

# HOUSE BILL No. 5368

September 15, 2009, Introduced by Reps. Terry Brown, Scripps, Warren, Miller, Polidori, Sheltrown, Leland, Lipton, Bledsoe, Gonzales, Espinoza, Smith, Donigan, Roberts, Kennedy and Meadows 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, 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 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 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  
7 that may be necessary to protect plant life, animals, humans,  
8 aquatic life, soil or water are not shown on the label.

1 (b) "Agricultural use" means that term as defined in section  
2 36101.

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

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

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

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

15 (g) "Bulk fertilizer" means fertilizer distributed in a  
16 nonpackaged form.

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

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

22 (j) "Director" means the director of the department or his or  
23 her designee.

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

27 (l) "Distributor" means any person who distributes fertilizer

1 for sale or use in this state.

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

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

11 (i) Contains not more than 1 of the following as primary  
12 nutrients:

13 (A) Total nitrogen (N).

14 (B) Available phosphate ( $P_2O_5$ ).

15 (C) Soluble potash ( $K_2O$ ).

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

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

22 (o) "Fund" means the fertilizer control fund created under  
23 section 8514.

24 (p) "Grade" means the percentage guarantee of total nitrogen  
25 (N), available phosphate ( $P_2O_5$ ), and soluble potash ( $K_2O$ ), of a  
26 fertilizer. ~~and~~ **GRADE** shall be stated in the same order given in  
27 this subdivision. Indication of grade does not apply to peat or

1 peat moss or soil conditioners.

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

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

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

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

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

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

21 (W) ~~(v)~~ "Licensee" means the person who receives a license to  
22 manufacture or distribute fertilizers under this part.

23 (X) ~~(w)~~ "Lot" means an identifiable quantity of fertilizer  
24 that can be sampled officially according to methods adopted under  
25 section 8510, that ~~amount~~ **IS** contained in a single vehicle, or that  
26 ~~amount~~ **IS** delivered under a single invoice.

27 (Y) ~~(x)~~ "Manufacture" means to process, granulate, compound,

1 produce, mix, blend, or alter the composition of fertilizer or  
2 fertilizer materials.

3 (Z) "TURF" MEANS LAND PLANTED IN GRASSES THAT ARE CLOSELY  
4 MOWED AND OTHERWISE MANAGED OR LAND ABOUT TO BE PLANTED IN GRASSES  
5 THAT WILL BE CLOSELY MOWED AND OTHERWISE MANAGED. TURF DOES NOT  
6 INCLUDE PASTURE, HAYLAND, HAY, TURF GROWN ON A TURF FARM, OR ANY  
7 OTHER FORM OF AGRICULTURAL PRODUCTION.

8 SEC. 8512B. (1) BEGINNING JANUARY 1, 2011, EXCEPT AS PROVIDED  
9 IN SUBSECTIONS (2) TO (4), A PERSON SHALL NOT APPLY TO TURF A  
10 FERTILIZER LABELED AS CONTAINING THE PLANT NUTRIENT AVAILABLE  
11 PHOSPHATE ( $P_2O_5$ ).

12 (2) IF A TISSUE, SOIL, OR OTHER TEST PERFORMED WITHIN THE  
13 PRECEDING 3 YEARS BY A LABORATORY OR METHOD APPROVED BY THE  
14 DIRECTOR INDICATES THAT THE LEVEL OF AVAILABLE PHOSPHATE ( $P_2O_5$ ) IN  
15 THE SOIL IS DEFICIENT TO SUPPORT HEALTHY TURF GRASS GROWTH OR  
16 ESTABLISHMENT, AFTER CONSIDERING RECOMMENDATIONS BY THE MICHIGAN  
17 STATE UNIVERSITY EXTENSION FOR APPLICATION RATES BASED ON THE TEST  
18 RESULTS, A PERSON MAY APPLY FERTILIZER TO THE TURF AT AN  
19 APPLICATION RATE FOR AVAILABLE PHOSPHATE NOT EXCEEDING THAT  
20 NECESSARY TO CORRECT THE DEFICIENCY.

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

1           (4) A PERSON MAY APPLY FERTILIZER LABELED AS CONTAINING THE  
2 PLANT NUTRIENT AVAILABLE PHOSPHATE ( $P_2O_5$ ) TO A GOLF COURSE IF 1 OR  
3 MORE OF THE FOLLOWING APPLY:

4           (A) THE GOLF COURSE HAS BEEN CERTIFIED BY AN ORGANIZATION AS A  
5 RESULT OF THE GOLF COURSE'S STAFF HAVING SUCCESSFULLY COMPLETED A  
6 TRAINING PROGRAM APPROVED BY THE DIRECTOR. THE DIRECTOR SHALL  
7 APPROVE A TRAINING PROGRAM IF IT IS A CONTINUING PROGRAM,  
8 ADEQUATELY ADDRESSES BEST MANAGEMENT PRACTICES FOR USE OF TURF  
9 FERTILIZER CONTAINING AVAILABLE PHOSPHATE, AND REQUIRES TRAINEES TO  
10 DEMONSTRATE SUCCESSFUL IMPLEMENTATION OF THOSE BEST MANAGEMENT  
11 PRACTICES.

12           (B) A TISSUE, SOIL, OR OTHER TEST PERFORMED WITHIN THE  
13 PRECEDING 3 YEARS BY A LABORATORY OR METHOD APPROVED BY THE  
14 DIRECTOR INDICATES THAT THE LEVEL OF AVAILABLE PHOSPHATE IN THE  
15 SOIL IS DEFICIENT TO SUPPORT THE HEALTHY GROWTH OF GOLF COURSE TURF  
16 GRASS. AFTER CONSIDERING RECOMMENDATIONS BY THE MICHIGAN STATE  
17 UNIVERSITY EXTENSION FOR APPLICATION RATES BASED ON THE TEST  
18 RESULTS, THE GOLF COURSE MAY APPLY FERTILIZER AT AN APPLICATION  
19 RATE FOR AVAILABLE PHOSPHATE NOT EXCEEDING THAT NECESSARY TO  
20 CORRECT THE DEFICIENCY.

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

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

27           (A) PROMPTLY CONTAIN THE FERTILIZER.

1           (B) EITHER LEGALLY APPLY THE FERTILIZER TO TURF OR ANOTHER  
2 APPROPRIATE SITE OR RETURN THE FERTILIZER TO AN APPROPRIATE  
3 CONTAINER.

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

6           Sec. 8517. (1) Except as otherwise provided in this section,  
7 this part preempts any local ordinance, regulation, or resolution  
8 that would duplicate, extend, or revise in any manner the  
9 provisions of this part. Except as otherwise provided for in this  
10 section, a local unit of government shall not adopt, maintain, or  
11 enforce an ordinance, regulation, or resolution that contradicts or  
12 conflicts in any manner with this part.

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

23           (3) A local unit of government may adopt an ordinance  
24 prescribing standards different from those contained in this part  
25 and rules promulgated under this part and that regulates the  
26 manufacturing, storage, distribution, sale, or agricultural use of  
27 a product regulated by this part only under either or both of the

1 following circumstances:

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

6 (b) The local unit of government has determined that the  
7 manufacturing, storage, distribution, sale, or agricultural use of  
8 a product regulated by this part within that unit of government has  
9 resulted or will result in the violation of other existing state or  
10 federal laws.

11 (4) An ordinance adopted under subsection (2) or (3) shall not  
12 conflict with existing state laws or federal laws. An ordinance  
13 adopted under subsection (3) shall not be enforced by a local unit  
14 of government until approved by the commission of agriculture. The  
15 commission of agriculture shall provide a detailed explanation of  
16 the basis of a denial within 60 days.

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



1 resolution of the local unit of government.

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

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

12 **(8) SUBSECTION (1) DOES NOT PROHIBIT THE MAINTENANCE OR**  
13 **ENFORCEMENT OF AN ORDINANCE THAT REGULATES OR PROHIBITS THE**  
14 **APPLICATION TO TURF OF FERTILIZER CONTAINING THE PLANT NUTRIENT**  
15 **AVAILABLE PHOSPHATE (P<sub>2</sub>O<sub>5</sub>) AS IN EFFECT ON THE ENACTMENT DATE OF THE**  
16 **AMENDATORY ACT THAT ADDED THIS SUBSECTION.**

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

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

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

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

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

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

23 (7) **A PERSON WHO VIOLATES OR ATTEMPTS TO VIOLATE SECTION**  
24 **8512B, 8512C, OR 8512F IS RESPONSIBLE FOR A STATE CIVIL INFRACTION**  
25 **AND MAY BE ORDERED TO PAY A CIVIL FINE OF NOT MORE THAN THE**  
26 **FOLLOWING FOR EACH VIOLATION OR ATTEMPTED VIOLATION:**

27 (A) **EXCEPT AS PROVIDED IN SUBDIVISION (B), NOT MORE THAN**

1 \$1,000.00.

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

3 (i) THE VIOLATION OR ATTEMPTED VIOLATION OCCURS ON A SINGLE-  
4 FAMILY RESIDENTIAL PARCEL OR ANY OTHER PARCEL OR CONTIGUOUS PARCELS  
5 WITH A TOTAL OF NOT MORE THAN 4 ACRES OF TURF.

6 (ii) THE VIOLATION IS COMMITTED BY THE PROPERTY OWNER OR  
7 LESSEE, A MEMBER OF HIS OR HER FAMILY, OR A PERSON WHO RESIDES ON  
8 THE PROPERTY.

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

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

24 (10) ~~(9)~~—In defense of an action filed under this section for  
25 a violation of this part, in addition to any other lawful defense,  
26 a person may present evidence as an affirmative defense that, at  
27 the time of the alleged violation or attempted violation, he or she

1 was in compliance with this part and rules promulgated under this  
2 part.

3 (11) ~~(10)~~ A person who violates this part is liable for all  
4 damages sustained by a purchaser of a product sold in violation of  
5 this part. In an enforcement action, a court, in addition to other  
6 sanctions provided by law, may order restitution to a party injured  
7 by the purchase of a product sold in violation of this part.

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