

FIRST REGULAR SESSION

# SENATE BILL NO. 469

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR MUNZLINGER.

Read 1st time February 19, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

2198S.011

## 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, with penalty provisions.

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Section A. Sections 266.301, 266.311, 266.331, 266.336, 266.341, 266.343, 2 and 266.347, RSMo, are repealed and six new sections enacted in lieu thereof, to 3 be known as sections 266.301, 266.311, 266.331, 266.336, 266.343, and 266.347, 4 to read as follows: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

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

2 period ending June thirtieth and December thirty-first, file with the [director]  
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. No rule or portion of**  
27 **a rule promulgated under the authority of this chapter shall become**  
28 **effective unless it has been promulgated pursuant to the provisions of**  
29 **section 536.024;**

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

43 (5) **Determine** the method and amount of fees to be assessed. In

44 performing its duties under this subdivision, the [advisory council] **fertilizer**  
45 **control board** shall represent the best interests of the Missouri farmers and  
46 **Missouri agribusinesses;**

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

49       **(6) Secure access to a laboratory with necessary equipment, and**  
50 **employees as may be necessary, to aid in the administration of sections**  
51 **266.291 to 266.351;**

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

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

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

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

73       **(2) Only to the extent necessary to determine general**  
74 **compliance, inspect and audit the books of every distributor who sells,**  
75 **offers for sale, or exposes for sale fertilizer for consumption or use in**  
76 **this state to determine whether or not the provisions of sections 266.291**  
77 **to 266.351 are being fully complied with;**

78       **(3) Require every distributor to file documentation as prescribed**  
79 **by rules promulgated under sections 266.291 to 266.351. Such**  
80 **documents shall not be required more often than six-month intervals,**

81 and all such documents shall be returned to the distributor upon  
82 request;

83 (4) Enter upon any public or private premises during regular  
84 business hours in order to have access to fertilizer subject to sections  
85 266.291 to 266.351 and the rules and regulations promulgated under  
86 sections 266.291 to 266.351, and to take samples and inspect such  
87 fertilizer;

88 (5) Issue and enforce a written or printed "stop-sale, use, or  
89 removal" order to the owner or custodian of any fertilizer that is found  
90 to be in violation of any of the provisions of sections 266.291 to 266.351,  
91 which such order prohibiting the further sale of such fertilizer until  
92 sections 266.291 to 266.351 have been complied with or otherwise  
93 disposed of;

94 (6) Publish each year the full and detailed report giving the  
95 names and addresses of all distributors registered under sections  
96 266.291 to 266.351, the analytical results of all samples collected, and a  
97 statement of all fees and penalties received and expenditures made  
98 under sections 266.291 to 266.351;

99 (7) Establish from information secured from manufacturers and  
100 other reliable sources, the market value of fertilizer and fertilizer  
101 materials for the purpose of determining the amount of damages due  
102 when the official analysis shows an excessive deficiency from the  
103 guaranteed analysis;

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

109 [3.] 4. The filling of vacancies, the selection of officers, the  
110 conduct of its meetings, and all other matters concerning the fertilizer  
111 control board shall be outlined in the bylaws established by the  
112 fertilizer control board. All members of the [advisory council] fertilizer  
113 control board shall serve for terms of three years and until their successors are  
114 duly appointed and qualified; except that, of the members first appointed:

115 (1) Two members who are actively employed as fertilizer manufacturers  
116 or distributors, two members actively engaged in the business of farming, and  
117 [two members chosen from the residents of this state] one at large member

118 shall serve for terms of three years;

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

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

124 [4.] **5.** All members shall be residents of this state. No member may  
125 serve more than two consecutive terms on the advisory council, but any member  
126 may be reappointed after he has not been a member of the advisory council for  
127 a period of at least three years.

128 [5.] **6.** All members shall be reimbursed for reasonable expenses incurred  
129 in the performance of their official duties in accordance with the reimbursement  
130 policy set by the [director] **fertilizer control board bylaws**. All  
131 reimbursements paid under this section shall be paid from fees collected under  
132 sections 266.291 to 266.351.

133 [6. Every vacancy on the advisory council shall be filled by the director  
134 with the approval of a majority of the remaining members of the council. The  
135 person selected to fill any such vacancy shall possess the same qualifications  
136 required by this section as the member he replaces and shall serve until the end  
137 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 **a potential deficiency, the distributor shall be provided preliminary**  
10 **notification within two business days by telephone or email in addition**  
11 **to a notification letter delivered by mail. Once the analysis is certified,**  
12 a written certification of penalties assessed under section 266.343 [addressed to  
13 the distributor. A copy of such certification of assessment] shall be mailed to the  
14 distributor liable for the penalty.

15 3. Any decision, finding, order or ruling of the [director] **fertilizer**  
16 **control board** made pursuant to the provisions of sections 266.291 through  
17 266.351 shall be subject to judicial review in the manner provided by chapter 536.

18 4. If any distributor shall fail to pay any penalty assessed [by the  
19 director] after the time for judicial review has expired, or after any judgment or  
20 decree approving such assessment has become final, the person entitled to such  
21 penalty under the provisions of subsection 1 shall be entitled to bring a civil

22 action to recover the same, and in such civil action such persons shall be entitled  
23 to recover from the distributor the amount of the penalty, a reasonable attorney's  
24 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.]

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