
26 (.25) percentages; provided, however, that such percentages shall not  
27 exceed one percent (1%), respectively, subject to the same limits and  
28 tolerances set forth in this Chapter.
- 29 (9) The term 'grade' means the percentage of total nitrogen, available  
30 ~~phosphoric acid~~ phosphate (as P<sub>2</sub>O<sub>5</sub>) and soluble potash (as K<sub>2</sub>O)  
31 only stated in the order given in this subdivision, and, when applied to  
32 mixed fertilizers, shall be in whole numbers only for all packages  
33 larger than 16 ounces.
- 34 (10) The term 'manipulated manures' means substances composed primarily  
35 of excreta, plant remains or mixtures of such substances which have  
36 been processed in any manner, including the addition of plant foods,  
37 artificially drying, grinding and other means.
- 38 In 'manipulated manures' the minimum percentages of total  
39 nitrogen, available ~~phosphoric acid~~ phosphate (as P<sub>2</sub>O<sub>5</sub>) and soluble  
40 potash (as K<sub>2</sub>O) are to be guaranteed, and the guarantee stated in  
41 multiples of half (.50) percentages. Additions of plant food shall be  
42 limited to one-half (.50) percent each of nitrogen, phosphorus and  
43 potash.

- 1 (11) The term 'manufacturer' means a person engaged in the business of  
2 preparing, mixing, or manufacturing commercial fertilizers or the  
3 person whose name appears on the label as being responsible for the  
4 guarantee. The term 'manufacture' means preparing, mixing, or  
5 combining fertilizer materials chemically or physically, including the  
6 simultaneous application of two or more fertilizer materials, by a  
7 manufacturer or contract applicator.
- 8 (12) The term 'mixed fertilizers' means products resulting from the  
9 combination, mixture, or simultaneous application of two or more  
10 fertilizer materials for use in, or claimed to have value in promoting  
11 plant growth.
- 12 (13) The term 'mulch' means substances composed primarily of plant  
13 remains or mixtures of such substances to which no plant food has  
14 been added and for which no plant food is claimed.
- 15 (14) The term 'natural organic fertilizer' means material derived from either  
16 plant or animal products containing one or more elements (other than  
17 carbon, hydrogen and oxygen) which are essential for plant growth.  
18 These materials may be subjected to biological degradation processes  
19 under normal conditions of aging, rainfall, sun-curing, air drying,  
20 composting, rotting, enzymatic, or anaerobic/aerobic bacterial action,  
21 or any combination of these. These materials shall not be mixed with  
22 synthetic materials, or changed in any physical or chemical manner  
23 from their initial state except by physical manipulations such as  
24 drying, cooking, chopping, grinding, shredding or pelleting.
- 25 (15) The term 'official sample' means any sample of commercial fertilizer  
26 taken by the Commissioner or his authorized agent according to the  
27 method prescribed in subsection (b) of G.S. 106-662.
- 28 (16) The term 'organic fertilizer' means a material containing carbon and  
29 one or more elements other than hydrogen and oxygen essential for  
30 plant growth.
- 31 (17) The term 'percent' or 'percentage' means the percentage by weight.
- 32 (18) The term 'person' includes individuals, partnerships, associations,  
33 firms, agencies, and corporations, or other legal entity.
- 34 (19) The term 'retailer' means any person who sells or delivers fertilizer to a  
35 consumer.
- 36 (20) The term 'sale' means any transfer of title or possession, or both,  
37 exchange or barter of tangible personal property, conditional or  
38 otherwise for a consideration paid or to be paid, and this shall include  
39 any of said transactions whereby title or ownership is to pass and shall  
40 further mean and include any bailment, loan, lease, rental or license to  
41 use or consume tangible personal property for a consideration paid in  
42 which possession of said property passes to the bailee, borrower,  
43 lessee, or licensee.

- (21) The term 'sell' means the alienation, exchange, transfer or contract for such transfer of property for a fixed price in money or its equivalent.
- (22) The term 'specialty fertilizer' means any fertilizer distributed primarily for use on noncommercial crops such as gardens, lawns, shrubs, flowers, golf courses, cemeteries and nurseries.
- (23) The term 'ton' means a net ton of two thousand pounds avoirdupois.
- (24) The term 'unmanipulated manures' means substances composed primarily of excreta, plant remains or mixtures of such substances which have not been processed in any manner.
- (25) The term 'wholesaler' shall mean any person who sells to any other person for the purpose of resale, and who also may sell to a consumer.
- (26) 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.
- (27) The term 'fertilizer coated seed' means seed which has been coated with commercial fertilizer."

Sec. 4. G.S. 106-659 reads as rewritten:

**"§ 106-659. Minimum plant food content.**

Superphosphate containing less than eighteen percent (18%) available ~~phosphoric acid, phosphate,~~ or any mixed fertilizer in which the guarantees for the nitrogen, available ~~phosphoric acid, phosphate,~~ or soluble potash are in fractional percentages ~~may not shall not~~ be offered for sale, sold, or distributed in this State; provided, however, packages of 16 fluid ounces or less when in liquid form, or 16 ounces or less avoirdupois when in a dry form, may be sold in fractional percentages, but such packages are not exempt from any other requirements of this Article."

Sec. 5. G.S. 106-664 reads as rewritten:

**"§ 106-664. Determination and publication of commercial values.**

For the purpose of determining the commercial values to be applied under the provisions of G.S. 106-665, the Commissioner shall determine and publish annually the values per pound of nitrogen, available ~~phosphoric acid, phosphate,~~ and soluble potash in commercial fertilizers in this State. The values so determined and published shall be used in determining and assessing penalties."

Sec. 6. G.S. 106-665(b)(1) reads as rewritten:

"(1) For total nitrogen, available ~~phosphoric acid, phosphate,~~ or available potash: A penalty of three times the value of the deficiency if ~~such the~~ deficiency is in excess of the following investigational allowances.

Percentage	Nitrogen		Available SoluableGuarantee <del>Phosphoric</del> Acid Phosphate	Total Potash Percentage
4 or less	0.49	0.67	0.41	
5	0.51	0.67	0.43	
6	0.52	0.67	0.47	

1	7	0.54	0.68	0.53		
2	8	0.55	0.68	0.60		
3	9	0.57	0.68	0.65		
4	10	0.58	0.69	0.70		
5	12	0.61	0.69	0.79		
6	14	0.63	0.70	0.87		
7	16	0.67	0.70	0.94		
8	18	0.70	0.71	1.01		
9	20	0.73	0.72	1.08		
10	22	0.75	0.72	1.15		
11	24	0.78	0.73	1.21		
12	26	0.81	0.73	1.27		
13	28	0.83	0.74	1.33		
14	30	0.86	0.75	1.39		
15	32 or more		0.88		0.76	1.44

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Provided that when the found relative value of a sample is equal to or exceeds the guaranteed relative value, an overage in primary nutrients may compensate for a deficiency in another primary nutrient up to 10% of the guarantee of the deficient nutrient, not to exceed two units. No compensation ~~will~~shall be allowed toward a deficiency if the overage does not compensate for the entire amount of the deficiency or if the deficiency exceeds 10% of the guarantee or the deficiency exceeds two units. If more than one primary nutrient is in penalty status, no compensation ~~will~~shall be allowed."

Sec. 7. This act becomes effective December 1, 1993.