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SB-1522 Fertilizing material. (2023-2024)

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Senate Bill No. 1522

CHAPTER 208

An act to amend Sections 14501, 14502, 14528, 14533, 14542, 14550.5, 14557, 14558, 14591, 14601, 14603, 14611, 14623, and 14651 of, to add Sections 14555.5 and 14651.7 to, to repeal Section 14552 of, and to repeal and add Section 14513 of, the Food and Agricultural Code, relating to fertilizer.

[Approved by Governor August 26, 2024. Filed with Secretary of State August 26, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1522, Committee on Agriculture. Fertilizing material.

Existing law generally regulates fertilizing materials, as defined, and provides for the licensure of individuals who manufacture or distribute fertilizing materials. For purposes of these provisions, existing law defines "fertilizing materials" to mean any commercial fertilizer, agricultural mineral, auxiliary soil and plant substance, organic input material, or packaged soil amendment.

This bill would revise the definition of fertilizing materials to instead mean any commercial fertilizer, agricultural mineral, beneficial substance, or organic input material. The bill would also define the term "beneficial substance" for these purposes.

Existing law requires that each differing label, other than weight or package size, as described, for specialty fertilizer, packaged agricultural mineral, auxiliary soil and plant substance, organic input material, and packaged soil amendment be registered. Existing law requires that registrations be valid for 2 years and requires the registration fee to not exceed \$200 per product, except for the registration fee for organic input material, which may not exceed \$500.

This bill would eliminate the label registration requirement for auxiliary soil and plant substances and packaged soil amendments and would apply that requirement to beneficial substances. The bill would require registrations to be valid for up to 4 years and would increase the general registration fee to a maximum of \$400 and the organic input registration fee to a maximum of \$1,000. The bill would also exclude certain substances from the registration requirement if distributed in bulk quantities.

The bill would require the Department of Food and Agriculture to refuse to issue a license or label registration, or both, if the person has a fine, fee, assessment, or penalty levied by the department for a violation of the provisions regulating fertilizing materials that remains unpaid after a specified time period, and until that fine, fee, assessment, or penalty is paid in full. The bill would require the department to adopt regulations that establish procedures for a written appeals process for a person who wishes to contest the department's refusal to issue a license or registration, or both, as specified.

Existing law requires a licensee whose name appears on the label who sells or distributes bulk fertilizing materials to unlicensed purchasers to pay to the Secretary of Food and Agriculture an assessment not to exceed \$0.002 per dollar of sales and authorizes the secretary to reduce the assessment to a lower rate that provides sufficient revenue to carry out these provisions.

This bill would authorize the secretary to set the mill assessment rate, subject to a specified limit, and exempt the setting of the mill assessment rate from specified laws relating to administrative regulations and rulemaking.

Existing law requires a tonnage report to be submitted to the secretary semiannually no later than January 31 and July 31 of each year, and requires the secretary to impose a penalty of \$200 on any person who fails to submit a report on or before the due dates.

This bill would instead require the tonnage report to be submitted semiannually as specified by regulation and would instead require the secretary to impose a late fee of \$200. The bill would require, if a person has obtained multiple fertilizing materials licenses and the reports are submitted after the required dates, the late fee to be limited to one \$200 late fee per person.

This bill would also make conforming, clarifying, and technical changes.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 14501 of the Food and Agricultural Code is amended to read:

14501. The Legislature finds and declares that it is the intent of this chapter to do all of the following:

- (a) To promote the distribution of effective and safe fertilizing materials essential for the production of food and fiber.
- (b) To provide assurance to the consumer of commercial fertilizers, agricultural minerals, and beneficial substances that the product purchased is properly identified, and to provide assurance of the validity of the quality and quantity represented by the manufacturer of these products.
- (c) To provide funds for the administration and enforcement of this chapter.

SEC. 2. Section 14502 of the Food and Agricultural Code is amended to read:

14502. The secretary shall enforce this chapter and adopt and enforce regulations relating to the manufacture, guaranteeing, labeling, and distribution of, the manner of reporting tonnage for, and making inspection tonnage fee payments upon, fertilizing materials as the secretary determines necessary to carry out this chapter. A copy of those regulations shall be made available promptly upon adoption to each person who is licensed pursuant to this chapter. The failure of any licensee to receive a copy of the regulations is not a defense to a violation of the regulations.

SEC. 3. Section 14513 of the Food and Agricultural Code is repealed.

SEC. 4. Section 14513 is added to the Food and Agricultural Code, to read:

14513. "Beneficial substance" means any substance or compound, other than primary plant nutrients, secondary plant nutrients, and micronutrients, and excluding pesticides, that can be demonstrated by scientific research to be beneficial to one or more species of plants, soil, or media. A beneficial substance includes, but is not limited to, plant biostimulants.

SEC. 5. Section 14528 of the Food and Agricultural Code is amended to read:

14528. "Discontinued manufacturing" means a beneficial substance, packaged agricultural mineral, organic input material, and specialty fertilizer that is no longer manufactured, but is still offered for sale.

SEC. 6. Section 14533 of the Food and Agricultural Code is amended to read:

14533. "Fertilizing material" means any commercial fertilizer, agricultural mineral, beneficial substance, or organic input material.

SEC. 7. Section 14542 of the Food and Agricultural Code is amended to read:

14542. "Labeling" means all written, printed, or graphic matter on, accompanying, or used in promoting the sale of any fertilizing material, including advertisements, brochures, posters, internet websites, and television and radio announcements.

SEC. 8. Section 14550.5 of the Food and Agricultural Code is amended to read:

14550.5. "Organic input material" means any bulk or packaged commercial fertilizer, agricultural mineral, beneficial substance, or specialty fertilizer, excluding pesticides, that is to be used in organic crop and food production and that complies with the requirements of the National Organic Program standards, as specified in Part 205 (commencing with Section 205.1) of Subchapter M of Chapter I of Subtitle B of Title 7 of the Code of Federal Regulations.

SEC. 9. Section 14552 of the Food and Agricultural Code is repealed.

SEC. 10. Section 14555.5 is added to the Food and Agricultural Code, to read:

14555.5. "Plant biostimulant" means a substance or microorganism, or mixtures thereof, that, when applied to seeds, plants, the rhizosphere, soil, or other growth media, act to support a plant's natural nutrition processes independently of the biostimulant's nutrient content. The plant biostimulant thereby may improve nutrient availability, uptake, or use efficiency, tolerance to abiotic stress, and consequent growth, development, quality, or yield.

SEC. 11. Section 14557 of the Food and Agricultural Code is amended to read:

14557. "Provisional registration" means that under certain circumstances, a label for renewal on a beneficial substance, packaged agricultural mineral, organic input material, or specialty fertilizer, alone or in any combination, may be registered for a limited period of time while labels are being corrected and reprinted or during registration renewal.

SEC. 12. Section 14558 of the Food and Agricultural Code is amended to read:

14558. "Registrant" means any person who has registered a packaged agricultural mineral, beneficial substance, organic input material, or specialty fertilizer.

SEC. 13. Section 14591 of the Food and Agricultural Code is amended to read:

14591. (a) Every person who manufactures or distributes fertilizing materials shall, before engaging in the activity, obtain a license from the secretary for each plant and business location that the person operates. Before issuing a license, the secretary shall require verification that the applicant is a manufacturer or distributor of fertilizing material compliant with this chapter. All licenses shall be renewed in January of each odd-numbered year, and shall be valid until December 31 of the following even-numbered year, if issued in January of that same year. However, a person who only distributes or who makes retail sales of packaged agricultural minerals, packaged commercial fertilizers, organic input material, or packaged beneficial substances, alone or in any combination, which bear the registered label of another licensed person, is not required to obtain the license.

(b) Every person who manufactures or distributes, or intends to manufacture or distribute, ammonium nitrate as defined in Section 14512.5, in this state, shall inform the secretary of that activity or intent when applying for a license. The license obtained by that person shall identify that person as a manufacturer or distributor of ammonium nitrate.

(c) The license fee shall not exceed three hundred dollars (\$300). The secretary may, based on the findings and recommendations of the board, reduce the license fee to a lower rate that provides sufficient revenue to carry out this chapter.

SEC. 14. Section 14601 of the Food and Agricultural Code is amended to read:

14601. (a) Each differing label, other than weight or package size, such as changes in the guaranteed analysis, derivation statement, or anything that implies a different product, for specialty fertilizer, packaged agricultural mineral, beneficial substance, and organic input material shall be registered. The department may develop a schedule for all registrations to be submitted to the department for approval, and registrations shall be valid for up to four years. The registration fee shall not exceed four hundred dollars (\$400) per product, except for organic input material.

(b) (1) Any substance distributed for the purpose of promoting plant growth or improving the quality of crops by conditioning soils solely through physical means or that is intended for use solely because of its physical properties shall not require registration if distributed in bulk quantities, excluding organic input material and biochar.

(2) For purposes of this subdivision, those bulk materials include, but are not limited to, hay, straw, sand, wood products, manures, and compost sold without guarantees for plant nutrients.

(c) Notwithstanding subdivision (a), the registration fee for organic input material shall not exceed one thousand dollars (\$1,000) per product, as the registration of organic input material labels require additional departmental resources and review time to ensure that nutrient guarantees and claims are scientifically feasible and meet National Organic Program standards. Funds generated from the registration of organic input material shall be deposited into the Organic Input Materials Account in the

Department of Food and Agriculture Fund and, notwithstanding Section 221, shall be available upon appropriation by the Legislature.

(d) The secretary may, based on the findings and recommendations of the board, reduce the registration fees to a lower rate that provides sufficient revenue to carry out this chapter.

(e) Registrations may not be issued without a current license.

(f) The secretary may require proof of labeling statements and other claims made for any specialty fertilizer, agricultural mineral, organic input material, or beneficial substance, before the secretary registers any such product. As evidence of proof, the secretary may rely on experimental data, evaluations, or advice furnished by scientists, including scientists affiliated with the University of California, and may accept or reject additional sources of proof in the evaluation of any fertilizing material. In all cases, experimental proof shall relate to conditions in California under which the product is intended for use.

(g) The secretary may perform site inspections of organic input material manufacturing processes used to validate label nutrient guarantees, claims, and compliance with National Organic Program standards giving priority to inspecting high-risk products and manufacturers. The department may accept inspections performed by a third-party organization approved by the secretary for organic input material manufacturers. All inspection records obtained by a contracted third-party organization shall be made available to the secretary upon request. When a contracted third-party organization is conducting a site inspection, the organization shall notify the department of when the inspection is going to take place no less than 72 hours in advance of the inspection. Department representatives may be present at the inspection.

(h) (1) The secretary, after hearing, may cancel the registration of, or refuse to register, any specialty fertilizer, packaged soil amendment, organic input material, or beneficial substance, that the secretary determines is detrimental or injurious to plants, animals, public safety, or the environment when it is applied as directed, that is known to be of little or no value for the purpose for which it is intended, or for which any false or misleading claim is made or implied. The secretary may cancel the registration of any product of any person who violates this chapter.

(2) The proceedings to determine whether to cancel or refuse registration of any of those products shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The secretary shall have all the powers that are granted pursuant to Chapter 5.

SEC. 15. Section 14603 of the Food and Agricultural Code is amended to read:

14603. Each application for renewal shall be accompanied by a fee not to exceed four hundred dollars (\$400) for each product label or one thousand dollars (\$1,000) for each organic input material product label. If a registration is not renewed within one calendar month following expiration, a penalty of fifty dollars (\$50) per product label shall be added to the fee.

SEC. 16. Section 14611 of the Food and Agricultural Code is amended to read:

14611. (a) (1) A licensee whose name appears on the label who sells or distributes bulk fertilizing materials, as defined in Sections 14517 and 14533, to unlicensed purchasers, shall pay to the secretary an assessment not to exceed two mills (\$0.002) per dollar of sales for all fertilizing materials. A licensee whose name appears on the label of packaged fertilizing materials, as defined in Sections 14533 and 14551, shall pay to the secretary an assessment not to exceed two mills (\$0.002) per dollar of sales.

(2) The secretary may adjust the mill assessment rate based upon a finding and recommendation of the board of a proposed rate. The mill assessment rate shall not exceed the maximum rate established by this section. Setting the mill assessment rate shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) In addition to the assessment provided in subdivision (a), the secretary may impose an assessment in an amount not to exceed one mill (\$0.001) per dollar of sales for all sales of fertilizing materials, to provide funding for research and education regarding the use and handling of fertilizing material, including, but not limited to, support for University of California Cooperative Extension, the California resource conservation districts, other California institutions of postsecondary education, or other qualified entities to develop programs in the following areas:

(1) Technical education for users of fertilizer materials in the development and implementation of nutrient management projects that result in more agronomically sound uses of fertilizer materials and minimize the environmental impacts of fertilizer use, including, but not limited to, nitrates in groundwater and emissions of greenhouse gases resulting from fertilizer use.

(2) Research to improve nutrient management practices resulting in more agronomically sound uses of fertilizer materials and to minimize the environmental impacts of fertilizer use, including, but not limited to, nitrates in groundwater and emissions of greenhouse gases resulting from fertilizer use.

(3) Education to increase awareness of more agronomically sound use of fertilizer materials to reduce the environmental impacts resulting from the overuse or inefficient use of fertilizing materials.

SEC. 17. Section 14623 of the Food and Agricultural Code is amended to read:

14623. The tonnage report shall be submitted to the secretary semiannually as specified by regulation. The secretary shall impose a late fee in the amount of two hundred dollars (\$200) on any person who does not submit the report on or before the required dates. If a person has obtained multiple fertilizing materials licenses and the reports are submitted after the required dates, the late fee is limited to one two-hundred-dollar (\$200) late fee per person. Any tonnage report that is more than 90 days past due is a cause for revocation of the license.

SEC. 18. Section 14651 of the Food and Agricultural Code is amended to read:

14651. (a) Unless otherwise specified in this chapter, any violation of this chapter, or the regulations adopted pursuant to this chapter, is a misdemeanor, punishable by a fine of not more than one thousand dollars (\$1,000) for the first violation and not less than one thousand dollars (\$1,000) for each subsequent violation.

(b) The secretary may, after hearing, refuse to issue or renew, or may suspend or revoke, a license or registration for any violation of this chapter or any regulation that is adopted pursuant to this chapter.

(c) Upon calling a hearing, the secretary shall hand deliver or mail a notice of the hearing to the licensee or registrant specifying the time and place of the hearing at least 10 days before the hearing. The hearing officer may do any of the following:

(1) Administer oaths and take testimony.

(2) Issue subpoenas requiring the attendance of the licensee, registrant, or witnesses, together with books, records, memorandums, papers, and all other documents that may be pertinent to the case.

(3) Compel from the licensee or registrant and any witness the disclosure of all facts known to them regarding the case. In no instance shall any employee of the Feed, Fertilizer and Livestock Drugs Regulatory Services Branch serve as the hearing officer in any hearing conducted pursuant to this section.

(d) Any person who is denied a license, whose license is not renewed, or whose license is suspended or revoked pursuant to this section may appeal to the secretary.

SEC. 19. Section 14651.7 is added to the Food and Agricultural Code, to read:

14651.7. (a) Notwithstanding any other provision of this chapter, the department shall refuse to issue a license pursuant to Article 4 (commencing with Section 14591), or registration pursuant to Article 5 (commencing with Section 14601), or both a license and registration, to a person if the person has a fine, fee, assessment, or penalty levied by the department for a violation of this chapter that remains unpaid after 30 days of the issuance of a hearing officer's decision, a superior court judgment pursuant to subdivision (e) of Section 14651.5, a stipulated settlement payment deadline, or any combination thereof, and until that fine, fee, assessment, or penalty is paid in full.

(b) The person may appeal the decision of the department to refuse to issue a license, registration, or both.

(c) The department shall adopt regulations that establish procedures for a written appeals process for a person who wishes to contest the department's refusal to issue a license or registration, or both, pursuant to subdivision (a). The appeal shall be limited to the issue of whether the person has unpaid fines, fees, assessments, or penalties as described in subdivision (a).