

SECOND REGULAR SESSION

SENATE BILL NO. 655

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR MUNZLINGER.

Pre-filed December 1, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4229S.01I

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Section A. Sections 266.301, 266.311, 266.331, 266.336, 266.341, 266.343, 2 and 266.347, RSMo, are repealed and six new sections enacted in lieu thereof, to 3 be known as sections 266.301, 266.311, 266.331, 266.336, 266.343, and 266.347, 4 to read as follows:

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

266.311. It shall be unlawful for any person to sell, offer for sale or expose 2 for sale any fertilizer for use or consumption in this state which is 3 misbranded. Any fertilizer shall be deemed to be misbranded if it fails to carry 4 the printed statement required under section 266.321, or if the chemical 5 composition of such fertilizer does not meet the guarantee expressed on said 6 statement within allowable tolerances fixed by the [director] **fertilizer control 7 board**, or if the container for such fertilizer or any statement accompanying the 8 same carries any false or misleading statement, or if false or misleading 9 statements concerning its agricultural value are made on any advertising matter 10 accompanying or associated with such fertilizer.

266.331. Every distributor shall, within thirty days after each six-months' 2 period ending June thirtieth and December thirty-first, file with the [director]

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

3 **fertilizer control board** on forms supplied by [him] **the fertilizer control**
4 **board** a sworn certificate setting forth the information required [by the director]
5 by rule. At the time of filing said certificate, each distributor of fertilizer,
6 excluding manipulated animal or vegetable manure, shall pay to the director the
7 fee prescribed [by the director] by rule, which fee shall not exceed one dollar per
8 ton and one dollar ten cents per metric ton; except that, sales to fertilizer
9 manufacturers or exchanges between them are hereby exempted. Each
10 distributor of fertilizer consisting of manipulated animal or vegetable manure
11 shall pay to the director a fee paid for each ton of manure as prescribed [by the
12 director] by rule, which fee shall not exceed two cents for each percent nitrogen
13 for manure containing less than five percent nitrogen; or which fee shall not
14 exceed four cents for each percent nitrogen for manure containing at least five but
15 less than ten percent nitrogen; or which fee shall not exceed six cents for each
16 percent nitrogen for manure containing ten or more percent nitrogen. In the
17 event that the [director] **fertilizer control board** has not prescribed a fee
18 under this section, each distributor required to pay a fee under this section shall
19 pay a fee of one and one-half cents for each one hundred pounds of fertilizer sold
20 [by him] during the period covered by the certificate filed under this
21 section. [The fees so paid to the director shall be used for defraying the expenses
22 in administering sections 266.291 to 266.351 and the rules promulgated under
23 sections 266.291 to 266.351, and for practical and scientific experiments by the
24 Missouri agricultural experiment station in the value and proper use of
25 fertilizers. Such fees may also be used to support such related research and
26 methodology, publications, and educational programs extending the results of the
27 fertilizer experiments as may be of practical use to the farmers of this state.] **The**
28 **director is hereby authorized to collect fees and hold all fees in a**
29 **separate fund that shall be utilized by the fertilizer control board to**
30 **administer sections 266.291 to 266.351.**

266.336. 1. There is hereby created [an advisory council to the director,
2 which] a **"Fertilizer Control Board"**. **The fertilizer control board** shall be
3 composed of [fifteen] **thirteen** members [appointed by the director pursuant to
4 this section]. Of the [fifteen] **thirteen** members [so appointed], five shall be
5 actively employed as fertilizer manufacturers or distributors[,] **and** five shall be
6 actively engaged in the business of farming[, and five shall be chosen from the
7 residents at large of this state. The five members chosen from the residents at
8 large of this state]. **The nonprofit corporation organized under Missouri**

9 law to promote the interests of the fertilizer industry shall nominate
10 persons employed as fertilizer manufacturers or distributors, and
11 Missouri not-for-profit organizations that represent farmers shall
12 nominate persons engaged in the business of farming. Such
13 nominations shall be submitted to the director, and the director shall
14 select members from these nominations. Three at large members shall
15 be selected by the director with the approval of a majority of the other ten
16 members of the [advisory council] fertilizer control board.

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

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

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

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

36 (4) [Consider all information and advise the director in determining]
37 Revoke or suspend a permit, or refuse to issue a permit, to any
38 distributor who has knowingly violated any of the provisions of
39 sections 266.291 to 266.351, or has failed or neglected to pay the fees or
40 penalties provided for in sections 266.291 to 266.351. The board shall
41 conduct a hearing if requested by the distributor to review all penalties
42 assessed and permit decisions made by the board. Upon completion of
43 a hearing, the board shall determine if penalty modifications are
44 warranted giving consideration to the history of previous violations,
45 the seriousness of the violation, any overage in any other ingredients,

46 **demonstrated good faith of the distributor, and any other factors**
47 **deemed appropriate. Any penalty modification must comply with**
48 **section 266.343;**

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

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

55 **(6) Secure access to a laboratory with necessary equipment, and**
56 **employees as may be necessary, to aid in the administration of sections**
57 **266.291 to 266.351;**

58 **(7) Pursue nutrient research, educational, and outreach**
59 **programs to ensure the adoption and implementation of practices that**
60 **optimize nutrient use efficiency, ensure soil fertility, and address**
61 **environmental concerns with regard to fertilizer use extending the**
62 **results of the fertilizer experiments that may be of practical use to the**
63 **farmers and agribusinesses of this state;**

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

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

69 **(1) Only to the extent necessary to determine general**
70 **compliance, collect samples, inspect, and make analysis of fertilizer**
71 **sold, offered, or exposed for sale within this state; except that, samples**
72 **taken of fertilizer sold in bulk shall be taken from the bulk container**
73 **immediately after mixing on the premises of the mixing facility or,**
74 **when not possible, to be sampled from the bulk container wherever**
75 **found. All samples shall have a preliminary analysis completed within**
76 **five business days of the sample being obtained. If requested, a portion**
77 **of any sample found subject to penalty or other legal action shall be**
78 **provided to the distributor liable for the penalty;**

79 **(2) Only to the extent necessary to determine general**
80 **compliance, inspect and audit the books of every distributor who sells,**
81 **offers for sale, or exposes for sale fertilizer for consumption or use in**
82 **this state to determine whether or not the provisions of sections 266.291**

83 to 266.351 are being fully complied with;

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

89 (4) Enter upon any public or private premises during regular
90 business hours in order to have access to fertilizer subject to sections
91 266.291 to 266.351 and the rules and regulations promulgated under
92 sections 266.291 to 266.351, and to take samples and inspect such
93 fertilizer;

94 (5) Issue and enforce a written or printed "stop-sale, use, or
95 removal" order to the owner or custodian of any fertilizer that is found
96 to be in violation of any of the provisions of sections 266.291 to 266.351,
97 which such order prohibiting the further sale of such fertilizer until
98 sections 266.291 to 266.351 have been complied with or otherwise
99 disposed of;

100 (6) Publish each year the full and detailed report giving the
101 names and addresses of all distributors registered under sections
102 266.291 to 266.351, the analytical results of all samples collected, and a
103 statement of all fees and penalties received and expenditures made
104 under sections 266.291 to 266.351;

105 (7) Establish from information secured from manufacturers and
106 other reliable sources, the market value of fertilizer and fertilizer
107 materials for the purpose of determining the amount of damages due
108 when the official analysis shows an excessive deficiency from the
109 guaranteed analysis;

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

115 [3.] 4. The filling of vacancies, the selection of officers, the
116 conduct of its meetings, and all other matters concerning the fertilizer
117 control board shall be outlined in the bylaws established by the
118 fertilizer control board. All members of the [advisory council] fertilizer
119 control board shall serve for terms of three years and until their successors are

120 duly appointed and qualified; except that, of the members first appointed:

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

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

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

130 [4.] **5.** All members shall be residents of this state. No member may
131 serve more than two consecutive terms on the advisory council, but any member
132 may be reappointed after he has not been a member of the advisory council for
133 a period of at least three years.

134 [5.] **6.** All members shall be reimbursed for reasonable expenses incurred
135 in the performance of their official duties in accordance with the reimbursement
136 policy set by the [director] **fertilizer control board bylaws**. All
137 reimbursements paid under this section shall be paid from fees collected under
138 sections 266.291 to 266.351.

139 [6. Every vacancy on the advisory council shall be filled by the director
140 with the approval of a majority of the remaining members of the council. The
141 person selected to fill any such vacancy shall possess the same qualifications
142 required by this section as the member he replaces and shall serve until the end
143 of the unexpired term of his predecessor.]

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

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

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

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

11 (2) For multiple ingredient fertilizers containing two or more of the single
12 ingredients: Nitrogen or available phosphate or soluble potash, penalties shall

13 be assessed according to (a), (b) or (c) as herein stated. When a multiple
14 ingredient fertilizer is subject to a penalty under (a), (b) and (c) only the larger
15 penalty shall be assessed.

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

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

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

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

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

8 2. [The director shall prepare] **Where the preliminary analysis shows**
9 **that a fertilizer has a potential plant food deficiency, the distributor**
10 **shall be provided preliminary notification within two business days by**
11 **telephone or email in addition to a notification letter delivered by**
12 **mail. Once the analysis is certified,** a written certification of penalties
13 assessed under section 266.343 [addressed to the distributor. A copy of such
14 certification of assessment] shall be mailed to the distributor liable for the
15 penalty.

16 3. Any decision, finding, order or ruling of the [director] **fertilizer**
17 **control board** made pursuant to the provisions of sections 266.291 through

18 266.351 shall be subject to judicial review in the manner provided by chapter 536.

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

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

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

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

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

24 (3) Require every distributor to file with the director
25 documentation as prescribed by rules promulgated under sections
26 266.291 to 266.351. Such documents shall not be required more
27 often than two-week intervals, and all such documents shall be
28 returned to the distributor upon his request;

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

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

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

44 (7) Publish each year the full and detailed report giving the
45 names and addresses of all distributors registered under sections
46 266.291 to 266.351, the analytical results of all samples collected,
47 and a statement of all fees and penalties received and expenditures
48 made under sections 266.291 to 266.351;

49 (8) Revoke or suspend the permit, or refuse to issue a
50 permit, to any distributor who has willfully violated any of the
51 provisions of sections 266.291 to 266.351 or failed or neglected to
52 pay the fees or penalties provided for in sections 266.291 to
53 266.351;

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

57 (10) Establish from information secured from
58 manufacturers and other reliable sources the market value of
59 fertilizer and fertilizer materials for the purpose of determining the
60 amount of damages due when the official analysis shows an
61 excessive deficiency from the guaranteed analysis.]