

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1149 Session of  
2013

INTRODUCED BY BRUBAKER, TOMLINSON, GREENLEAF, WAUGH, ALLOWAY,  
RAFFERTY, WHITE, VULAKOVICH, YAW, FERLO, SOLOBAY AND SCHWANK,  
OCTOBER 29, 2013

REFERRED TO AGRICULTURE AND RURAL AFFAIRS, OCTOBER 29, 2013

AN ACT

1 Amending Title 3 (Agriculture) of the Pennsylvania Consolidated  
2 Statutes, in fertilizer, further providing for labels and  
3 labeling and for disposition of funds; and providing for  
4 fertilizer for use on turf.

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Section 6705 of Title 3 of the Pennsylvania  
8 Consolidated Statutes is amended by adding a subsection to read:

9 § 6705. Labels and labeling.

10 \* \* \*

11 (a.1) Prohibited label.--No fertilizer may be labeled for  
12 the purpose of melting snow or ice.

13 \* \* \*

14 Section 2. Section 6725 of Title 3 is amended to read:

15 § 6725. Disposition of funds.

16 Moneys received from license fees, registration fees,  
17 inspection fees, fines and penalties shall be paid into a  
18 special restricted account in the General Fund to be known as

1 the Agronomic Regulatory Account. All moneys in the Agronomic  
2 Regulatory Account are hereby appropriated to the department for  
3 the purposes of this chapter and Chapters 68 (relating to  
4 fertilizer for use on turf), 69 (relating to soil and plant  
5 amendment) and 71 (relating to seed).

6 Section 3. Title 3 is amended by adding a chapter to read:

7 CHAPTER 68

8 FERTILIZER FOR USE ON TURF

9 Sec.

10 6801. Definitions.

11 6802. Applicability.

12 6803. Fertilizer sold to consumers.

13 6804. Labeling.

14 6805. Application of fertilizer to turf.

15 6806. Certification of professional fertilizer applicators.

16 6807. Cooperation with other entities.

17 6808. Preemption.

18 6809. Rules and regulations.

19 6810. Enforcement and penalties.

20 6811. Disposition of funds.

21 § 6801. Definitions.

22 The following words and phrases when used in this chapter  
23 shall have the meanings given to them in this section unless the  
24 context clearly indicates otherwise:

25 "Agricultural production." The production for commercial  
26 purposes of crops, livestock and livestock products, including  
27 the processing or retail marketing of such crops, livestock or  
28 livestock products if more than 50% of such processed or  
29 merchandised products are produced by the farm operator. The  
30 term includes use of land that is devoted to and meets the

requirements of and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the Federal Government.

"Bulk fertilizer." A fertilizer distributed in a nonpackaged form.

"By-product." Municipal waste or residual waste as defined in the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act, that contains a plant nutrient and meets all the applicable regulations of the Department of Environmental Protection.

"Consumer." A person who purchases fertilizer for the end use of the product.

"Crops, livestock and livestock products." Include, but are not limited to:

(1) Field crops, including corn, wheat, oats, rye, barley, hay, potatoes and dry beans.

(2) Fruits, including apples, peaches, grapes, cherries and berries.

(3) Vegetables, including tomatoes, snap beans, cabbage, carrots, beets, onions and mushrooms.

(4) Horticultural specialties, including nursery stock ornamental shrubs, ornamental trees and flowers.

(5) Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, furbearing animals, milk, eggs and furs.

(6) Timber, wood and other wood products derived from trees.

(7) Aquatic plants and animals and their products.

"Distribute." To import, consign, offer for sale, sell, barter or otherwise supply fertilizer in this Commonwealth.

1 "Enhanced-efficiency fertilizer." A fertilizer product with  
2 characteristics that allow increased plant uptake and reduced  
3 potential of nutrient losses to the environment, such as gaseous  
4 losses, leaching or runoff, when compared to an appropriate  
5 reference product.

6 "Fertilizer." Any substance, including fertilizer material,  
7 mixed fertilizer, specialty fertilizer and bulk fertilizer,  
8 containing one or more recognized plant nutrients which is used  
9 for its plant nutrient content and which is designed for use or  
10 claimed to have value in promoting plant growth, except  
11 unmanipulated animal and vegetable manure, agricultural liming  
12 materials, wood ashes and other materials exempted by regulation  
13 by the Department of Agriculture.

14 "Fertilizer material." A fertilizer which:

15 (1) contains only one of the following primary plant  
16 nutrients:

17 (i) nitrogen;

18 (ii) phosphate; or

19 (iii) potash;

20 (2) has 85% or more of its plant nutrient content  
21 present in the form of a single chemical compound; or

22 (3) is derived from a plant or animal residue, by-  
23 product or coproduct as defined in regulation or natural  
24 material deposit which has been processed in such a way that  
25 its content of plant nutrients has not been materially  
26 changed except by purification and concentration.

27 "Impervious surface." A structure, surface or improvement  
28 that reduces or prevents absorption of water into land and  
29 includes porous paving, paver blocks, gravel, crushed stone,  
30 decks, patios, elevated structures and other similar structures,

1 surfaces or improvements.

2 "Intermittent stream." A body of water flowing in a channel  
3 or bed composed primarily of substrates associated with flowing  
4 water which, during periods of the year, is below the water  
5 table and obtains its flow from both surface runoff and  
6 groundwater discharges.

7 "Label." The display of all written, printed or graphic  
8 matter upon the immediate container or a statement accompanying  
9 a fertilizer.

10 "Labeling." All written, printed or graphic matter upon or  
11 accompanying any fertilizer or advertisements, brochures,  
12 posters or electronic media used in promoting the distribution  
13 of fertilizer.

14 "Natural organic fertilizer." A fertilizer derived from  
15 either plant or animal products containing one or more elements,  
16 other than carbon, hydrogen and oxygen, which are essential for  
17 plant growth. These materials may be subjected to biological  
18 degradation processes under normal conditions of aging,  
19 rainfall, sun curing, air drying, composting, rotting, enzymatic  
20 or anaerobic or aerobic bacterial action or a combination of  
21 these processes. These materials may not be mixed with synthetic  
22 materials or changed in any physical or chemical manner from  
23 their initial state except by physical manipulation such as  
24 drying, cooking, chopping, grinding, shredding or pelleting.

25 "Organic-base fertilizer." A mixed fertilizer where:

26 (1) More than half of the fertilizer materials are  
27 organic.

28 (2) More than half of the sum of the guaranteed primary  
29 nutrient percentages are derived from organic materials.

30 "Percent" or "percentage." A percentage by weight.

1 "Perennial stream." A body of water flowing in a channel or  
2 bed composed primarily of substrates associated with flowing  
3 waters and capable, in the absence of pollution or other manmade  
4 stream disturbances, of supporting bottom-dwelling aquatic  
5 animals.

6 "Person." An individual, partnership, association, firm,  
7 corporation or any other legal entity.

8 "Plant nutrient." Any of the following:

9 (1) primary nutrient;

10 (2) secondary nutrient; and

11 (3) micronutrient.

12 "Primary nutrient." Any of the following:

13 (1) total nitrogen;

14 (2) available phosphate; and

15 (3) soluble potash.

16 "Professional fertilizer applicator." An individual who  
17 applies fertilizer for hire, including, but not limited to, an  
18 employee of a government entity or golf course who applies  
19 fertilizer within the scope of employment. The term does not  
20 include an individual who applies fertilizer only for the  
21 purpose of agricultural production or sod produced for  
22 commercial sale.

23 "Readily available nitrogen." Water soluble nitrogen in  
24 either ammoniacal, urea or nitrate form that does not have slow  
25 or controlled release properties.

26 "Secondary nutrient." Any of the following:

27 (1) calcium;

28 (2) magnesium; and

29 (3) sulfur.

30 "Slow or controlled release." A fertilizer containing a

plant nutrient in a form that delays its availability for plant uptake and use after application or which extends its availability to the plant significantly longer than a reference "rapidly available nutrient fertilizer," such as ammonium nitrate or urea, ammonium phosphate or potassium chloride.

"Soil test." A chemical, physical or biological procedure that estimates the suitability of the soil to support plant growth.

"Specialty fertilizer." A fertilizer distributed for nonfarm use and fertilizer material primarily intended to supply plant nutrients other than nitrogen, phosphate or potash.

"Turf." Land, including, but not limited to, residential property, golf courses and publicly owned land, that is planted in closely mowed, managed grass, except for land used for agricultural production.

"Under the direct supervision of." Acting with the instructions and under the control of a certified applicator who is responsible for the actions of the technician and who is available when needed.

#### § 6802. Applicability.

This chapter shall not apply to fertilizer applied for the purposes of agricultural production or sod produced for commercial sale.

#### § 6803. Fertilizer sold to consumers.

(a) Contents.--Fertilizer sold at retail and intended for use on turf shall:

- (1) contain no more than 0.7 pounds of readily available nitrogen and no more than 0.9 pounds of total nitrogen per 1,000 square feet when applied pursuant to the instructions on the container;

1       (2) consist of at least 20% enhanced-efficiency nitrogen  
2       of the total nitrogen; and

3       (3) contain no phosphorus, except when specifically  
4       labeled for the following purpose:

5               (i) providing nutrients to specific soils and target  
6               vegetation as determined to be necessary pursuant to a  
7               soil test performed no more than three years prior to  
8               application;

9               (ii) establishing vegetation for the first time;

10              (iii) reestablishing or repairing a turf area; or

11              (iv) as an enhanced-efficiency phosphorus  
12              fertilizer, natural organic fertilizer, organic-base  
13              fertilizer or fertilizer derived from a by-product.

14       (b) Turf.--Notwithstanding the limits of subsection (a) (1),  
15       fertilizer sold at retail and intended for use on turf may  
16       contain up to 2.5 pounds of enhanced-efficiency nitrogen  
17       fertilizer per 1,000 square feet when applied pursuant to the  
18       instructions on the container, provided the monthly release rate  
19       does not exceed 0.7 pounds of nitrogen per 1,000 square feet.

20       § 6804. Labeling.

21       (a) Mandatory label.--In addition to any other requirements  
22       under Chapter 67 (relating to fertilizer), a container of  
23       fertilizer sold at retail and intended for use on turf shall  
24       include the following statement on its label in a legible and  
25       conspicuous form:

26               "Do not apply near water, storm drains or drainage  
27               ditches. Do not apply if heavy rain is expected. Apply  
28               this product only to your lawn and sweep any product that  
29               lands on the driveway, sidewalk or street back onto your  
30               lawn."



1 (b) Prohibited label.--No fertilizer material may be labeled  
2 for the purpose of melting snow or ice.

3 § 6805. Application of fertilizer to turf.

4 (a) Restrictions.--No person or professional fertilizer  
5 applicator may:

6 (1) apply fertilizer intended for use on turf to an  
7 impervious surface. Any fertilizer inadvertently applied to  
8 an impervious surface shall be removed from the impervious  
9 surface;

10 (2) apply fertilizer containing phosphorus or nitrogen  
11 to turf at any time when the ground is frozen to a depth of  
12 at least two inches or snow covered;

13 (3) apply fertilizer containing phosphorus or nitrogen  
14 to turf before March 1 or after November 15 in any calendar  
15 year, except fertilizer containing no more than 0.5 pounds of  
16 total nitrogen per 1,000 square feet may be applied by a  
17 professional fertilizer applicator to turf after November 15  
18 but before March 1 in a calendar year;

19 (4) apply fertilizer within five feet of the top of a  
20 bank of any perennial or intermittent stream, except that  
21 fertilizer may be applied to the top of the bank of any  
22 perennial or intermittent stream if applied using a drop  
23 spreader, rotary spreader with deflector, targeted spray  
24 liquid or other available targeted application technology.  
25 The establishment of setbacks for fertilizer application  
26 pursuant to this paragraph shall not preclude the  
27 establishment or applicability of, or required compliance  
28 with, any other environmental standard established pursuant  
29 to any other Federal or State law, rule or regulation; or

30 (5) apply fertilizer for the purpose of melting snow or

1 ice.

2 (b) Application rates.--Except as provided under subsections  
3 (c), (d) and (e), at least 20% of the total nitrogen applied per  
4 1,000 square feet shall be enhanced-efficiency nitrogen and  
5 application rates shall:

6 (1) not exceed 0.7 pounds of readily available nitrogen  
7 per 1,000 square feet per application;

8 (2) not exceed 0.9 pounds of total nitrogen per 1,000  
9 square feet per application; and

10 (3) contain zero phosphorus, except when specifically  
11 labeled for the following purposes:

12 (i) providing nutrients to specific soils and target  
13 vegetation as determined to be necessary pursuant to a  
14 soil test performed no more than three years prior to the  
15 application;

16 (ii) establishing vegetation for the first time;

17 (iii) reestablishing or repairing a turf area; or

18 (iv) as an enhanced-efficiency phosphorus  
19 fertilizer, natural organic fertilizer, organic-base  
20 fertilizer or fertilizer derived from a by-product.

21 (c) Professional fertilizer applicators.--A professional  
22 fertilizer applicator shall not be required to use enhanced-  
23 efficiency nitrogen fertilizer. Except as provided under  
24 subsections (d) and (e), no professional fertilizer applicator  
25 may apply fertilizer at a rate exceeding:

26 (1) 0.7 pounds of readily available nitrogen per 1,000  
27 square feet per application;

28 (2) 0.9 pounds of total nitrogen per 1,000 square feet  
29 per application; and

30 (3) zero phosphorus, except when the professional

fertilizer applicator:

(i) determines that the fertilizer is necessary for the specific soils and target vegetation pursuant to a soil test performed no more than three years before the application, and the application is in a manner consistent with generally accepted best management practices;

(ii) is establishing vegetation for the first time in a manner consistent with generally accepted best management practices;

(iii) is reestablishing or repairing a turf area in a manner consistent with generally accepted best management practices; or

(iv) is utilizing an enhanced-efficiency phosphorus fertilizer, natural organic fertilizer, organic-base fertilizer or fertilizer derived from a by-product.

(d) Enhanced-efficiency nitrogen fertilizer.--

Notwithstanding the provisions of subsections (b) and (c), enhanced-efficiency nitrogen fertilizer may be applied at a rate not to exceed 2.5 pounds of nitrogen per application with a monthly release rate not to exceed 0.7 pounds of nitrogen per 1,000 square feet.

(e) Enhanced-efficiency phosphorus fertilizer, natural organic fertilizer, organic-base fertilizer and fertilizer derived from a by-product.--

(1) Except as provided in paragraph (2) and notwithstanding the provisions of subsections (b) and (c), an enhanced-efficiency phosphorus fertilizer, natural organic fertilizer, organic-base fertilizer or fertilizer derived from a by-product containing phosphorus may be applied at a

1 rate indicated by a soil test performed not more than three  
2 years before the application date or at a rate not to exceed  
3 0.25 pounds of phosphorus per 1,000 square feet, with a  
4 maximum total annual application of 0.5 pounds of phosphorus  
5 per 1,000 square feet per year.

6 (2) Fertilizer products containing phosphorus may not be  
7 applied to turf when a soil test performed not more than  
8 three years before the application date indicates a soil  
9 phosphorus level equal to or greater than 200 ppm according  
10 to a Mehlich 3 test or equivalent.

11 § 6806. Certification of professional fertilizer applicators.

12 (a) Certification.--

13 (1) No professional fertilizer applicator may apply  
14 fertilizer to turf without first completing a certification  
15 program and receiving appropriate certification pursuant to  
16 subsection (c), unless acting under the supervision of a  
17 certified professional fertilizer applicator as provided  
18 under subsection (b).

19 (2) A certification issued under subsection (c) shall be  
20 valid for three years, subject to the limitations of section  
21 6810(c) (relating to enforcement and penalties).

22 (b) Supervisory employees.--A person or entity employing  
23 professional fertilizer applicators shall have at least one  
24 supervisory employee who holds a valid certificate present or  
25 immediately accessible to employees applying fertilizer at all  
26 hours of operation.

27 (c) Professional fertilizer application program.--

28 (1) The department shall:

29 (i) establish a professional fertilizer application  
30 certification program; or

1           (ii) designate one or more professional fertilizer  
2           application certification programs provided by a third  
3           party, such as a university, industry association,  
4           employer of professional fertilizer applicators or other  
5           continuing education provider, as an approved  
6           professional fertilizer application certification program  
7           for purposes of this section.

8           (2) Any program established or designated under this  
9           subsection shall include, but not be limited to, information  
10          on the following subject areas:

11           (i) the proper use and calibration of fertilizer  
12           application equipment;

13           (ii) the hazards involved in, and the environmental  
14           impact of, applying fertilizer, including nutrient  
15           pollution, to perennial or intermittent streams;

16           (iii) all applicable Federal and State laws, rules  
17           and regulations;

18           (iv) the correct interpretation of fertilizer  
19           labeling information; and

20           (v) the generally accepted best management practices  
21           for fertilizer use on turf, including the appropriate  
22           time to wait before applying fertilizer when rain is  
23           forecast and the appropriate time to apply fertilizer  
24           when soils are wet and the potential for fertilizer  
25           movement offsite exists.

26          (d) Program fees and continuing education.--In administering  
27          a professional fertilizer application certification program:

28           (1) The department, acting pursuant to subsection (c) (1)

29           (i), may:

30           (i) require payment, not to exceed \$50, for a

certificate of competency to cover costs associated with the administration of this chapter; and

(ii) require payment, not to exceed \$25, for recertification to cover costs associated with the administration of this chapter.

(2) A third party, acting pursuant to subsection (c)(1) (ii), may:

(i) require payment, not to exceed \$50, for a certificate of competency to cover costs associated with the administration of this chapter; and

(ii) require payment, not to exceed \$25, for a recertification to cover costs associated with the administration of this chapter.

(e) Program duties of department.--In establishing or designating a professional fertilizer application certification program under subsection (c), the department shall, to the maximum extent practicable, align education and training opportunities for commercial applicators of pesticides under section 16.1 of the act of March 1, 1974 (P.L.90, No.24), known as the Pennsylvania Pesticide Control Act of 1973.

(f) List of certified professional fertilizer applicators.--The department shall publish and maintain a list of all certified professional fertilizer applicators and make the list available on its publicly accessible Internet website.

§ 6807. Cooperation with other entities.

The department may cooperate with and enter into agreements with agencies of the Federal Government, agencies and political subdivisions of the Commonwealth or any other state or a nongovernmental entity in order to carry out the purpose and provisions of this chapter.

1 § 6808. Preemption.

2 This chapter and its provisions are of Statewide concern, and  
3 no political subdivision shall have the authority to adopt or  
4 enforce any ordinance, regulation or resolution which is in  
5 conflict with this chapter.

6 § 6809. Rules and regulations.

7 The department shall promulgate and enforce rules and  
8 regulations necessary for the administration and implementation  
9 of this chapter. To implement section 6806(c) (relating to  
10 certification of professional fertilizer applicators), the  
11 department shall promulgate rules and regulations no later than  
12 two years from the effective date of this section.

13 § 6810. Enforcement and penalties.

14 (a) Civil penalties.--

15 (1) In addition to any other remedy available at law or  
16 in equity for a violation of this chapter, the department  
17 may:

18 (i) Except as otherwise provided in subparagraph  
19 (ii), assess a civil penalty of not more than \$50 upon  
20 any person for each violation of a provision of this  
21 chapter.

22 (ii) Assess a civil penalty of not more than \$2,500  
23 upon any person for each violation of section 6803  
24 (relating to fertilizer sold to consumers) or 6804  
25 (relating to labeling).

26 (2) The civil penalty assessed shall be payable to the  
27 department and shall be collectible in any manner provided by  
28 law for the collection of debt.

29 (3) No civil penalty may be assessed unless the person  
30 assessed the penalty has been given notice and an opportunity

1 for a hearing on the assessment in accordance with the  
2 provisions of 2 Pa.C.S. Chs. 5 Subch. A (relating to practice  
3 and procedure of Commonwealth agencies) and 7 Subch. A  
4 (relating to judicial review of Commonwealth agency action).

5 (b) De minimis violations.--Nothing in this chapter may be  
6 construed as requiring the department to report a violation and  
7 to institute penalties as a result of de minimis violations of  
8 this chapter when the department concludes that the public  
9 interest will be best served by a suitable notice of warning in  
10 writing.

11 (c) Suspension or revocation of certification.--The  
12 department may suspend or revoke a certification under section  
13 6806 (relating to certification of professional fertilizer  
14 applicators) for a violation of this chapter.  
15 § 6811. Disposition of funds.

16 Moneys received from fees collected pursuant to section  
17 6806(d)(1) (relating to certification of professional fertilizer  
18 applicators), fines and penalties under this chapter shall be  
19 paid into the Agronomic Regulatory Account established under  
20 section 6725 (relating to disposition of funds).

21 Section 4. This act shall take effect as follows:

22 (1) The addition of 3 Pa.C.S. §§ 6801, 6803, 6804 and  
23 6805 shall take effect in two years.

24 (2) The addition of 3 Pa.C.S. § 6806(a) and (b) shall  
25 take effect one year after the promulgation of regulations  
26 made under 3 Pa.C.S. § 6806(c).

27 (3) The remainder of this act shall take effect  
28 immediately.