

SECOND REGULAR SESSION

[PERFECTED]

HOUSE BILL NO. 1728

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE REIBOLDT.

5117H.01P

D. ADAM CRUMBLISS, ChiefClerk

AN ACT

To repeal sections 266.301, 266.311, 266.331, 266.336, 266.341, 266.343, and 266.347, RSMo, and to enact in lieu thereof six new sections relating to the establishment of the fertilizer control board.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 266.301, 266.311, 266.331, 266.336, 266.341, 266.343, and
2 266.347, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as
3 sections 266.301, 266.311, 266.331, 266.336, 266.343, and 266.347, to read as follows:

266.301. It shall be unlawful for any distributor to sell, offer for sale or expose for sale
2 for consumption or use in this state any fertilizer without first securing a permit from the
3 [director] **fertilizer control board**. Such permit shall expire on the thirtieth day of June of each
4 year. Application for such permit shall be on forms furnished by the [director] **fertilizer control**
5 **board**.

266.311. It shall be unlawful for any person to sell, offer for sale or expose for sale any
2 fertilizer for use or consumption in this state which is misbranded. Any fertilizer shall be
3 deemed to be misbranded if it fails to carry the printed statement required under section 266.321,
4 or if the chemical composition of such fertilizer does not meet the guarantee expressed on said
5 statement within allowable tolerances fixed by the [director] **fertilizer control board**, or if the
6 container for such fertilizer or any statement accompanying the same carries any false or
7 misleading statement, or if false or misleading statements concerning its agricultural value are
8 made on any advertising matter accompanying or associated with such fertilizer.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

266.331. Every distributor shall, within thirty days after each six-months' period ending June thirtieth and December thirty-first, file with the [director] **fertilizer control board** on forms supplied by [him] **the fertilizer control board** a sworn certificate setting forth the information required [by the director] by rule. At the time of filing said certificate, each distributor of fertilizer, excluding manipulated animal or vegetable manure, shall pay to the director the fee prescribed [by the director] by rule, which fee shall not exceed one dollar per ton and one dollar ten cents per metric ton; except that, sales to fertilizer manufacturers or exchanges between them are hereby exempted. Each distributor of fertilizer consisting of manipulated animal or vegetable manure shall pay to the director a fee paid for each ton of manure as prescribed [by the director] by rule, which fee shall not exceed two cents for each percent nitrogen for manure containing less than five percent nitrogen; or which fee shall not exceed four cents for each percent nitrogen for manure containing at least five but less than ten percent nitrogen; or which fee shall not exceed six cents for each percent nitrogen for manure containing ten or more percent nitrogen. In the event that the [director] **fertilizer control board** has not prescribed a fee under this section, each distributor required to pay a fee under this section shall pay a fee of one and one-half cents for each one hundred pounds of fertilizer sold [by him] during the period covered by the certificate filed under this section. [The fees so paid to the director shall be used for defraying the expenses in administering sections 266.291 to 266.351 and the rules promulgated under sections 266.291 to 266.351, and for practical and scientific experiments by the Missouri agricultural experiment station in the value and proper use of fertilizers. Such fees may also be used to support such related research and methodology, publications, and educational programs extending the results of the fertilizer experiments as may be of practical use to the farmers of this state.] **The director is hereby authorized to collect fees and hold all fees in a separate fund that shall be utilized by the fertilizer control board to administer sections 266.291 to 266.351.**

266.336. 1. There is hereby created [an advisory council to the director, which] a **"Fertilizer Control Board"**. **The fertilizer control board** shall be composed of [fifteen] **thirteen** members [appointed by the director pursuant to this section]. Of the [fifteen] **thirteen** members [so appointed], five shall be actively employed as fertilizer manufacturers or distributors[,] **and** five shall be actively engaged in the business of farming[, and five shall be chosen from the residents at large of this state. The five members chosen from the residents at large of this state]. **The nonprofit corporation organized under Missouri law to promote the interests of the fertilizer industry shall nominate persons employed as fertilizer manufacturers or distributors, and Missouri not-for-profit organizations that represent farmers shall nominate persons engaged in the business of farming. Such nominations shall be submitted to the director, and the director shall select members from these**

12 **nominations. Three at-large members** shall be selected by the director with the approval of
13 a majority of the other ten members of the [advisory council] **fertilizer control board. No**
14 **person shall be selected to serve as a member of the board if he or she has been found to**
15 **be in violation of any of the provisions of sections 266.291 to 266.351 within the last five**
16 **years.**

17 2. The [advisory council] **fertilizer control board** shall:

18 (1) Meet at least [once] **twice** each year **with meetings conducted according to bylaws;**

19 (2) [Annually] Review [with the director] **and approve** the income received and
20 expenditures made under sections 266.291 to 266.351;

21 (3) [Review and approve all rules, and revisions or rescissions thereof, to be promulgated
22 by the director] **In accordance with this section and chapter 536, adopt, amend, promulgate,**
23 **or repeal after due notice and hearing rules and regulations to enforce, implement, and**
24 **effectuate the powers and duties of sections 266.291 to 266.351. Any rule or portion of a**
25 **rule, as that term is defined in section 536.010 that is created under the authority delegated**
26 **in this section shall become effective only if it complies with and is subject to all of the**
27 **provisions of chapter 536, and, if applicable, section 536.028. This section and chapter 536**
28 **are nonseverable, and if any of the powers vested with the general assembly pursuant to**
29 **chapter 536, to review, to delay the effective date, or to disapprove and annul a rule are**
30 **subsequently held unconstitutional, then the grant of rulemaking authority and any rule**
31 **proposed or adopted after August 28, 2016, shall be invalid and void;**

32 (4) [Consider all information and advise the director in determining] **Revoke or suspend**
33 **a permit, or refuse to issue a permit, to any distributor who has knowingly violated any of**
34 **the provisions of sections 266.291 to 266.351, or has failed or neglected to pay the fees or**
35 **penalties provided for in sections 266.291 to 266.351. The board shall conduct a hearing**
36 **if requested by the distributor to review all penalties assessed and permit decisions made**
37 **by the board. Upon completion of a hearing, the board shall determine if penalty**
38 **modifications are warranted giving consideration to the history of previous violations, the**
39 **seriousness of the violation, any overage in any other ingredients, demonstrated good faith**
40 **of the distributor, and any other factors deemed appropriate. Any penalty modification**
41 **shall comply with section 266.343;**

42 (5) **Determine** the method and amount of fees to be assessed. In performing its duties
43 under this subdivision, the [advisory council] **fertilizer control board** shall represent the best
44 interests of the Missouri farmers **and Missouri agribusinesses;**

45 [(5) Serve in an advisory capacity in all matters pertaining to the administration of
46 sections 266.291 to 266.351]

47 **(6) Secure access to a laboratory with necessary equipment, and employees as may**
48 **be necessary, to aid in the administration of sections 266.291 to 266.351;**

49 **(7) Pursue nutrient research, educational, and outreach programs to ensure the**
50 **adoption and implementation of practices that optimize nutrient use efficiency, ensure soil**
51 **fertility, and address environmental concerns with regard to fertilizer use extending the**
52 **results of the fertilizer experiments that may be of practical use to the farmers and**
53 **agribusinesses of this state;**

54 **(8) Exercise general supervision of the administration and enforcement of sections**
55 **266.291 to 266.351, and all rules and regulations and orders promulgated under such**
56 **sections.**

57 **3. Authorized agents of the fertilizer control board are hereby authorized and**
58 **empowered to:**

59 **(1) Only to the extent necessary to determine general compliance, collect not less**
60 **than three thousand five hundred samples, inspect, and make an analysis of fertilizer sold,**
61 **offered, or exposed for sale within this state; except that, samples taken of fertilizer sold**
62 **in bulk shall be taken from the bulk container immediately after mixing on the premises**
63 **of the mixing facility or, if not possible, to be sampled from the bulk container wherever**
64 **found. All samples shall have a preliminary analysis completed within five business days**
65 **of the sample being obtained. If requested, a portion of any sample found subject to**
66 **penalty or other legal action shall be provided to the distributor liable for the penalty;**

67 **(2) Only to the extent necessary to determine general compliance, inspect and audit**
68 **the books of every distributor who sells, offers for sale, or exposes for sale fertilizer for**
69 **consumption or use in this state to determine whether the provisions of sections 266.291**
70 **to 266.351 are being fully complied with;**

71 **(3) Require every distributor to file documentation as prescribed by rules**
72 **promulgated under sections 266.291 to 266.351. Such documents shall not be required**
73 **more often than six-month intervals, and all such documents shall be returned to the**
74 **distributor upon request;**

75 **(4) Enter upon any public or private premises during regular business hours in**
76 **order to have access to fertilizer subject to sections 266.291 to 266.351 and the rules and**
77 **regulations promulgated under sections 266.291 to 266.351, and to take samples and**
78 **inspect such fertilizer;**

79 **(5) Issue and enforce a written or printed "stop-sale, use, or removal" order to the**
80 **owner or custodian of any fertilizer that is found to be in violation of any of the provisions**
81 **of sections 266.291 to 266.351, which such order prohibiting the further sale of such**

82 fertilizer until sections 266.291 to 266.351 has been complied with or otherwise disposed
83 of;

84 (6) Publish each year a full and detailed report giving the names and addresses of
85 all distributors registered under sections 266.291 to 266.351, the analytical results of all
86 samples collected, and a statement of all fees and penalties received and expenditures made
87 under sections 266.291 to 266.351;

88 (7) Establish from information secured from manufacturers and other reliable
89 sources the market value of fertilizer and fertilizer materials for the purpose of
90 determining the amount of damages due when the official analysis shows an excessive
91 deficiency from the guaranteed analysis;

92 (8) Retain, employ, provide for, and compensate such consultants, assistants, and
93 other employees on a full- or part-time basis and contract for goods and services as may
94 be necessary to carry out the provisions of sections 266.291 to 266.351, and prescribe the
95 times at which they shall be appointed and their powers and duties.

96 [3.] 4. The filling of vacancies, the selection of officers, the conduct of its meetings,
97 and all other matters concerning the fertilizer control board shall be outlined in the bylaws
98 established by the fertilizer control board. All members of the [advisory council] fertilizer
99 control board shall serve for terms of three years and until their successors are duly appointed
100 and qualified; except that, of the members first appointed:

101 (1) Two members who are actively employed as fertilizer manufacturers or distributors,
102 two members actively engaged in the business of farming, and [two members chosen from the
103 residents of this state] one at large member shall serve for terms of three years;

104 (2) Two members who are actively employed as fertilizer manufacturers or distributors,
105 two members actively engaged in the business of farming, and [two members chosen from the
106 residents of this state] one at large member shall serve for terms of two years; and

107 (3) The remaining three members shall serve for terms of one year.

108 [4.] 5. All members shall be residents of this state. No member may serve more than two
109 consecutive terms on the advisory council, but any member may be reappointed after he has not
110 been a member of the advisory council for a period of at least three years.

111 [5.] 6. All members shall be reimbursed for reasonable expenses incurred in the
112 performance of their official duties in accordance with the reimbursement policy set by the
113 [director] fertilizer control board bylaws. All reimbursements paid under this section shall be
114 paid from fees collected under sections 266.291 to 266.351.

115 [6. Every vacancy on the advisory council shall be filled by the director with the approval
116 of a majority of the remaining members of the council. The person selected to fill any such

117 vacancy shall possess the same qualifications required by this section as the member he replaces
118 and shall serve until the end of the unexpired term of his predecessor.]

266.343. If any fertilizer offered for sale in this state shall upon official analysis prove
2 deficient from its guarantee as stated on the bag or other container, penalties shall be assessed
3 as follows:

4 (1) For a single ingredient fertilizer containing nitrogen or available phosphate or soluble
5 potash:

6 (a) When the value of this ingredient is found to be deficient from the guarantee to the
7 extent of three percent and not over five percent, the distributor shall be liable for the actual
8 deficiency;

9 (b) When the deficiency exceeds five percent of the total value, the penalty shall be three
10 times the actual value of the shortage;

11 (2) For multiple ingredient fertilizers containing two or more of the single ingredients:
12 Nitrogen or available phosphate or soluble potash, penalties shall be assessed according to (a),
13 (b) or (c) as herein stated. When a multiple ingredient fertilizer is subject to a penalty under (a),
14 (b) and (c) only the larger penalty shall be assessed.

15 (a) When the total combined values of the nitrogen or available phosphate or soluble
16 potash is found to be deficient to the extent of three percent and not over five percent, the
17 distributor shall be liable for the actual deficiency in total value.

18 (b) When the deficiency exceeds five percent of the total value, the penalty shall be three
19 times the actual value of the shortage.

20 (c) When either the nitrogen, available phosphate or soluble potash value is found
21 deficient from the guarantee to the extent of ten percent up to the maximum of two units (two
22 percent plant food), the distributors shall be liable for the value of such shortages;

23 **(3) Total penalties assessed upon a distributor shall not exceed five thousand**
24 **dollars or the amount of the current value of the plant food deficiency, whichever is**
25 **greater. A distributor who knowingly violates the provisions of sections 266.291 to 266.351**
26 **shall be assessed a penalty of not more than twenty-five thousand dollars for each offense.**

266.347. 1. The penalties assessed [by the director] under section 266.343 shall be paid
2 by the distributor to the purchaser of such fertilizer, and in the event such purchaser cannot be
3 ascertained, then said penalty shall be paid [to the director and used for the purposes specified
4 in section 266.321, except the maximum paid the purchaser will approximate the actual value
5 of the deficiency] **to the director under section 266.331 and shall be used in accordance with**
6 **the provisions of such section.**

7 2. [The director shall prepare] **If the preliminary analysis shows that a fertilizer has**
8 **a potential plant food deficiency, the distributor shall be provided preliminary notification**

9 **within two business days by telephone or email in addition to a notification letter delivered**
10 **by mail. Once the analysis is certified,** a written certification of penalties assessed under
11 section 266.343 [addressed to the distributor. A copy of such certification of assessment] shall
12 be mailed to the distributor liable for the penalty.

13 3. Any decision, finding, order or ruling of the [director] **fertilizer control board** made
14 pursuant to the provisions of sections 266.291 through 266.351 shall be subject to judicial review
15 in the manner provided by chapter 536.

16 4. If any distributor shall fail to pay any penalty assessed [by the director] after the time
17 for judicial review has expired, or after any judgment or decree approving such assessment has
18 become final, the person entitled to such penalty under the provisions of subsection 1 shall be
19 entitled to bring a civil action to recover the same, and in such civil action such persons shall be
20 entitled to recover from the distributor the amount of the penalty, a reasonable attorney's fee and
21 costs of the action.

2 [266.341. 1. The duty of enforcing and administering sections 266.291
3 to 266.351 shall be vested in the director. The director shall, in accordance with
4 this section and chapter 536, promulgate all rules necessary to provide for the
5 efficient administration and enforcement of sections 266.291 to 266.351; except
6 that, no rule, nor revision or rescission thereof, may be filed with the secretary of
7 state until it has been approved by a majority of the members of the advisory
8 council created in section 266.336. No rule or portion of a rule promulgated
9 under the authority of this chapter shall become effective unless it has been
10 promulgated pursuant to the provisions of section 536.024.

11 2. The director or his authorized agents are hereby authorized and
12 empowered to:

13 (1) Collect samples, inspect, and make analysis of fertilizer sold, offered
14 or exposed for sale within this state; except that, samples taken of fertilizer sold
15 in bulk shall be taken from the bulk container immediately after mixing on the
16 premises of the mixing facility or, when not possible, to be sampled from the
17 bulk container wherever found;

18 (2) Inspect and audit the books of every distributor who sells, offers for
19 sale, or exposes for sale fertilizer for consumption or use in this state, to
20 determine whether or not the provisions of sections 266.291 to 266.351 are being
21 fully complied with;

22 (3) Require every distributor to file with the director documentation as
23 prescribed by rules promulgated under sections 266.291 to 266.351. Such
24 documents shall not be required more often than two-week intervals, and all such
25 documents shall be returned to the distributor upon his request;

26 (4) Enter upon any public or private premises during the regular business
27 hours in order to have access to fertilizer subject to sections 266.291 to 266.351
28 and the rules and regulations promulgated under sections 266.291 to 266.351, and
to take samples and inspect such fertilizer;

29 (5) Issue and enforce a written or printed "stop-sale, use, or removal"
30 order to the owner or custodian of any fertilizer which is found to be in violation
31 of any of the provisions of sections 266.291 to 266.351, which order shall
32 prohibit the further sale of such fertilizer until sections 266.291 to 266.351 have
33 been complied with or such violation has been otherwise legally disposed of by
34 written authority of the director;

35 (6) Maintain a laboratory with necessary equipment and employ such
36 employees as may be necessary to aid in the administration of sections 266.291
37 to 266.351;

38 (7) Publish each year the full and detailed report giving the names and
39 addresses of all distributors registered under sections 266.291 to 266.351, the
40 analytical results of all samples collected, and a statement of all fees and
41 penalties received and expenditures made under sections 266.291 to 266.351;

42 (8) Revoke or suspend the permit, or refuse to issue a permit, to any
43 distributor who has willfully violated any of the provisions of sections 266.291
44 to 266.351 or failed or neglected to pay the fees or penalties provided for in
45 sections 266.291 to 266.351;

46 (9) Institute and prosecute through the attorney general of this state suits
47 to collect any fees due under the provisions of sections 266.291 to 266.351 which
48 are not promptly paid;

49 (10) Establish from information secured from manufacturers and other
50 reliable sources the market value of fertilizer and fertilizer materials for the
51 purpose of determining the amount of damages due when the official analysis
52 shows an excessive deficiency from the guaranteed analysis.]

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