

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5368

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

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 sufficient amount to render it
4 injurious to beneficial plant life, animals, humans, aquatic life,
5 soil or water when applied in accordance with directions for use on
6 the label, or if adequate warning statements or directions for use

1 that may be necessary to protect plant life, animals, humans,
2 aquatic life, soil or water are not shown on the label.

3 (b) "Agricultural use" means that term as defined in section
4 36101.

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

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

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

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

17 (g) "Bulk fertilizer" means fertilizer distributed in a
18 nonpackaged form.

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

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

24 (j) "Director" means the director of the department or his or
25 her designee.

26 (k) "Distribute" means to import, consign, sell, barter, offer
27 for sale, solicit orders for sale, or otherwise supply fertilizer

1 for sale or use in this state.

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

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

11 (n) "Fertilizer material" means a fertilizer ~~that is any~~ **TO**
12 **WHICH 1 OR MORE** of the following **APPLY**:

13 (i) Contains not more than 1 of the following as primary
14 nutrients:

15 (A) Total nitrogen (N).

16 (B) Available phosphate (P_2O_5).

17 (C) Soluble potash (K_2O).

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

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

24 (O) **"FINISHED SEWAGE SLUDGE PRODUCT" MEANS A PRODUCT**
25 **CONSISTING IN WHOLE OR IN PART OF SEWAGE SLUDGE THAT IS DISTRIBUTED**
26 **TO THE PUBLIC AND THAT IS DISINFECTED BY MEANS OF COMPOSTING,**
27 **PASTEURIZATION, WET AIR OXIDATION, HEAT TREATMENT, OR OTHER MEANS.**

1 (P) ~~(e)~~—"Fund" means the fertilizer control fund created under
2 section 8514.

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

8 (R) ~~(g)~~—"Groundwater" means underground water within the zone
9 of saturation.

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

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

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

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

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

27 (X) ~~(v)~~—"Licensee" means the person who receives a license to

1 manufacture or distribute fertilizers under this part.

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

6 (Z) "MANIPULATED MANURE" MEANS ANIMAL OR VEGETABLE MANURE THAT
7 IS GROUND, PELLETIZED, MECHANICALLY DRIED, PACKAGED, SUPPLEMENTED
8 WITH PLANT NUTRIENTS OR OTHER SUBSTANCES OTHER THAN PHOSPHORUS, OR
9 OTHERWISE TREATED IN A MANNER TO ASSIST WITH THE SALE OR
10 DISTRIBUTION OF THE MANURE AS A FERTILIZER OR SOIL OR PLANT
11 ADDITIVE.

12 (AA) ~~(x)~~ "Manufacture" means to process, granulate, compound,
13 produce, mix, blend, or alter the composition of fertilizer or
14 fertilizer materials.

15 (BB) "ORGANIC MANURE" MEANS MANURE DERIVED SOLELY FROM LIVING
16 ORGANISMS WITHOUT MANIPULATION.

17 (CC) "SEWAGE SLUDGE" MEANS SEWAGE SLUDGE GENERATED IN THE
18 TREATMENT OF DOMESTIC SEWAGE, OTHER THAN ONLY SEPTAGE OR INDUSTRIAL
19 WASTE.

20 (DD) "TURF" MEANS LAND, INCLUDING RESIDENTIAL, COMMERCIAL, OR
21 INDUSTRIAL PROPERTY, GOLF COURSES, OR PUBLICLY OWNED LAND, THAT IS
22 PLANTED IN CLOSELY MOWED, MANAGED GRASS, EXCEPT LAND USED IN THE
23 OPERATION OF A COMMERCIAL FARM.

24 SEC. 8512B. (1) BEGINNING JANUARY 1, 2012, EXCEPT AS PROVIDED
25 IN SUBSECTION (2), (3), (4), OR (5), A PERSON SHALL NOT APPLY TO
26 TURF A FERTILIZER LABELED AS CONTAINING THE PLANT NUTRIENT
27 AVAILABLE PHOSPHATE (P_2O_5).

1 (2) IF A TISSUE, SOIL, OR OTHER TEST PERFORMED WITHIN THE
2 PRECEDING 3 YEARS BY A LABORATORY EXPERIENCED IN CONDUCTING TESTS
3 FOR PHOSPHORUS THAT ADHERE TO RECOGNIZED NATIONAL STANDARDS
4 INDICATES THAT THE LEVEL OF AVAILABLE PHOSPHATE (P_2O_5) IN THE SOIL
5 IS DEFICIENT TO SUPPORT HEALTHY TURF GRASS GROWTH OR ESTABLISHMENT,
6 A PERSON MAY APPLY FERTILIZER TO THE TURF AT AN APPLICATION RATE
7 FOR AVAILABLE PHOSPHATE NOT EXCEEDING THAT NECESSARY TO CORRECT THE
8 DEFICIENCY.

9 (3) IF NEW TURF IS BEING ESTABLISHED USING SEED OR SOD, IT IS
10 THE FIRST GROWING SEASON FOR THE TURF GRASS AT THE SITE, AND A TEST
11 DESCRIBED IN SUBSECTION (2) HAS NOT BEEN PERFORMED, A PERSON MAY
12 APPLY FERTILIZER TO THE TURF AT AN APPLICATION RATE FOR AVAILABLE
13 PHOSPHATE (P_2O_5) NOT EXCEEDING THE STANDARD RATE FOR NEW TURF GRASS
14 ESTABLISHMENT, WHICH SHALL BE SPECIFIED BY THE DIRECTOR AFTER
15 CONSULTATION WITH THE MICHIGAN STATE UNIVERSITY EXTENSION.

16 (4) A PERSON MAY APPLY A FINISHED SEWAGE SLUDGE PRODUCT, AN
17 ORGANIC MANURE, OR A MANIPULATED MANURE TO TURF AT A RATE OF NOT
18 MORE THAN 0.25 POUNDS OF PHOSPHORUS PER 1,000 SQUARE FEET AT ANY 1
19 TIME.

20 (5) IN ADDITION, A PERSON MAY APPLY FERTILIZER LABELED AS
21 CONTAINING THE PLANT NUTRIENT AVAILABLE PHOSPHATE (P_2O_5) TO A GOLF
22 COURSE IF 1 OR MORE OF THE FOLLOWING APPLY:

23 (A) THE GOLF COURSE HAS BEEN CERTIFIED BY AN ORGANIZATION AS A
24 RESULT OF THE GOLF COURSE'S STAFF HAVING SUCCESSFULLY COMPLETED A
25 TRAINING PROGRAM APPROVED BY THE DIRECTOR. THE DIRECTOR SHALL
26 APPROVE A TRAINING PROGRAM IF IT IS A CONTINUING PROGRAM,
27 ADEQUATELY ADDRESSES BEST MANAGEMENT PRACTICES FOR USE OF TURF

1 FERTILIZER CONTAINING AVAILABLE PHOSPHATE, AND REQUIRES TRAINEES TO
2 DEMONSTRATE SUCCESSFUL IMPLEMENTATION OF THOSE BEST MANAGEMENT
3 PRACTICES.

4 (B) IF A TISSUE, SOIL, OR OTHER TEST PERFORMED WITHIN THE
5 PRECEDING 3 YEARS BY A LABORATORY EXPERIENCED IN CONDUCTING TESTS
6 FOR PHOSPHORUS THAT ADHERE TO RECOGNIZED NATIONAL STANDARDS
7 INDICATES THAT THE LEVEL OF AVAILABLE PHOSPHATE IN THE SOIL IS
8 DEFICIENT TO SUPPORT HEALTHY GOLF COURSE TURF GRASS GROWTH OR
9 ESTABLISHMENT, THE GOLF COURSE MAY APPLY FERTILIZER AT AN
10 APPLICATION RATE FOR AVAILABLE PHOSPHATE NOT EXCEEDING THAT
11 NECESSARY TO CORRECT THE DEFICIENCY.

12 (C) IF NEW TURF IS BEING ESTABLISHED USING SEED OR SOD, IT IS
13 THE FIRST GROWING SEASON FOR THE TURF GRASS AT THE SITE, AND A TEST
14 DESCRIBED IN SUBDIVISION (B) HAS NOT BEEN PERFORMED, A GOLF COURSE
15 MAY APPLY FERTILIZER TO THE TURF AT AN APPLICATION RATE FOR
16 AVAILABLE PHOSPHATE (P_2O_5) NOT EXCEEDING THE RATE NECESSARY FOR NEW
17 GOLF COURSE TURF GRASS ESTABLISHMENT.

18 (6) A PERSON SHALL NOT APPLY FERTILIZER TO TURF LESS THAN 15
19 FEET FROM ANY SURFACE WATER, UNLESS 1 OR MORE OF THE FOLLOWING
20 APPLY:

21 (A) A CONTINUOUS NATURAL VEGETATIVE BUFFER AT LEAST 10 FEET
22 WIDE SEPARATES THE TURF FROM THE SURFACE WATER.

23 (B) A SPREADER GUARD, DEFLECTOR SHIELD, OR DROP SPREADER IS
24 USED WHEN APPLYING THE FERTILIZER, AND THE FERTILIZER IS NOT
25 APPLIED LESS THAN 3 FEET FROM THE SURFACE WATER.

26 (7) A PERSON SHALL NOT CLEAN A FERTILIZER SPREADER THAT IS
27 USED TO APPLY FERTILIZER TO TURF IN A MANNER THAT ALLOWS WASH WATER

1 FROM THE SPREADER TO DISCHARGE DIRECTLY INTO WATERS OF THIS STATE,
2 INCLUDING, BUT NOT LIMITED TO, A DRAIN UNDER THE DRAIN CODE OF
3 1956, 1956 PA 40, MCL 280.1 TO 280.630.

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

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

10 (A) PROMPTLY CONTAIN THE FERTILIZER.

11 (B) EITHER LEGALLY APPLY THE FERTILIZER TO TURF OR ANOTHER
12 APPROPRIATE SITE OR RETURN THE FERTILIZER TO AN APPROPRIATE
13 CONTAINER.

14 (2) A PERSON SHALL NOT APPLY A FERTILIZER TO TURF IF THE SOIL
15 IS FROZEN OR SATURATED WITH WATER.

16 SEC. 8512G. THE DEPARTMENT, IN CONSULTATION WITH THE
17 FERTILIZER INDUSTRY REPRESENTATIVES, FERTILIZER RETAILERS,
18 STATEWIDE ENVIRONMENTAL ORGANIZATIONS, LAKE GROUPS, AND OTHER
19 INTERESTED PARTIES, MAY APPROVE CONSUMER INFORMATION ON USE
20 RESTRICTIONS AND RECOMMENDED BEST PRACTICES FOR LAWN FERTILIZER
21 CONTAINING AVAILABLE PHOSPHATE (P_2O_5), AND ON BEST MANAGEMENT
22 PRACTICES FOR OTHER RESIDENTIAL USES OF PHOSPHORUS. THE INFORMATION
23 SHALL BE IN A FORMAT AND INCLUDE CONTENT SUITABLE FOR USE BY THE
24 GENERAL PUBLIC OR POSTING AND DISTRIBUTION AT RETAIL POINTS OF SALE
25 OF TURF FERTILIZER.

26 Sec. 8517. (1) Except as otherwise provided in this section,
27 this part preempts any local ordinance, regulation, or resolution

1 that would duplicate, extend, or revise in any manner the
2 provisions of this part. Except as otherwise provided for in this
3 section, a local unit of government shall not adopt, maintain, or
4 enforce an ordinance, regulation, or resolution that contradicts or
5 conflicts in any manner with this part.

6 (2) If a local unit of government is under contract with the
7 department to act as its agent or the local unit of government has
8 received prior written authorization from the department, that
9 local unit of government may adopt an ordinance that is identical
10 to this part and rules promulgated under this part, except as
11 prohibited in subsection (6). The local unit of government's
12 enforcement response for a violation of the ordinance that involves
13 the manufacturing, storage, distribution, sale, or agricultural use
14 of products regulated by this part is limited to issuing a cease
15 and desist order in the manner prescribed in section 8511.

16 (3) A local unit of government may adopt an ordinance
17 prescribing standards different from those contained in this part
18 and rules promulgated under this part and that regulates the
19 manufacturing, storage, distribution, sale, or agricultural use of
20 a product regulated by this part only under either or both of the
21 following circumstances:

22 (a) Unreasonable adverse effects on the environment or public
23 health will **OTHERWISE** exist within the local unit of government,
24 taking into consideration specific populations whose health may be
25 adversely affected within that local unit of government.

26 (b) The local unit of government has determined that the
27 manufacturing, storage, distribution, sale, or agricultural use of

1 a product regulated by this part within that unit of government has
2 resulted or will result in the violation of other existing state or
3 federal laws.

4 (4) An ordinance adopted under subsection (2) or (3) shall not
5 conflict with existing state laws or federal laws. An ordinance
6 adopted under subsection (3) shall not be enforced by a local unit
7 of government until approved by the commission of agriculture. The
8 commission of agriculture shall provide a detailed explanation of
9 the basis of a denial within 60 days.

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

22 (6) The director may contract with a local unit of government
23 to act as its agent for the purpose of enforcing this part and the
24 rules promulgated under this part. The department has sole
25 authority to assess fees, register fertilizer or soil conditioner
26 products, cancel or suspend registrations, and ~~regulate~~**ADMINISTER**
27 and enforce provisions of section 8512.

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

5 (8) **SUBSECTION (1) DOES NOT PROHIBIT THE MAINTENANCE OR**
6 **ENFORCEMENT OF AN ORDINANCE THAT REGULATES OR PROHIBITS THE**
7 **APPLICATION TO TURF OF FERTILIZER CONTAINING THE PLANT NUTRIENT**
8 **AVAILABLE PHOSPHATE (P₂O₅), BUT ONLY IF THE ORDINANCE WAS IN EFFECT**
9 **ON THE ENACTMENT DATE OF THE AMENDATORY ACT THAT ADDED THIS**
10 **SUBSECTION.**

11 Sec. 8520. (1) A person who violates **OR ATTEMPTS TO VIOLATE**
12 this part or rules promulgated under this part is subject to the
13 penalties and remedies provided in this part regardless of whether
14 he or she acted directly or through an employee or agent.

15 (2) The director, upon finding after notice and an opportunity
16 for an administrative hearing that a person has violated or
17 attempted to violate any provision of this part or a rule
18 promulgated under this part, may impose an administrative fine of
19 not more than \$1,000.00 for each violation or attempted violation.
20 **A PERSON SHALL NOT BE FINED UNDER BOTH THIS SUBSECTION AND**
21 **SUBSECTION (7) FOR THE SAME VIOLATION OR ATTEMPTED VIOLATION. A**
22 **PERSON SHALL NOT BE FINED UNDER THIS SUBSECTION FOR A VIOLATION**
23 **DESCRIBED IN SUBSECTION (7) (B) .**

24 (3) If the director finds that a violation or attempted
25 violation has occurred despite the exercise of due care or did not
26 result in significant harm to human health or the environment, the
27 director may issue a warning instead of imposing an administrative

1 fine.

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

6 (5) A person who violates this part or a rule promulgated
7 under this part, or attempts to violate this part or a rule
8 promulgated under this part, is guilty of a misdemeanor punishable
9 by imprisonment for not more than 90 days or a fine of not more
10 than \$5,000.00 for each violation or attempted violation, in
11 addition to any administrative fines imposed. **THIS SUBSECTION DOES**
12 **NOT APPLY TO A VIOLATION OR ATTEMPTED VIOLATION OF SECTION 8512B OR**
13 **8512F.**

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

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

24 (A) **EXCEPT AS PROVIDED IN SUBDIVISION (B), NOT MORE THAN**
25 **\$1,000.00.**

26 (B) **NOT MORE THAN \$50.00 IF ALL OF THE FOLLOWING APPLY:**

27 (i) **THE VIOLATION OR ATTEMPTED VIOLATION OCCURS ON A SINGLE-**

1 FAMILY RESIDENTIAL PARCEL, OR ANY OTHER PARCEL OR CONTIGUOUS
2 PARCELS WITH A TOTAL OF NOT MORE THAN 4 ACRES OF TURF.

3 (ii) THE VIOLATION OR ATTEMPTED VIOLATION IS COMMITTED BY THE
4 PROPERTY OWNER OR LESSEE, A MEMBER OF HIS OR HER FAMILY, OR A
5 PERSON WHO RESIDES ON THE PROPERTY.

6 (8) ~~(7)~~—The director may bring an action to enjoin the
7 violation or threatened violation of this part or a rule
8 promulgated under this part in a court of competent jurisdiction of
9 the county in which the violation occurs or is about to occur.

10 (9) ~~(8)~~—The attorney general may file a civil action in which
11 the court may impose on any person who violates **OR ATTEMPTS TO**
12 **VIOLATE** this part or a rule promulgated under this part, ~~or~~
13 ~~attempts to violate this part or a rule promulgated under this part~~
14 **OTHER THAN SECTION 8512B OR 8512F**, a civil fine of not more than
15 \$5,000.00 for each violation or attempted violation. In addition,
16 the attorney general may bring an action in circuit court to
17 recover the reasonable costs of the investigation from any person
18 who violated this part or attempted to violate this part. Money
19 recovered under this subsection shall be forwarded to the state
20 treasurer for deposit into the fund.

21 (10) ~~(9)~~—In defense of an action filed under this section for
22 a violation **OR ATTEMPTED VIOLATION** of this part, in addition to any
23 other lawful defense, a person may present evidence as an
24 affirmative defense that, at the time of the alleged violation or
25 attempted violation, he or she was in compliance with this part and
26 rules promulgated under this part.

27 (11) ~~(10)~~—A person who violates this part is liable for all

1 damages sustained by a purchaser of a product sold in violation of
2 this part. In an enforcement action, a court, in addition to other
3 sanctions provided by law, may order restitution to a party injured
4 by the purchase of a product sold in violation of this part.

5 (12) ~~(11) Applicable~~ **A CIVIL ACTION FILED PURSUANT TO THIS**
6 **PART IS SUBJECT TO APPLICABLE** provisions of the revised judicature
7 act of 1961, 1961 PA 236, MCL 600.101 to ~~600.9948~~, ~~apply to civil~~
8 ~~actions filed pursuant to this part.~~ **600.9947.**