

LEGISLATIVE BILL 92

Approved by the Governor February 26, 2015

Introduced by Johnson, 23.

A BILL FOR AN ACT relating to the Agricultural Liming Materials Act; to amend sections 2-4323, 2-4324, 2-4326, and 2-4327, Reissue Revised Statutes of Nebraska; to change requirements for annual report filing and report publication; to change provisions relating to enforcement; to provide for seizure and disposal of noncompliant agricultural liming materials; to change penalties; to provide a duty for the Attorney General and local county attorneys; to remove an obsolete provision; to provide operative dates; and to repeal the original sections.

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

Section 1. Section 2-4323, Reissue Revised Statutes of Nebraska, is amended to read:

2-4323 (1) Every retailer licensee shall file, not later than the last day of January and July of each year, a semiannual tonnage report on forms provided by the department, setting forth the number of net tons of each agricultural liming material sold in Nebraska during the preceding six-month period, which report shall cover the periods from July 1 to December 31 and January 1 to June 30, and such other information as the director shall deem necessary. All persons required to be licensed pursuant to the Agricultural Liming Materials Act shall file such report regardless of whether any inspection fee is due. Upon filing the report, such person shall pay the inspection fee at the rate prescribed pursuant to this section within thirty days following the expiration of each license, each retailer 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. The Such statement shall be accompanied by payment of an inspection fee shall be 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 minimum inspection fee required pursuant to this section shall be five dollars, and no inspection fee shall be paid more than once for any one product. In 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.

(2) If a person fails to report and pay the fee required by subsection (1) of this section by January 31 and July 31, the fee shall be considered delinquent and the person owing the fee shall pay an additional administrative fee of twenty-five percent of the delinquent amount for each month it remains unpaid, not to exceed one hundred percent of the original amount due. The department may waive the additional administrative fee based upon the existence and extent of any mitigating circumstances that have resulted in the late payment of such fee. The purpose of the additional administrative fee is to cover the administrative costs associated with collecting fees, and all money collected as an additional administrative fee shall be remitted to the State Treasurer for credit to the Fertilizers and Soil Conditioners Administrative Fund. Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided in this subsection shall constitute sufficient cause for the cancellation of all product registrations or licenses on file for such person.

(3 2) The director department shall annually make information available in such form as he or she may deem proper concerning publish and 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. 2. Section 2-4324, Reissue Revised Statutes of Nebraska, is amended to read:

2-4324 All fees paid to the department pursuant to the Agricultural Liming Materials Act shall be remitted to the State Treasurer for credit to the Fertilizers and Soil Conditioners Administrative Fund. ~~Any money in the Liming Materials Cash Fund on August 31, 2003, shall be transferred to the Fertilizers and Soil Conditioners Administrative Fund.~~ All money credited or transferred to the fund shall be used by the department to aid in defraying expenses of administering the Agricultural Liming Materials Act and the Nebraska Commercial Fertilizer and Soil Conditioner Act.

Sec. 3. Section 2-4326, Reissue Revised Statutes of Nebraska, is amended to read:

2-4326 (1) When the director has reasonable cause to believe agricultural liming materials are being sold in violation of the Agricultural Liming Materials Act or the rules and regulations adopted and promulgated pursuant to the act, he or she The department may issue and enforce a written or printed stop-sale, stop-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 the ~~act Agricultural Liming Materials Act~~ or the rules and regulations ~~adopted and promulgated by the department~~. Such material shall be released when the act 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.

(2) Any agricultural liming materials not in compliance with the act or the rules and regulations shall be subject to seizure on complaint of the director to a court of competent jurisdiction in the area in which the agricultural liming materials are located. If the court finds the agricultural liming materials to be in violation of the act or the rules and regulations and orders the condemnation of the agricultural liming materials, such agricultural liming materials shall be disposed of in any manner consistent with the quality of the agricultural liming materials and the laws of the State of Nebraska. The court shall not order disposition without first giving the claimant an opportunity to apply to the court for release of the agricultural liming materials or for permission to process or relabel such product to bring it into compliance with the act.

Sec. 4. Section 2-4327, Reissue Revised Statutes of Nebraska, is amended to read:

2-4327 (1) Any person violating the Agricultural Liming Materials Act shall be guilty of a Class IV \forall misdemeanor upon the first conviction thereof, and a Class II \forall misdemeanor for each subsequent conviction thereof.

(2) Nothing in the act shall be construed to require the director or his or her duly authorized agent to report a violation in order to prosecute or to institute seizure proceedings as a result of minor violations of the act when he or she believes that the public interest will best be served by a suitable written warning to the violator.

(3) The Attorney General or the county attorney of the county in which any violation occurs or is about to occur, when notified by the department of such violation or threatened violation, shall pursue appropriate proceedings pursuant to section 2-4326 or this section or both without delay.

(4) In order to insure compliance with the act, the department may apply for a restraining order, a temporary or permanent injunction, or a mandatory injunction against any person violating or threatening to violate the act or the rules and regulations adopted and promulgated pursuant to the act. The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

(5) Any person adversely affected by an action, order, or ruling made by the department pursuant to the act may appeal the action, order, or ruling, and the appeal shall be in accordance with the Administrative Procedure Act.

Sec. 5. Sections 1 and 6 of this act become operative on February 1, 2016. The other sections of this act become operative on their effective date.

Sec. 6. Original section 2-4323, Reissue Revised Statutes of Nebraska, is repealed.

Sec. 7. Original sections 2-4324, 2-4326, and 2-4327, Reissue Revised Statutes of Nebraska, are repealed.