

Assembly Bill No. 924

Passed the Assembly August 30, 2005

Chief Clerk of the Assembly

Passed the Senate August 25, 2005

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2005, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 14502, 14504, 14581, 14583, 14585, 14586, 14591, 14601, 14611, 14612, 14613, 14621, 14622, 14623, 14631, 14641, 14642, 14643, 14644, 14645, 14646, 14647, 14648, 14651, 14653, 14654, 14655, 14656, 14657, 14658, 14659, 14660, and 14672 of, and to add Sections 14502.1, 14512.5, 14559.5, and 14612.5 to, the Food and Agricultural Code, relating to fertilizer.

LEGISLATIVE COUNSEL'S DIGEST

AB 924, Canciamilla. Ammonium nitrate.

Existing law generally regulates fertilizer materials and provides for the licensure of individuals who manufacture or distribute fertilizing materials.

This bill would define ammonium nitrate fertilizer, as specified. This bill would require persons who manufacture or distribute ammonium nitrate fertilizer, or who intend to do so, to inform the Secretary of Food and Agriculture and to obtain a license identifying him or her as a manufacturer or distributor of ammonium nitrate. This bill would require licensees that manufacture, distribute, or sell ammonium nitrate to maintain specified information with respect to sales of that material that shall be made available only to the secretary and public safety officials upon request. This bill would also require the secretary to notify each person so licensed of the duty to maintain these records.

Because a violation of provisions relating to fertilizing materials is a misdemeanor, by changing the definition of a crime this bill would impose a state-mandated local program.

This bill would make other conforming changes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 14502 of the Food and Agricultural Code is amended to read:

14502. The secretary shall enforce this chapter and adopt and enforce such regulations relating to the manufacture, guaranteeing, labeling, and distribution of, the manner of reporting tonnage for, and making inspection tonnage fee payments upon, fertilizing materials as the secretary determines necessary to carry out this chapter. A copy of those regulations shall be mailed promptly upon adoption to each person who is licensed pursuant to this chapter. The failure of any licensee to receive a copy of the regulations is not a defense to a violation of the regulations.

SEC. 2. Section 14502.1 is added to the Food and Agricultural Code, to read:

14502.1. The secretary shall notify every licensee that manufactures, distributes, or sells ammonium nitrate, as defined in Section 14512.5, of their duty to maintain records pursuant to Section 14612.5 and to notify the secretary as to where those records may be obtained by him or her.

SEC. 3. Section 14504 of the Food and Agricultural Code is amended to read:

14504. The secretary shall prepare an annual statement of the operating expenditures and revenue related to this chapter which shall be presented to the board for review as soon as possible following the termination of the fiscal year. A copy of this statement shall be made available to any interested person upon request.

SEC. 4. Section 14512.5 is added to the Food and Agricultural Code, to read:

14512.5. "Ammonium nitrate" means solid ammonium nitrate that is chiefly the ammonium salt of nitric acid, contains not less than 33 percent of nitrogen, one-half of which is in the ammonium form and one-half of which is in the nitrate form, and is produced, imported, stored, offered for sale, sold, offered for distribution, received, or intended for use as a plant nutrient.

SEC. 5. Section 14559.5 is added to the Food and Agricultural Code, to read:

14559.5. “Secretary” means the Secretary of Food and Agriculture.

SEC. 6. Section 14581 of the Food and Agricultural Code is amended to read:

14581. There is, in the department, a Fertilizer Inspection Advisory Board consisting of nine persons appointed by the secretary, eight of whom shall be licensed under this chapter and subject to the payment of the inspection fee in accordance with this chapter, and one of whom shall be a public member. The members of the board shall receive no compensation, but are entitled to payment of necessary traveling expenses in accordance with the rules of the Department of Personnel Administration. These expenses shall be paid out of appropriations made to the department pursuant to this chapter.

SEC. 7. Section 14583 of the Food and Agricultural Code is amended to read:

14583. The board shall be advisory to the secretary and may make recommendations on all matters pertaining to this chapter, including, but not limited to, the inspection and enforcement program, research and education, the annual budget, necessary fees to provide adequate inspection services, and regulations required to accomplish the purposes of this chapter.

SEC. 8. Section 14585 of the Food and Agricultural Code is amended to read:

14585. The board shall meet at the call of the chairperson or the secretary, or at the request of any five members of the board. The board shall meet at least once a year.

SEC. 9. Section 14586 of the Food and Agricultural Code is amended to read:

14586. The secretary shall accept the recommendations of the advisory board pertaining to subdivision (b) of Section 14611 if he or she finds them to be practicable and in the interests of the fertilizer industry and the public. If the secretary does not accept the recommendations of the advisory board, or any part thereof, the secretary shall provide the board with a written statement within 15 working days of making his or her decision stating the reasons for not accepting the recommendations, or any part thereof.

SEC. 10. Section 14591 of the Food and Agricultural Code is amended to read:

14591. (a) Every person who manufactures or distributes fertilizing materials shall, before he or she engages in the activity, obtain a license from the secretary for each plant and business location which he or she operates. All licenses shall be renewed in January of each odd-numbered year, and shall be valid until December 31 of the following even-numbered year, if issued in January of that same year. However, a person who only distributes or who makes retail sales of packaged agricultural minerals, packaged commercial fertilizers, packaged soil amendments, or packaged auxiliary soil and plant substances, alone or in any combination, which bear the registered label of another licensed person, is not required to obtain the license.

(b) Every person who manufactures or distributes, or intends to manufacture or distribute, ammonium nitrate as defined in Section 14512.5, in this state, shall inform the secretary of that activity or intent when applying for a license. The license obtained by that person shall identify him or her as a manufacturer or distributor of ammonium nitrate.

(c) The license fee shall not exceed two hundred dollars (\$200). The secretary may, based on the findings and recommendations of the board, reduce the license fee to a lower rate that provides sufficient revenue to carry out this chapter.

SEC. 11. Section 14601 of the Food and Agricultural Code is amended to read:

14601. Each differing label, other than weight or package size, such as changes in the guaranteed analysis, derivation statement, or anything that implies a different product, for specialty fertilizer, packaged agricultural mineral, auxiliary soil and plant substance, and packaged soil amendment shall be registered. All registrations shall be renewed in January of an even-numbered year, and shall be valid until December 31 of the following odd-numbered year, if issued in January of that same year. The registration fee shall not exceed two hundred dollars (\$200) per product. The secretary may, based on the findings and recommendations of the board, reduce the registration fee to a lower rate that provides sufficient revenue to carry out this chapter. The secretary may require proof of labeling statements and other claims made for any specialty fertilizer, agricultural mineral, packaged soil amendment, or auxiliary soil and plant substance, before the secretary registers any such product. As

evidence of proof, the secretary may rely on experimental data, evaluations, or advice furnished by scientists, including scientists affiliated with the University of California, and may accept or reject additional sources of proof in the evaluation of any fertilizing material. In all cases, experimental proof shall relate to conditions in California under which the product is intended for use.

The secretary, after hearing, may cancel the registration of, or refuse to register, any specialty fertilizer, packaged agricultural mineral, packaged soil amendment, or auxiliary soil and plant substance, which the secretary determines is detrimental or injurious to plants, animals, public safety, or the environment when it is applied as directed, which is known to be of little or no value for the purpose for which it is intended, or for which any false or misleading claim is made or implied. The secretary may cancel the registration of any product of any person who violates this chapter.

The proceedings to determine whether to cancel or refuse registration of any of those products shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The director shall have all the powers that are granted pursuant to Chapter 5.

SEC. 12. Section 14611 of the Food and Agricultural Code is amended to read:

14611. (a) Any licensee whose name appears on the label who sells or distributes bulk fertilizing materials, as defined in Sections 14517 and 14533, to unlicensed purchasers, shall pay to the secretary an assessment not to exceed two mills (\$0.002) per dollar of sales for all fertilizing materials. Any licensee whose name appears on the label of packaged fertilizing materials, as defined in Sections 14533 and 14551, shall pay to the secretary an assessment not to exceed two mills (\$0.002) per dollar of sales. The secretary may, based on the findings and recommendations of the board, reduce the assessment rate to a lower rate that provides sufficient revenue to carry out this chapter.

(b) In addition to the assessment provided in subdivision (a), the secretary may impose an assessment in an amount not to exceed one mill (\$0.001) per dollar of sales for all sales of fertilizing materials, to provide funding for research and

education regarding the use and handling of commercial and organic fertilizers, including, but not limited to, any environmental effects.

SEC. 13. Section 14612 of the Food and Agricultural Code is amended to read:

14612. Each licensee shall maintain in this state, or with the secretary's permission, at another location, an accurate record of all transactions subject to assessment. These records shall be maintained for a period of not less than three years following the transaction and are subject to audit by the secretary.

SEC. 13.5. Section 14612.5 is added to the Food and Agricultural Code, to read:

14612.5. (a) Every licensee that manufactures, distributes, or sells ammonium nitrate, as defined in Section 14512.5, shall maintain in this state, or with the secretary's permission, at another location, all of the following information with respect to sales of ammonium nitrate:

(1) The names, addresses, and driver's license and telephone numbers of purchasers. The name and address of each purchaser shall be verified against a valid California driver's license, unless the fertilizer is shipped to a wholesale purchaser outside of the state.

(2) The date of each sale.

(3) The total amount of material sold.

(b) The information collected by licensees pursuant to subdivision (a) shall be kept for a period of at least three years and shall be made available only to the secretary or law enforcement officials upon request.

SEC. 14. Section 14613 of the Food and Agricultural Code is amended to read:

14613. The payment required by Section 14611, together with a form containing information prescribed by the secretary, shall be made quarterly within one calendar month after March 31, June 30, September 30, and December 31 of each year, and that form shall be submitted on or before those dates even if no fertilizer materials are sold. For any delinquency in making the payment, or any deficiency in payment, the director shall add a penalty of 15 percent to the delinquent payment. Any delinquency which is more than 90 days past due is a cause for cancellation of the license.

SEC. 15. Section 14621 of the Food and Agricultural Code is amended to read:

14621. The last licensee selling or distributing fertilizing material shall submit a tonnage report, on a form or a computer printout format approved by the secretary, containing information on shipments received or deliveries made during specified periods designated by the secretary.

SEC. 16. Section 14622 of the Food and Agricultural Code is amended to read:

14622. (a) The secretary shall publish, at least annually, a tonnage report. The secretary shall distribute the report and may charge a fee to cover the actual cost of publishing and distributing the report.

(b) Any information furnished to the secretary under this chapter shall not be disclosed in such a way as to divulge the business practices of any licensee.

SEC. 17. Section 14623 of the Food and Agricultural Code is amended to read:

14623. The tonnage report shall be submitted to the secretary semiannually not later than January 31 and July 31 of each year. The secretary shall impose a penalty in the amount of two hundred dollars (\$200) on any person who does not submit the report on or before those dates.

SEC. 18. Section 14631 of the Food and Agricultural Code is amended to read:

14631. Every lot, parcel, or package of fertilizing material distributed into or within this state shall have attached to it, or the shipment shall be physically accompanied by, a label as required by the secretary, by regulation. The secretary may require proof of labeling statements and claims made for any fertilizing material. As evidence of proof, the secretary may rely on experimental data, evaluations, or advice furnished by scientists, including scientists affiliated with the University of California, and may accept or reject additional sources of proof. The secretary may cancel the approval of, or refuse to approve, a fertilizing material label if the secretary determines that adequate proof of label claims do not exist. The secretary, after hearing, may cancel the license of any person who distributes a fertilizing material with a label for which approval has been canceled or a label that has not been approved by the secretary.

SEC. 19. Section 14641 of the Food and Agricultural Code is amended to read:

14641. The secretary shall have free access at reasonable times to all records, premises, or conveyances which are used in the manufacture, transportation, importation, distribution, storage, or application of any fertilizing material.

SEC. 20. Section 14642 of the Food and Agricultural Code is amended to read:

14642. The secretary shall, at the times and to the extent necessary for the enforcement of this chapter, do all of the following:

- (a) Take samples of any substance.
- (b) Make analyses or examinations of any substance.
- (c) Conduct investigations concerning the use, sale, adulteration, or misbranding of any substance.

SEC. 21. Section 14643 of the Food and Agricultural Code is amended to read:

14643. In determining the percentage of component parts of any substance for the purpose of proper labeling, registration, or determining compliance with representations, all analyses shall be made according to a method determined by the secretary.

SEC. 22. Section 14644 of the Food and Agricultural Code is amended to read:

14644. The secretary shall publish, at least annually, the results of examinations or chemical analyses of official samples of commercial fertilizer and agricultural minerals, and any additional information the secretary deems necessary.

SEC. 23. Section 14645 of the Food and Agricultural Code is amended to read:

14645. The secretary may take a sample for analysis from any lot of fertilizing material which is in the possession of any producer, manufacturer, importer, agent, dealer, or user. The sample shall be taken pursuant to regulations adopted by the secretary.

SEC. 24. Section 14646 of the Food and Agricultural Code is amended to read:

14646. The secretary shall establish sampling procedures by regulation.

SEC. 25. Section 14647 of the Food and Agricultural Code is amended to read:

14647. Upon the analysis of a sample of fertilizing material, the secretary shall issue a report showing the findings and indicating that the product has met the guarantee or was found to be deficient. However, the secretary, in determining whether any product is deficient in guarantee or misrepresented, may establish, by regulation, tolerances that provide allowances for variations that occur in the taking, preparation, and analysis of an official sample.

SEC. 26. Section 14648 of the Food and Agricultural Code is amended to read:

14648. In any action, civil or criminal, in any court in this state, a laboratory report from the secretary which states the results of any analysis, reported to be made pursuant to this chapter, shall be prima facie evidence of all of the following:

(a) That the sample which is described in the laboratory report was properly analyzed.

(b) That the sample was taken pursuant to this chapter.

(c) That the substances analyzed contained the component parts which are stated in the laboratory report.

(d) That the sample was taken from the lots, parcels, or packages which are described in the laboratory report.

SEC. 27. Section 14651 of the Food and Agricultural Code is amended to read:

14651. (a) Unless otherwise specified in this chapter, any violation of this chapter, or the regulations adopted pursuant to this chapter, is a misdemeanor, punishable by a fine of not more than five hundred dollars (\$500) for the first violation and not less than five hundred dollars (\$500) for each subsequent violation.

(b) The secretary may, after hearing, refuse to issue or renew, or may suspend or revoke, a license or registration for any violation of this chapter or any regulation that is adopted pursuant to this chapter.

(c) Upon calling a hearing, the director shall hand deliver or mail a notice of the hearing to the licensee or registrant specifying the time and place of the hearing at least 10 days prior to the hearing. The hearing officer may do any of the following:

(1) Administer oaths and take testimony.

(2) Issue subpoenas requiring the attendance of the licensee, registrant, or witnesses, together with books, records,

memorandums, papers, and all other documents that may be pertinent to the case.

(3) Compel from the licensee or registrant and any witness the disclosure of all facts known to him or her regarding the case. In no instance shall any employee of Agricultural Commodities and Regulatory Services serve as the hearing officer in any hearing conducted pursuant to this section.

(d) Any person who is denied a license, whose license is not renewed, or whose license is suspended or revoked pursuant to this section may appeal to the secretary.

SEC. 28. Section 14653 of the Food and Agricultural Code is amended to read:

14653. The secretary may seize and hold any lot of fertilizing material which he or she has reasonable cause to believe is in violation of this chapter or the regulations adopted pursuant to this chapter.

SEC. 29. Section 14654 of the Food and Agricultural Code is amended to read:

14654. If the secretary seizes any lot of fertilizing material, he or she shall immediately issue a hold order to the person that has control of that material. The secretary may affix to that lot or package of the material a warning tag which states that the lot is subject to a hold order.

SEC. 30. Section 14655 of the Food and Agricultural Code is amended to read:

14655. (a) Any lot of fertilizing material for which a hold order or notice is issued shall be held by the person having control of the material and shall not be distributed or moved except under the specific directions of the secretary, pending final disposition pursuant to this chapter. This does not prevent the person who has control of the material from inspecting any seized material or from taking a reasonable sample for evidence while in the presence of a person designated by the director.

(b) The movement, distribution, or sale of all or part of any product that has been quarantined by the secretary, unless the movement, distribution, or sale has the prior approval of the secretary, is a misdemeanor punishable by a fine of not more than five hundred dollars (\$500). A second or subsequent violation of this subdivision is a misdemeanor punishable by a fine of not less than one thousand dollars (\$1,000).

SEC. 31. Section 14656 of the Food and Agricultural Code is amended to read:

14656. Upon demand of the person who has control of the seized fertilizing material, and within 10 days of sampling by the secretary, a subsample shall be returned from the state laboratory to the person in control of the fertilizing material.

SEC. 32. Section 14657 of the Food and Agricultural Code is amended to read:

14657. If the seized and held lot, as determined by the secretary's analysis, is not in violation of this chapter, the secretary shall immediately release the seized and held lot and remove the hold order.

SEC. 33. Section 14658 of the Food and Agricultural Code is amended to read:

14658. If the seized and held lot is found to be in violation of this chapter, the secretary shall take either of the following actions:

(a) Continue to hold the lot until such time as the requirements of this chapter have been complied with, at which time the lot shall be released.

(b) Issue orders for the disposal of the lot in a manner specified by the secretary.

SEC. 34. Section 14659 of the Food and Agricultural Code is amended to read:

14659. The person who has control of a seized or held lot that is found to be in violation of this chapter may appeal the result of the analysis to the secretary, in writing, within 15 days of receiving the notice of violation. Upon receipt of that appeal, the secretary shall take a further sample of the lot in question for analysis. The cost of sampling and analysis shall be at the expense of the person who requests the further sample. The findings of the analysis on appeal shall be conclusive.

SEC. 35. Section 14660 of the Food and Agricultural Code is amended to read:

14660. The authority for the issuance of citations is limited to the violations of Sections 14591, 14601, 14631, 14651, and 14655. The secretary shall adopt procedures for the issuance of citations and penalties, upon the recommendation of the board. Chapter 3.5 (commencing with Section 11340) of Part 1 of

Division 3 of Title 2 of the Government Code does not apply to the procedures adopted by the secretary pursuant to this section.

SEC. 36. Section 14672 of the Food and Agricultural Code is amended to read:

14672. Nothing in this chapter requires the secretary to report for prosecution or to institute injunctive proceedings for any minor violation of this chapter whenever the secretary believes that the public interest would be adequately served by a suitable written notice of warning and compliance with the notice.

SEC. 37. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2005

Governor