

LEGISLATIVE BILL 539

Approved by the Governor April 29, 1983

Introduced by Carsten, 2

AN ACT to amend sections 2-4302, 2-4303, 2-4310, 2-4319, 2-4320, 2-4322, 2-4323, 2-4325, and 2-4326, Revised Statutes Supplement, 1982, relating to agriculture; to redefine terms; to clarify application; to provide duties for certain manufacturers, distributors, and retailers; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 2-4302, Revised Statutes Supplement, 1982, be amended to read as follows:

2-4302. As used in sections 2-4301 to 2-4327, unless the context otherwise requires, the definitions in sections 2-4303 to 2-4318 and section 4 of this act shall apply.

Sec. 2. That section 2-4303, Revised Statutes Supplement, 1982, be amended to read as follows:

2-4303. Agricultural liming material shall mean material which is distributed for agricultural purposes a finished product which is sold in the normal course of business to the ultimate consumer and whose calcium and magnesium compounds are capable of neutralizing soil acidity, including limestone, burnt lime, hydrated lime, marl, an industrial by-product byproduct, and agricultural lime slurry.

Sec. 3. That section 2-4310, Revised Statutes Supplement, 1982, be amended to read as follows:

2-4310. Fineness shall mean the percentage by weight of the material which will pass nationally recognized standard sieves of specified sizes to be determined by the director pursuant to section 2-4319.

Sec. 4. (1) Manufacturer shall mean a person who quarries, crushes, or grinds agricultural liming materials.

(2) Distributor shall mean one who sells agricultural liming material to any but the ultimate consumer.

(3) Retailer shall mean one who sells

agricultural liming material to the ultimate consumer.

(4) Any person can be either a manufacturer, distributor, or seller, or any combination thereof, depending upon the function performed by such person in any given transaction.

Sec. 5. That section 2-4319, Revised Statutes Supplement, 1982, be amended to read as follows:

2-4319. The department shall adopt, promulgate, and enforce such rules and regulations as may be necessary to carry out the provisions of sections 2-4301 to 2-4327 pursuant to Chapter 84, article 9.

The director shall adopt and promulgate rules and regulations relating to fineness as defined in section 2-4310 and he or she shall refer in adopting such rules and regulations to specifications ~~base such rules and regulations on specifications for sieve sizes~~ used by national testing and materials organizations.

Sec. 6. That section 2-4320, Revised Statutes Supplement, 1982, be amended to read as follows:

2-4320. (1) Agricultural liming materials sold, offered, or exposed for sale in this state by any manufacturer, distributor, or retailer shall have affixed to each package in a conspicuous manner on the outside of such package a plainly printed, stamped, or otherwise marked label, tag, or statement or, in the case of bulk sales, a delivery slip, setting forth the following information:

(a) The name and principal office address of the manufacturer or distributor;

(b) The brand or trade name of the material;

(c) The identification of the product as to the type of the agricultural liming material;

(d) The net weight of the agricultural liming material;

(e) The minimum effective calcium carbonate equivalent, which is a percentage of weight function of calcium carbonate equivalent and fineness as prescribed by the rules and regulations of the director; and

(f) The pounds of effective calcium carbonate per ton.

Additional information may also be listed on the package including the minimum percentage by weight of calcium carbonate and magnesium carbonate.

(2) No information or statement shall appear on any package, label, delivery slip, or advertising matter which is false or misleading to the purchaser as to the quality, analysis type, or composition of the agricultural liming material.

(3) In the case of any material which has been ~~adulterated~~ changed in any way as to render inaccurate or misleading any of the information required by subsection (1) of this section subsequent to its packaging, labeling, or loading and before its delivery to the consumer, a

plainly marked notice of the change adulteration shall be affixed by the manufacturer, distributor, or retailer vendor to the package or delivery slip to identify the kind and degree of such change adulteration in such package.

(4) At every site from which agricultural liming materials are delivered in bulk and at every place where consumer orders for bulk deliveries are placed, there shall be conspicuously posted a copy of the statements required by subsections (1) and (3) of this section for each brand of material.

Sec. 7. That section 2-4322, Revised Statutes Supplement, 1982, be amended to read as follows:

2-4322. (1) Each separately identified agricultural liming material shall be registered before being distributed in this state. The person distributor who first causes the distribution of the agricultural liming material into or within this state shall be responsible for compliance with the registration requirements of this section. The application for registration shall be submitted to the department on forms furnished and approved by the department. Upon approval by the department a copy of the registration shall be furnished to the applicant. All registrations shall expire on December 31 of the same year. Agricultural lime slurry as defined in section 2-4316 shall be exempt from the registration requirements of this section.

A person distributor shall not be required to register any brand of agricultural liming material which is already registered pursuant to sections 2-4301 to 2-4327 by another person, if the label does not differ in any respect.

(2) Any out-of-state manufacturer, distributor, or retailer who has no distribution facility within this state shall obtain a registration for its principal out-of-state office if it markets or distributes agricultural liming materials in the State of Nebraska.

~~(2)~~ (3) Every manufacturer, distributor, or retailer of agricultural liming materials to be distributed in this state shall file with the department an application for a license on or before January 1 of each year or prior to manufacture, or distribution, or sale of such liming materials. Upon acceptance of the application and proper fee, the department shall issue a license for the current year. The annual license fee shall be five dollars and the license shall expire on December 31 of the same year.

Sec. 8. That section 2-4323, Revised Statutes Supplement, 1982, be amended to read as follows:

2-4323. (1) Within thirty days following the expiration of each registration and license, each retailer registrant or licensee shall submit on a form furnished and approved by the department an annual statement setting forth, by county name, the number of net tons of each

agricultural liming material sold by him or her for use in this state during the previous twelve-month period. Such statement shall be accompanied by payment of an inspection fee at the rate fixed by the director but not exceeding ten cents per ton. The fee shall be set at an amount to cover the expenses of the inspection provided in section 2-4325 and the costs of administering this section. The fee shall be paid by the retailer licensee and in the case of agricultural lime slurry, the fee shall be paid on the base lime material only. The fee shall be paid by the person licensed or registered under section 2-4322. In the case of a person who is a registrant and licensee, he or she shall not be subject to payment of more than one inspection fee nor required to submit more than one annual statement.

(2) The department shall publish and ~~distribute~~ annually; make available, to each agricultural liming material registrant or licensee and to any other interested person upon his or her request, a composite report showing the tons of agricultural liming material sold in each county in this state. Such report shall in no way divulge the operation of any registrant or licensee.

Sec. 9. That section 2-4325, Revised Statutes Supplement, 1982, be amended to read as follows:

2-4325. (1) It shall be the duty of the director or his or her duly authorized agent, to sample, inspect, make analyses of, and test agricultural liming materials distributed within this state as he or she may deem necessary to determine whether such agricultural liming materials are in compliance with sections 2-4301 to 2-4327. The director or his or her duly authorized agent is authorized to enter upon any public or private premises or carriers during regular business hours in order to have access to agricultural liming material regulated by sections 2-4301 to 2-4327 and by the rules and regulations adopted pursuant thereto, and to have access to the records relating to such material's distribution.

(2) The methods of analysis and sampling shall be those approved by the director based on methods recognized by analytical chemists or published sources. The director shall, pursuant to the rulemaking provisions of Chapter 84, article 9, adopt and promulgate rules and regulations regarding methods of analysis and sampling, and shall refer to methods recognized by analytical chemists or published sources in adopting such methods.

(3) The results of official analyses of agricultural liming materials and portions of official samples shall be distributed by the department as provided in the rules and regulations at least annually.

Sec. 10. That section 2-4326, Revised Statutes Supplement, 1982, be amended to read as follows:

2-4326. The department may issue and enforce a written or printed stop-sale, use, or removal order to the owner or custodian of any lot of agricultural liming

material. The department may order the owner or custodian to hold such material at a designated place when the department finds such material is being offered or exposed for sale by the owner or custodian in violation of sections 2-4301 to 2-4327 or the rules and regulations. Such material shall be released when sections 2-4301 to 2-4327 or the rules and regulations have been complied with, such violations have otherwise been legally disposed of in writing, and all costs and expense incurred in connection with such material's holding have been paid. This section shall not apply if the owner or custodian is the ultimate consumer of the agricultural liming material and he or she has title to such materials.

Sec. 11. That original sections 2-4302, 2-4303, 2-4310, 2-4319, 2-4320, 2-4322, 2-4323, 2-4325, and 2-4326, Revised Statutes Supplement, 1982, are repealed.

Sec. 12. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.