

# SENATE BILL NO. 710

## 102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR MOON.

2761S.01H

KRISTINA MARTIN, Secretary

### AN ACT

To repeal sections 266.291, 266.301, 266.311, 266.331, 266.336, and 266.347, RSMo, and to enact in lieu thereof six new sections relating to fertilizer control.

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

Section A. Sections 266.291, 266.301, 266.311, 266.331, 266.336, and 266.347, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 266.291, 266.301, 266.311, 266.331, 266.336, and 266.347, to read as follows:

266.291. The following words, terms, and phrases, when used in sections 266.291 to 266.351 have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) **"Department", the department of agriculture;**

(2) "Director" means the director of the [Missouri agricultural experiment station at Columbia, Missouri] **department;**

[(2)] (3) "Distributor" means any person who imports, consigns, manufactures, produces or compounds fertilizer, or offers for sale, sells, barter, or otherwise supplies fertilizers for consumption or use in this state; provided that this term shall not apply to any person who purchases fertilizer from a distributor registered under sections 266.291 to 266.351 and which fertilizer has been once sold in compliance with sections 266.291 to 266.351;

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

17            [(3)] (4) "Essential plant nutrient" includes any  
18 element recognized as being directly required by any plant  
19 to complete its life cycle;

20            [(4)] (5) "Fertilizer" includes any organic or  
21 inorganic material of natural or synthetic origin which is  
22 added to soil, soil mixtures, or solution to supplement  
23 nutrients and is claimed to contain one or more essential  
24 plant nutrients. The term "fertilizer" does not include  
25 unmanipulated animal and vegetable manure and agricultural  
26 liming materials used to reduce soil acidity;

27            [(5)] (6) "Person" includes individuals, partnerships,  
28 associations, firms, corporations, estates, trusts,  
29 receivers, or trustees appointed by any state or federal  
30 court;

31            [(6)] (7) "Sale", "sold", and "sells" include  
32 exchanges and consignments for sale and means any transfer  
33 or barter;

34            [(7)] (8) "Variable rate technology" means the method  
35 of applying two or more fertilizer materials which are  
36 blended at variable rates by a spreading vehicle or device  
37 during the application process.

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

266.311. It shall be unlawful for any person to sell,  
2 offer for sale or expose for sale any fertilizer for use or  
3 consumption in this state which is misbranded. Any  
4 fertilizer shall be deemed to be misbranded if it fails to

5 carry the printed statement required under section 266.321,  
6 or if the chemical composition of such fertilizer does not  
7 meet the guarantee expressed on said statement within  
8 allowable tolerances fixed by the [fertilizer control board]  
9 **department**, or if the container for such fertilizer or any  
10 statement accompanying the same carries any false or  
11 misleading statement, or if false or misleading statements  
12 concerning its agricultural value are made on any  
13 advertising matter accompanying or associated with such  
14 fertilizer.

266.331. Every distributor shall, within thirty days  
2 after each six-months' period ending June thirtieth and  
3 December thirty-first, file with the [fertilizer control  
4 board] **department** on forms supplied by the [fertilizer  
5 control board] **department** a sworn certificate setting forth  
6 the information required by rule. At the time of filing  
7 said certificate, each distributor of fertilizer, excluding  
8 manipulated animal or vegetable manure, shall pay to the  
9 director the fee prescribed by rule, which fee shall not  
10 exceed one dollar per ton and one dollar ten cents per  
11 metric ton; except that, sales to fertilizer manufacturers  
12 or exchanges between them are hereby exempted. Each  
13 distributor of fertilizer consisting of manipulated animal  
14 or vegetable manure shall pay to the director a fee paid for  
15 each ton of manure as prescribed by rule, which fee shall  
16 not exceed two cents for each percent nitrogen for manure  
17 containing less than five percent nitrogen; or which fee  
18 shall not exceed four cents for each percent nitrogen for  
19 manure containing at least five but less than ten percent  
20 nitrogen; or which fee shall not exceed six cents for each  
21 percent nitrogen for manure containing ten or more percent  
22 nitrogen. In the event that the [fertilizer control board]

23 **department** has not prescribed a fee under this section, each  
24 distributor required to pay a fee under this section shall  
25 pay a fee of one and one-half cents for each one hundred  
26 pounds of fertilizer sold during the period covered by the  
27 certificate filed under this section. The director is  
28 hereby authorized to collect fees and hold all fees in a  
29 separate fund that shall be utilized by the [fertilizer  
30 control board] **department** to administer sections 266.291 to  
31 266.351.

266.336. 1. [There is hereby created a "Fertilizer  
2 Control Board". The fertilizer control board shall be  
3 composed of thirteen members. Of the thirteen members, five  
4 shall be actively employed as fertilizer manufacturers or  
5 distributors and five shall be actively engaged in the  
6 business of farming. The nonprofit corporation organized  
7 under Missouri law to promote the interests of the  
8 fertilizer industry shall nominate persons employed as  
9 fertilizer manufacturers or distributors, and Missouri not-  
10 for-profit organizations that represent farmers shall  
11 nominate persons engaged in the business of farming. Such  
12 nominations shall be submitted to the director, and the  
13 director shall select members from these nominations. Three  
14 at large members shall be selected by the director with the  
15 approval of a majority of the other ten members of the  
16 fertilizer control board.

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

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

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

22 [(3)] (2) In accordance with this section and chapter  
23 536, adopt, amend, promulgate, or repeal after due notice

24 and hearing rules and regulations to enforce, implement, and  
25 effectuate the powers and duties of sections 266.291 to  
26 266.351. Any rule or portion of a rule, as that term is  
27 defined in section 536.010, that is created under the  
28 authority delegated in this section shall become effective  
29 only if it complies with and is subject to all of the  
30 provisions of chapter 536 and, if applicable, section  
31 536.028. This section and chapter 536 are nonseverable and  
32 if any of the powers vested with the general assembly  
33 pursuant to chapter 536 to review, to delay the effective  
34 date, or to disapprove and annul a rule are subsequently  
35 held unconstitutional, then the grant of rulemaking  
36 authority and any rule proposed or adopted after August 28,  
37 2016, shall be invalid and void;

38 [(4)] (3) Revoke or suspend a permit, or refuse to  
39 issue a permit, to any distributor who has knowingly  
40 violated any of the provisions of sections 266.291 to  
41 266.351, or has failed or neglected to pay the fees or  
42 penalties provided for in sections 266.291 to 266.351. The  
43 [board] department shall conduct a hearing if requested by  
44 the distributor to review all penalties assessed and permit  
45 decisions made by the [board] department. Upon completion  
46 of a hearing, the [board] department shall determine if  
47 penalty modifications are warranted giving consideration to  
48 the history of previous violations, the seriousness of the  
49 violation, any overage in any other ingredients,  
50 demonstrated good faith of the distributor, and any other  
51 factors deemed appropriate. Any penalty modification must  
52 comply with section 266.343;

53 [(5)] (4) Determine the method and amount of fees to  
54 be assessed. In performing its duties under this  
55 subdivision, the [fertilizer control board] department shall

56 represent the best interests of the Missouri farmers and  
57 Missouri agribusinesses;

58 [(6)] (5) Secure access to a laboratory with necessary  
59 equipment, and employees as may be necessary, to aid in the  
60 administration of sections 266.291 to 266.351;

61 [(7)] (6) Pursue nutrient research, educational, and  
62 outreach programs to ensure the adoption and implementation  
63 of practices that optimize nutrient use efficiency, ensure  
64 soil fertility, and address environmental concerns with  
65 regard to fertilizer use extending the results of the  
66 fertilizer experiments that may be of practical use to the  
67 farmers and agribusinesses of this state;

68 [(8)] (7) Exercise general supervision of the  
69 administration and enforcement of sections 266.291 to  
70 266.351, and all rules and regulations and orders  
71 promulgated under such sections;

72 [(9)] (8) Institute and prosecute through the attorney  
73 general of the state suits to collect any fees due under  
74 sections 266.301 to 266.347 which are not promptly paid.

75 [3.] 2. Authorized agents of the [fertilizer control  
76 board] **department** are hereby authorized and empowered to:

77 (1) Only to the extent necessary to determine general  
78 compliance, collect samples, inspect, and make analysis of  
79 fertilizer sold, offered, or exposed for sale within this  
80 state; except that, samples taken of fertilizer sold in bulk  
81 shall be taken from the bulk container immediately after  
82 mixing on the premises of the mixing facility or, when not  
83 possible, to be sampled from the bulk container wherever  
84 found. All samples shall have a preliminary analysis  
85 completed within five business days of the sample being  
86 obtained. If requested, a portion of any sample found

87 subject to penalty or other legal action shall be provided  
88 to the distributor liable for the penalty;

89 (2) Only to the extent necessary to determine general  
90 compliance, inspect and audit the books of every distributor  
91 who sells, offers for sale, or exposes for sale fertilizer  
92 for consumption or use in this state to determine whether or  
93 not the provisions of sections 266.291 to 266.351 are being  
94 fully complied with;

95 (3) Require every distributor to file documentation as  
96 prescribed by rules promulgated under sections 266.291 to  
97 266.351. Such documents shall not be required more often  
98 than six-month intervals, and all such documents shall be  
99 returned to the distributor upon request;

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

105 (5) Issue and enforce a written or printed "stop-sale,  
106 use, or removal" order to the owner or custodian of any  
107 fertilizer that is found to be in violation of any of the  
108 provisions of sections 266.291 to 266.351, which such order  
109 prohibiting the further sale of such fertilizer until  
110 sections 266.291 to 266.351 have been complied with or  
111 otherwise disposed of;

112 (6) Publish each year the full and detailed report  
113 giving the names and addresses of all distributors  
114 registered under sections 266.291 to 266.351, the analytical  
115 results of all samples collected, and a statement of all  
116 fees and penalties received and expenditures made under  
117 sections 266.291 to 266.351;

118 (7) Establish from information secured from  
119 manufacturers and other reliable sources, the market value  
120 of fertilizer and fertilizer materials for the purpose of  
121 determining the amount of damages due when the official  
122 analysis shows an excessive deficiency from the guaranteed  
123 analysis; **and**

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

130 [4. The filling of vacancies, the selection of  
131 officers, the conduct of its meetings, and all other matters  
132 concerning the fertilizer control board shall be outlined in  
133 the bylaws established by the fertilizer control board. All  
134 members of the fertilizer control board shall serve for  
135 terms of three years and until their successors are duly  
136 appointed and qualified; except that, of the members first  
137 appointed:

138 (1) Two members who are actively employed as  
139 fertilizer manufacturers or distributors, two members  
140 actively engaged in the business of farming, and one at  
141 large member shall serve for terms of three years;

142 (2) Two members who are actively employed as  
143 fertilizer manufacturers or distributors, two members  
144 actively engaged in the business of farming, and one at  
145 large member shall serve for terms of two years; and

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

148 5. All members shall be residents of this state. No  
149 member may serve more than two consecutive terms on the



150 fertilizer control board, but any member may be reappointed  
151 after he has not been a member of the advisory council for a  
152 period of at least three years.

153 6. All members shall be reimbursed for reasonable  
154 expenses incurred in the performance of their official  
155 duties in accordance with the reimbursement policy set by  
156 the fertilizer control board bylaws. All reimbursements  
157 paid under this section shall be paid from fees collected  
158 under sections 266.291 to 266.351.]

266.347. 1. The penalties assessed under section  
2 266.343 shall be paid by the distributor to the purchaser of  
3 such fertilizer, and in the event such purchaser cannot be  
4 ascertained, then said penalty shall be paid to the director  
5 under section 266.331 and shall be used in accordance with  
6 the provisions of such section.

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

15 3. Any decision, finding, order or ruling of the  
16 [fertilizer control board] **department** made pursuant to the  
17 provisions of sections 266.291 through 266.351 shall be  
18 subject to judicial review in the manner provided by chapter  
19 536.

20 4. If any distributor shall fail to pay any penalty  
21 assessed after the time for judicial review has expired, or  
22 after any judgment or decree approving such assessment has  
23 become final, the person entitled to such penalty under the

24 provisions of subsection 1 **of this section** shall be entitled  
25 to bring a civil action to recover the same, and in such  
26 civil action such persons shall be entitled to recover from  
27 the distributor the amount of the penalty, a reasonable  
28 attorney's fee and costs of the action.

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