

HOUSE BILL No. 6115

May 13, 2008, Introduced by Reps. Brown, Espinoza, Lindberg, Hammel, Palmer, Polidori, Alma Smith, Valentine, Gaffney, Gonzales, Miller, Young, Spade, Hopgood, Coulouris, Accavitti, Warren, Mayes, Kathleen Law, Bauer, Johnson, Simpson, Clack, Donigan, Leland, Robert Jones, Sak, Dean, Ball and Vagnozzi and referred to the Committee on Great Lakes and Environment.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 8501, 8501a, 8517, and 8520 (MCL 324.8501,
324.8501a, 324.8517, and 324.8520), section 8501 as amended by 2008
PA 13, sections 8501a and 8520 as added by 2006 PA 503, and section
8517 as amended by 2008 PA 14, and by adding sections 8512b and
8512f.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 8501. As used in this part:

2 (a) "Adulterated product" means a product that contains any
3 deleterious or harmful substance in **A** sufficient amount to render
4 ~~it~~ **THE PRODUCT** injurious to beneficial plant life, animals, humans,
5 aquatic life, soil, or water ~~when~~ **IF** applied in accordance with

1 directions for use on the label, or if adequate warning statements
2 or directions for use that may be necessary to protect plant life,
3 animals, humans, aquatic life, soil, or water are not shown on the
4 label.

5 (b) "Agricultural use" means that term as defined in section
6 36101.

7 (c) "Aquifer" means a geologic formation, group of formations,
8 or part of a formation capable of yielding a significant amount of
9 groundwater to wells or springs.

10 (d) "Aquifer sensitivity" means a hydrogeologic function
11 representing the inherent abilities of materials surrounding the
12 aquifer to attenuate the movement of nitrogen fertilizers into that
13 aquifer.

14 (e) "Aquifer sensitivity region" means an area in which
15 aquifer sensitivity estimations are sufficiently uniform to warrant
16 their classification as a unit.

17 (f) "Brand or product name" means a term, design, or trademark
18 used in connection with 1 or more grades of fertilizer.

19 (g) "Bulk fertilizer" means fertilizer distributed in a
20 nonpackaged form.

21 (h) "Custom blend" means a fertilizer blended according to
22 specifications provided to a blender in a soil test nutrient
23 recommendation or blended as specifically requested by the consumer
24 prior to blending.

25 (i) "Department" means the department of agriculture.

26 (j) "Director" means the director of the department or his or
27 her designee.

(k) "Distribute" means to import, consign, sell, barter, offer for sale, solicit orders for sale, or otherwise supply fertilizer for sale or use in this state.

(l) "Distributor" means any person who distributes fertilizer for sale or use in this state.

(m) "Fertilizer" means a substance ~~containing~~ **THAT CONTAINS** 1 or more recognized plant nutrients, ~~which substance~~ **THAT** is used 7 for its plant nutrient content, and ~~which~~ **THAT** is designed for use, 8 or claimed to have value, in promoting plant growth. Fertilizer 9 does not include unmanipulated animal and vegetable manures, marl, 10 lime, limestone, wood ashes, and other materials exempted by rules 11 promulgated under this part. 12

(n) "Fertilizer material" means a fertilizer ~~that is~~ **TO WHICH** 13 any of the following **APPLY:** 14

(i) Contains not more than 1 of the following as primary 15 nutrients: 16

(A) Total nitrogen (N).

(B) Available phosphate P_2O_5 .

(C) Soluble potash K_2O .

(ii) Has 85% or more of its plant nutrient content present in 20 the form of a single chemical compound. 21

(iii) Is derived from a plant or animal residue or by-product or 22 natural material deposit that has been processed in such a way that 23 its content of plant nutrients has not been materially changed 24 except by purification and concentration. 25

(o) "Fund" means the fertilizer control fund created under 26 section 8514. 27

(p) "Grade" means the percentage guarantee of total nitrogen (N), available phosphate P_2O_5 , and soluble potash K_2O , of a fertilizer and shall be stated in the same order given in this subdivision. Indication of grade does not apply to peat or peat moss or soil conditioners.

(q) "Groundwater" means underground water within the zone of saturation.

(r) "Groundwater stewardship practices" means any of a set of voluntary practices adopted by the commission of agriculture pursuant to part 87, designed to protect groundwater from contamination by fertilizers.

(s) "Guaranteed analysis" means the minimum percentage of each plant nutrient guaranteed or claimed to be present.

(T) "IMPERVIOUS SURFACE" MEANS A PAVED HIGHWAY, STREET, SIDEWALK, PARKING LOT, DRIVEWAY, OR OTHER OUTDOOR STRUCTURE THAT PREVENTS INFILTRATION OF WATER INTO THE SOIL.

(U) ~~(t)~~—"Label" means any written, printed, or graphic matter on or attached to packaged fertilizer or used to identify fertilizer distributed in bulk or held in bulk storage.

(V) ~~(u)~~—"Labeling" means all labels and other written, printed, electronic, or graphic matter upon or accompanying any fertilizer at any time, and includes advertising, sales literature, brochures, posters, and internet, television, and radio announcements used in promoting the sale of that fertilizer.

(W) "LAWN" MEANS LAND PLANTED IN CLOSELY MOWED, MANAGED GRASSES. LAWN DOES NOT INCLUDE ATHLETIC FIELDS OR PASTURE, HAYLAND, HAY, TURF GROWN ON TURF FARMS, OR ANY OTHER FORM OF AGRICULTURAL

1 **PRODUCTION.**

2 (X) ~~(v)~~—"Licensee" means the person who receives a license to
3 manufacture or distribute fertilizers under this part.

4 (Y) ~~(w)~~—"Lot" means an identifiable quantity of fertilizer
5 that can be sampled officially according to methods adopted under
6 section 8510, that amount contained in a single vehicle, or that
7 amount delivered under a single invoice.

8 (Z) ~~(x)~~—"Manufacture" means to process, granulate, compound,
9 produce, mix, blend, or alter the composition of fertilizer or
10 fertilizer materials.

11 Sec. 8501a. As used in this part:

12 (a) "Mixed fertilizer" means a fertilizer containing any
13 combination or mixture of fertilizer materials.

14 (b) "Nitrogen fertilizer" means a fertilizer that contains
15 nitrogen as a component.

16 (c) "Official sample" means a sample of fertilizer taken by a
17 representative of the department of agriculture in accordance with
18 acceptable sampling methods under section 8510.

19 (d) "Order" means a cease and desist order issued under
20 section 8511.

21 (e) "Package" ~~or "packaged"~~ means **AN INDIVIDUAL CONTAINER USED**
22 **TO DISTRIBUTE ANY PRODUCT REGULATED BY THIS PART.**

23 (F) **"PACKAGED" DESCRIBES** any type of product regulated by this
24 part that is distributed in individual labeled containers.

25 (G) ~~(f)~~—"Percent" and "percentage" mean the percentage by
26 weight.

27 (H) ~~(g)~~—"Person" means an individual, partnership,

1 association, firm, limited liability company, or corporation.

2 (I) ~~(h)~~—"Primary nutrients" means total nitrogen, available
3 phosphate, or soluble potash, or any combination of those
4 nutrients.

5 (J) ~~(i)~~—"Registrant" means the person who registers a product
6 under this part.

7 (K) ~~(j)~~—"Soil conditioner" means any substance that is used or
8 intended for use to improve the physical characteristics of soil,
9 including, but not limited to, materials such as peat moss and peat
10 products, composted products, synthetic soil conditioners, or other
11 products that are worked into the soil or are applied on the
12 surface to improve the properties of the soil for enhancing plant
13 growth. Soil conditioner does not include guaranteed plant
14 nutrients, agricultural liming materials, pesticides, unmanipulated
15 animal or vegetable manures, hormones, bacterial inoculants, and
16 products used in directly influencing or controlling plant growth.
17 A soil conditioner for which claims are made of nutrient value is
18 considered a fertilizer for the purposes of this part.

19 (L) ~~(k)~~—"Specialty fertilizer" means any fertilizer distributed
20 primarily for nonfarm use, such as use in connection with home
21 gardens, lawns, shrubbery, flowers, golf courses, parks, and
22 cemeteries, and may include fertilizers used for research or
23 experimental purposes.

24 (M) ~~(l)~~—"Ton" means a net weight of 2,000 pounds avoirdupois.

25 (N) ~~(m)~~—"Use" means the loading, mixing, applying, storing,
26 transporting, or disposing of a fertilizer.

27 **SEC. 8512B. (1) BEGINNING JANUARY 1, 2010, EXCEPT AS PROVIDED**

1 IN SUBSECTIONS (2) TO (4), A PERSON SHALL NOT APPLY TO A LAWN A
2 FERTILIZER CONTAINING MORE THAN 0.5% OF THE PLANT NUTRIENT
3 AVAILABLE PHOSPHATE (P_2O_5).

4 (2) IF A TISSUE, SOIL, OR OTHER TEST PERFORMED WITHIN THE LAST
5 3 YEARS BY A LABORATORY OR METHOD APPROVED BY THE DIRECTOR
6 INDICATES THAT THE LEVEL OF AVAILABLE PHOSPHORUS IN THE SOIL OF A
7 LAWN IS DEFICIENT TO SUPPORT HEALTHY LAWN GROWTH, FERTILIZER
8 DESCRIBED IN SUBSECTION (1) MAY BE APPLIED TO THE LAWN AT A RATE
9 NECESSARY TO CORRECT THE DEFICIENCY.

10 (3) IF A NEW LAWN IS BEING ESTABLISHED USING SEED OR SOD AND
11 IT IS THE FIRST GROWING SEASON FOR THE LAWN, FERTILIZER DESCRIBED
12 IN SUBSECTION (1) MAY BE APPLIED TO THE LAWN AT A RATE SPECIFIED BY
13 THE DIRECTOR. IF A TISSUE, SOIL, OR OTHER TEST PERFORMED WITHIN THE
14 LAST 3 YEARS BY A LABORATORY OR METHOD APPROVED BY THE DIRECTOR
15 INDICATES THAT THE LEVEL OF AVAILABLE PHOSPHORUS IN THE SOIL IS
16 DEFICIENT TO SUPPORT ESTABLISHMENT OF A HEALTHY LAWN, AND IF
17 APPLICATION AT A HIGHER RATE THAN THAT SPECIFIED BY THE DIRECTOR IS
18 NECESSARY TO CORRECT THE DEFICIENCY, THE FERTILIZER MAY BE APPLIED
19 AT THAT HIGHER RATE.

20 (4) FERTILIZER DESCRIBED IN SUBSECTION (1) MAY BE APPLIED TO A
21 GOLF COURSE IF THE APPLICATION IS UNDER THE DIRECTION OF A PERSON
22 LICENSED, CERTIFIED, OR APPROVED BY AN ORGANIZATION AS A RESULT OF
23 SUCCESSFUL PARTICIPATION IN AN ONGOING TRAINING PROGRAM AND THE
24 FERTILIZER IS APPLIED AT A RATE INDICATED BY BEST MANAGEMENT
25 PRACTICES. TO QUALIFY UNDER THIS SUBSECTION, AN ONGOING TRAINING
26 PROGRAM SHALL ADDRESS BEST MANAGEMENT PRACTICES FOR THE USE OF LAWN
27 FERTILIZER CONTAINING AVAILABLE PHOSPHATE AND BE APPROVED BY THE

1 DIRECTOR.

2 (5) THE DEPARTMENT SHALL POST INFORMATION CONCERNING THE
3 REQUIREMENTS OF SUBSECTIONS (1) TO (4) ON ITS WEBSITE AND PUBLICIZE
4 THE AVAILABILITY OF THAT INFORMATION BY WHATEVER MEANS THE
5 DEPARTMENT DETERMINES TO BE APPROPRIATE.

6 SEC. 8512F. (1) A PERSON WHO RELEASES FERTILIZER ON AN
7 IMPERVIOUS SURFACE SHALL DO BOTH OF THE FOLLOWING:

8 (A) PROMPTLY CONTAIN THE FERTILIZER.

9 (B) EITHER LEGALLY APPLY THE FERTILIZER TO A LAWN OR ANOTHER
10 APPROPRIATE SITE OR RETURN THE FERTILIZER TO AN APPROPRIATE
11 CONTAINER.

12 (2) A PERSON SHALL NOT APPLY A FERTILIZER TO A LAWN IF THE
13 SOIL IS FROZEN OR SATURATED WITH WATER.

14 Sec. 8517. (1) Except as otherwise provided in this section,
15 this part preempts any local ordinance, regulation, or resolution
16 that would duplicate, extend, or revise in any manner the
17 provisions of this part. Except as otherwise provided for in this
18 section, a local unit of government shall not adopt, maintain, or
19 enforce an ordinance, regulation, or resolution that contradicts or
20 conflicts in any manner with this part.

21 (2) If a local unit of government is under contract with the
22 department to act as its agent or the local unit of government has
23 received prior written authorization from the department, that
24 local unit of government may adopt an ordinance that is identical
25 to this part and rules promulgated under this part, except as
26 prohibited in subsection (6). The local unit of government's
27 enforcement response for a violation of the ordinance that involves

1 the manufacturing, storage, distribution, sale, or agricultural use
2 of products regulated by this part is limited to issuing a cease
3 and desist order in the manner prescribed in section 8511.

4 (3) A local unit of government may adopt an ordinance
5 prescribing standards different from those contained in this part
6 and rules promulgated under this part and that regulates the
7 manufacturing, storage, distribution, sale, or agricultural use of
8 a product regulated by this part only ~~under either or both of the~~
9 ~~following circumstances~~ **IF THE LEGISLATIVE BODY OF THE LOCAL UNIT**
10 **OF GOVERNMENT DETERMINES THAT, WITHOUT THE ORDINANCE, 1 OR MORE OF**
11 **THE FOLLOWING APPLY:**

12 (a) Unreasonable adverse effects on the environment or public
13 health will exist within the local unit of government, taking into
14 consideration specific populations whose health may be adversely
15 affected within that local unit of government.

16 (b) ~~The local unit of government has determined that the~~
17 manufacturing, storage, distribution, sale, or agricultural use of
18 ~~a~~ **THE** product ~~regulated by this part~~ within that unit of government
19 has resulted or will result in the violation of other existing
20 state or federal laws.

21 (4) An ordinance adopted under subsection (2) or (3) shall not
22 conflict with existing state laws or federal laws. An ordinance
23 adopted under subsection (3) shall not be enforced by a local unit
24 of government until approved by the commission of agriculture. ~~The~~
25 **IF THE COMMISSION OF AGRICULTURE DISAPPROVES THE ORDINANCE, THE**
26 commission of agriculture shall provide a detailed explanation of
27 the basis of ~~a denial~~ **THE DISAPPROVAL** within 60 days.

1 (5) Within 60 days after the legislative body of a local unit
2 of government submits to the department a resolution identifying
3 unreasonable adverse effects on the environment or public health as
4 provided for in subsection (3)(a), the department shall hold a
5 local public meeting to determine the nature and extent of
6 unreasonable adverse effects on the environment or public health
7 due to the manufacturing, storage, distribution, sale, or
8 agricultural use of a product regulated by this part. Within 30
9 days after the local public meeting, the department shall issue a
10 detailed opinion regarding the existence of unreasonable adverse
11 effects on the environment or public health as identified by the
12 resolution of the local unit of government.

13 (6) The director may contract with a local unit of government
14 to act as its agent for the purpose of enforcing this part and the
15 rules promulgated under this part. The department has sole
16 authority to assess fees, register fertilizer or soil conditioner
17 products, cancel or suspend registrations, and regulate and enforce
18 provisions of section 8512.

19 (7) A local unit of government that adopts an ordinance under
20 subsection (2) or (3) shall require persons enforcing the ordinance
21 to comply with training and enforcement requirements determined
22 appropriate by the director.

23 **(8) SUBSECTION (1) DOES NOT PROHIBIT THE MAINTENANCE OR**
24 **ENFORCEMENT OF AN ORDINANCE THAT REGULATES OR PROHIBITS THE DISPLAY**
25 **OR USE OF LAWN FERTILIZER OR LAWN AND GARDEN FERTILIZER CONTAINING**
26 **THE PLANT NUTRIENT AVAILABLE PHOSPHATE (P₂O₅) AS IN EFFECT ON THE**
27 **EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION.**

1 Sec. 8520. (1) A person who violates this part or rules
2 promulgated under this part is subject to the penalties and
3 remedies provided in this part regardless of whether he or she
4 acted directly or through an employee or agent.

5 (2) The director, upon finding after notice and an opportunity
6 for an administrative hearing that a person has violated or
7 attempted to violate any provision of this part or a rule
8 promulgated under this part, may impose an administrative fine of
9 not more than \$1,000.00 for each violation or attempted violation.

10 **A PERSON SHALL NOT BE FINED UNDER BOTH THIS SUBSECTION AND**
11 **SUBSECTION (7) FOR THE SAME VIOLATION.**

12 (3) If the director finds that a violation or attempted
13 violation has occurred despite the exercise of due care or did not
14 result in significant harm to human health or the environment, the
15 director may issue a warning instead of imposing an administrative
16 fine.

17 (4) The director shall advise the attorney general of the
18 failure of any person to pay an administrative fine imposed under
19 this section. The attorney general shall bring an action in a court
20 of competent jurisdiction to recover the fine.

21 (5) A person who violates this part or a rule promulgated
22 under this part, or attempts to violate this part or a rule
23 promulgated under this part, is guilty of a misdemeanor punishable
24 by imprisonment for not more than 90 days or a fine of not more
25 than \$5,000.00 for each violation or attempted violation, in
26 addition to any administrative fines imposed. **THIS SUBSECTION DOES**
27 **NOT APPLY TO A VIOLATION OF SECTION 8512B OR 8512F.**

(6) A person who knowingly and with malicious intent violates this part or a rule promulgated under this part is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$25,000.00 for each offense. **THIS SUBSECTION DOES NOT APPLY TO A VIOLATION OF SECTION 8512B OR 8512F.**

(7) A PERSON WHO VIOLATES OR ATTEMPTS TO VIOLATE SECTION 8512B OR 8512F IS RESPONSIBLE FOR A STATE CIVIL INFRACTION AND MAY BE ORDERED TO PAY A CIVIL FINE OF NOT MORE THAN THE FOLLOWING FOR EACH VIOLATION OR ATTEMPTED VIOLATION:

(A) EXCEPT AS PROVIDED IN SUBDIVISION (B), NOT MORE THAN \$1,000.00.

(B) IF THE VIOLATION OR ATTEMPTED VIOLATION OCCURS ON A SINGLE-FAMILY RESIDENTIAL PARCEL OR ANY OTHER PARCEL OR CONTIGUOUS PARCELS TOTALING 4 ACRES OR LESS AND THE VIOLATION IS COMMITTED BY THE PROPERTY OWNER OR LESSEE, A MEMBER OF HIS OR HER FAMILY, OR A PERSON WHO RESIDES ON THE PROPERTY, NOT MORE THAN \$50.00.

(8) ~~(7)~~—The director may bring an action to enjoin the violation or threatened violation of this part or a rule promulgated under this part in a court of competent jurisdiction of the county in which the violation occurs or is about to occur.

(9) ~~(8)~~—The attorney general may file a civil action in which the court may impose on any person who violates **OR ATTEMPTS TO VIOLATE** this part or a rule promulgated under this part, ~~or attempts to violate this part or a rule promulgated under this part~~ **OTHER THAN SECTION 8512B OR 8512F**, a civil fine of not more than \$5,000.00 for each violation or attempted violation. In addition, the attorney general may bring an action in circuit court to

1 recover the reasonable costs of the investigation from any person
2 who violated this part or attempted to violate this part. Money
3 recovered under this subsection shall be forwarded to the state
4 treasurer for deposit into the fund.

5 (10) ~~(9)~~—In defense of an action filed under this section for
6 a violation of this part, in addition to any other lawful defense,
7 a person may present evidence as an affirmative defense that, at
8 the time of the alleged violation or attempted violation, he or she
9 was in compliance with this part and rules promulgated under this
10 part.

11 (11) ~~(10)~~—A person who violates this part is liable for all
12 damages sustained by a purchaser of a product sold in violation of
13 this part. In an enforcement action, a court, in addition to other
14 sanctions provided by law, may order restitution to a party injured
15 by the purchase of a product sold in violation of this part.

16 (12) ~~(11) Applicable~~ **A CIVIL ACTION FILED PURSUANT TO THIS**
17 **PART IS SUBJECT TO APPLICABLE** provisions of the revised judicature
18 act of 1961, 1961 PA 236, MCL 600.101 to ~~600.9948~~, ~~apply to civil~~
19 ~~actions filed pursuant to this part.~~ **600.9947.**