

Prohibiting Local Governments from Regulating Activities Related to Fertilizer

This Act prohibits political subdivisions under the state from regulating the registration, packaging, labeling, sale, storage, distribution, use and application of fertilizers and declares that no political subdivision may adopt or continue in effect local legislation relating to the registration, packaging, labeling, sale, storage, distribution, use or application of fertilizers. The purpose of the Act is to help ensure that these materials are regulated based on sound scientific principles needed to protect human health and the environment and that there is no disruption to the uniform movement of these products in commerce throughout the state.

Submitted as:

West Virginia

[SB 631 \(enrolled version\)](#)

Status: Enacted into law in 2004.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be cited as "An Act Concerning Local Government
2 Regulation of Activities Relating to Fertilizer."
3

4 Section 2. [*Definitions.*] As used in this Act:

5 (a) "Brand" means a term, design or trademark used in connection with one or several
6 grades of regulated product.

7 (b) "Bulk fertilizer" means fertilizer delivered to the purchaser either in solid or liquid
8 state in a nonpackage form to which a label cannot be attached.

9 (c) "Commissioner" means the commissioner of agriculture of this state or his or her
10 duly authorized agent.

11 (d) "Compost" means a biologically stable material derived from the composting
12 process.

13 (e) "Custom media" means a horticultural growing medium prepared to exact
14 specifications of the person who will be planting in the medium.

15 (f) "Department" means the [state department of agriculture].

16 (g) "Distribute" means to import, consign, to offer for sale, sell, barter, warehouse or
17 otherwise supply a regulated product in this state.

18 (h) "Distributor" means any person who distributes a regulated product in this state.

19 (i) "Embargo" means a written stop sale order issued by the commissioner of agriculture
20 prohibiting the sale, use of or transportation of any regulated product in any manner until the
21 embargo is released by the commissioner.

22 (j) "Fertilizer" means any substance containing one or more recognized plant nutrients,
23 including natural organic fertilizer, which is designed for use or claimed to have value in
24 promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime,
25 limestone, wood ashes and gypsum and other products exempted by rule of the commissioner.

26 (k) "Fertilizer material" means a fertilizer which either:

27 (1) Contains important quantities of no more than one of the primary plant
28 nutrients: (nitrogen (N), available phosphate (P₂O₅) and soluble potash (K₂O); or

29 (2) Has eighty-five percent or more of its plant nutrient content present in the
30 form of a single chemical compound; or

31 (3) Is derived from a plant or animal residue or by-product or a natural material
32 deposit which has been processed in such a way that its content of primary plant nutrients has not
33 been materially changed except by purification and concentration.

34 (l) "Grade" means the percentage of total nitrogen, available phosphate and soluble
35 potash stated in whole numbers in the same terms, order and percentages as in the guaranteed
36 analysis; provided that:

37 (1) Specialty fertilizers may be guaranteed in fractional units of less than one
38 percent of total nitrogen, available phosphate and soluble potash; and provided, however, that;

39 (2) Fertilizer materials, bone meal, manures and similar raw materials may be
40 guaranteed in fractional units.

41 (m) "Guaranteed analysis" means the minimum percentage of plant nutrients claimed in
42 the following order and form:

43 (1) Total nitrogen (N) percent
44 Available phosphate (P_2O_5) percent
45 Soluble potash (K_2O)..... percent

46 (2) For unacidulated mineral phosphatic materials and basic slag, bone, tankage
47 and other organic phosphatic materials, the total available phosphate or degree of fineness may
48 also be guaranteed.

49 (3) Guarantees for other plant nutrients may be permitted or required by rule of
50 the commissioner and shall be expressed in the form of the element. The sources of such other
51 nutrients (oxides, salt, chelates, etc.) may be required to be stated on the application for
52 registration and may be included as a parenthetical statement on the label. Other beneficial
53 substances or compounds, determinable by laboratory methods, also may be guaranteed by
54 permission of the commissioner. When any plant nutrients or other substances or compounds are
55 guaranteed, they shall be subject to inspection and analysis in accord with the methods and rules
56 prescribed by the commissioner.

57 (n) "Horticultural growing medium" means any substance or mixture of substances
58 promoted as or intended to function as a commercial or consumer growing medium for the
59 managed growth of horticultural crops in containers.

60 (o) "Investigational allowance" means an allowance for variations inherent in the
61 collection, preparation and analysis of an official sample of regulated product.

62 (p) "Label" means the display of all written, printed or graphic matter upon the
63 immediate container or statement accompanying a regulated product.

64 (q) "Labeling" means all written, printed or graphic matter, upon or accompanying any
65 regulated product, or advertisements, brochures, posters or electronic announcements used in
66 promoting the sale of regulated products.

67 (r) "Local legislation" means, but not limited to, any ordinance, motion, resolution,
68 amendment, regulation or rule adopted by a political subdivision.

69 (s) "Manufacture" means to produce, compound, mix, blend or in any way alter the
70 chemical or physical characteristics of a regulated product.

71 (t) "Manufacturer" means any person who manufactures a regulated product.

72 (u) "Mixed fertilizer" means a fertilizer containing any combination or mixture of
73 fertilizer materials.

74 (v) "Natural organic fertilizer" means materials derived from either plant or animal
75 products containing one or more elements other than carbon, hydrogen and oxygen which are
76 essential for plant growth. These materials may be subjected to biological degradation processes
77 under normal conditions of aging, rainfall, sun-curing, air drying, composting, rotting, enzymatic

78 or anaerobic/aerobic bacterial action or any combination of these. These materials may not be
 79 mixed with synthetic materials or changed in any physical or chemical manner from their initial
 80 state except by manipulations such as drying, cooking, chopping, grinding, shredding, hydrolysis
 81 or pelleting.

82 (w) "Official sample" means any sample of regulated product collected by the
 83 commissioner or his or her agent and designated as "official" by the commissioner.

84 (x) "Percent" or "percentage" means the percentage by weight.

85 (y) "Person" means an individual, partnership, association, firm or corporation.

86 (z) "Political subdivision" means any local government entity which includes, but is not
 87 limited to, any city, county or municipal corporation and any other body corporate and politic
 88 that is responsible for government activities in a geographical area smaller than that of the state.

89 (aa) "Primary nutrients" means nitrogen (N), available phosphate (P₂O₅) and soluble
 90 potash (K₂O).

91 (bb) "Registrant" means the person who registers regulated products under the provisions
 92 of this article.

93 (cc) "Regulated product" means any product governed by this article, including any
 94 fertilizer, specialty fertilizer, soil amendment and horticultural growing medium.

95 (dd) "Soil amendment" means any substance or mixture of substances, imported,
 96 manufactured, prepared or sold for manurial, soil enriching or soil corrective purposes, or
 97 intended to be used for promoting or stimulating the growth of plants, increasing the productivity
 98 of plants, improving the quality of crops or producing any chemical or physical change in the
 99 soil. The following are exempt from the definition of "soil amendment": Fertilizer,
 100 unmanipulated animal manures, horticultural growing medium, agricultural liming materials,
 101 unmixed mulch and unmixed peat.

102 (ee) "Specialty fertilizer" means a fertilizer distributed primarily for non-farm use, such
 103 as home gardens, lawns, shrubbery, flowers, house plants, golf courses, municipal parks,
 104 cemeteries, greenhouses and nurseries.

105 (ff) "Synthetic" means any substance generated from another material or materials by
 106 means of a chemical reaction.

107 (gg) "Ton" means a net weight of two thousand pounds avoirdupois.

108 (hh) "Unmanipulated manure" means substances composed of the excreta of domestic
 109 animals, or domestic fowls, which has not been processed or conditioned in any manner,
 110 including, but not limited to, processing or conditioning by drying, grinding, pelleting,
 111 shredding, addition of plant food, mixing artificially with any material or materials, other than
 112 those which have been used for bedding, sanitary or feeding purposes for animals or fowls or by
 113 any other means.

114

115 Section 3. [*Local Legislation Prohibited.*] No political subdivision may regulate the
 116 registration, packaging, labeling, sale, storage, distribution, use and application of fertilizers;
 117 and, in addition, no political subdivision may adopt or continue in effect local legislation relating
 118 to the registration, packaging, labeling, sale, storage, distribution, use or application of fertilizers.
 119 Local legislation in violation of this section is void and unenforceable.

120

121 Section 4. [*Severability.*] [Insert severability clause.]

122

123 Section 5. [*Repealer.*] [Insert repealer clause.]

124

125 Section 6. [*Effective Date.*] [Insert effective date.]