WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1965

ENROLLED

HOUSE BILL No. 637

(By Mr. Smucker and Mr. Dinn)

PASSED March 12, 1965

In Effect ninety days from Passage

Filed in the Office of
JOSEPH W. FOLLO, JR.
SECRETARY OF STATE
Mar. 18, 1965
AN ACT to repeal article fourteen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to enact in lieu thereof a new article fourteen, relating to agricultural feeding stuffs, and providing penalties.

Be it enacted by the Legislature of West Virginia:

That article fourteen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and a new article fourteen be enacted in lieu thereof, to read as follows:

Article 14. West Virginia Commercial Feed Law.

Section 1. Title.—This article shall be known as the "West Virginia Commercial Feed Law."
Sec. 2. Enforcing Official.—This article shall be administered by the commissioner of agriculture of the state of West Virginia, hereinafter referred to as the “commissioner.”

Sec. 3. Definitions of Words and Terms When Used in This Article.—(a) The term “person” includes individual, partnership, corporation and association; (b) the term “distribute” means to offer for sale, sell or barter, commercial feed or customer-formula feed; or to supply, furnish or otherwise provide commercial feed or customer-formula feed to a contract feeder. The term “distributor” means any person who distributes; (c) the term “sell” or “sale” includes exchange; (d) the term “commercial feed” means all materials which are distributed for use as feed or for mixing in feed, for animals other than man except: (1) Unmixed or unprocessed whole seeds; (2) unground hay, straw, stover, silage, cobs, husks and hulls when not mixed with other materials; (3) individual chemical compounds when not mixed with other materials; (e) the term “feed ingredient” means each of the constituent materials making up a commercial feed;
(f) the term "mineral feed" shall mean a substance or mixture of substances designed or intended to supply primarily mineral elements or inorganic nutrients; (g) the term "customer-formula feed" means a mixture of commercial feeds and/or materials each batch of which mixture is mixed according to the specific instructions of the final purchaser or contract feeder; (h) the term "brand name" means any word, name, symbol or device, or any combination thereof, identifying the commercial feed of a distributor and distinguishing it from that of others; (i) the term "product name" means the name of the commercial feed which identifies it as to kind, class or specific use; (j) the term "label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed, or on the invoice or delivery slip with which a commercial feed or customer-formula feed is distributed; (k) the term "ton" means a net weight of two thousand pounds avoirdupois; (l) the term "per cent" or "percentage" means percentage by weight; (m) the term "official sample" means any sample of feed taken by the commis-
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39 sioner or his agent and designated as “official”; and (n)
40 the term “contract feeder” means a person who, as an in-
41 dependent contractor, feeds commercial feed to animals
42 pursuant to a contract whereby such commercial feed is
43 supplied, furnished or otherwise provided to such person
44 and whereby such person’s remuneration is determined
45 all or in part by feed consumption, mortality, profits, or
46 amount or quality of product.

Sec. 4. Registration.—(a) Each commercial feed shall
2 be registered before being distributed in this state: Pro-
3 vided, however, That customer-formula feeds are exempt
4 from registration. The application for registration shall
5 be submitted on forms furnished by the commissioner,
6 and, if the commissioner so requests, shall also be ac-
7 companied by a label or other printed matter describing
8 the product. Upon approval by the commissioner a copy
9 of the registration shall be furnished to the applicant.
10 All registrations are considered permanent unless new
11 registrations are called for by the commissioner or unless
12 cancelled by the registrant. The application shall
13 include the information required by subparagraphs
(2), (3), (4), and (5) of paragraph (a) of section five. The commissioner may by regulation permit on the registration the alternative listing of ingredients of comparable feeding value, provided that the label for each package shall state the specific ingredients which are in such package. (b) A distributor shall not be required to register any brand of commercial feed which is already registered under this article by another person. (c) Changes in the guarantee of either chemical or ingredient composition of a registered commercial feed may be permitted provided there is satisfactory evidence that such changes would not result in a lowering of the feeding value of the product for the purpose for which designed. Any changes permitted shall be considered as a new registration. (d) The commissioner is empowered to refuse registration of any application not in compliance with the provisions of this article and to cancel any registration subsequently found not to be in compliance with any provision of this article: Provided, however, That no registration shall be refused or cancelled until the registrant shall have been given opportunity to be heard before
the commissioner and to amend his application in order
to comply with the requirements of this article.

Sec. 5. Labeling.—(a) Any commercial feed distrib-
uted in this state shall be accompanied by a legible label
bearing the following information: (1) The net weight.
(2) The product name, brand name, if any, under which
the commercial feed is distributed. (3) The guaranteed
analysis of the commercial feed, listing the minimum per-
centage of crude protein, minimum percentage of crude
fat, and maximum percentage of crude fiber. For all
mineral feeds and for those commercial feeds containing
a level of added mineral ingredients established by reg-
ulation, the list shall include the following, if added:
minimum and maximum percentages of calcium (Ca),
minimum percentage of phosphorus (P), minimum per-
centage of iodine (I), and minimum and maximum per-
centage of salt (NaCl). Other substances or elements,
determinable by laboratory methods, may be guaranteed
by permission of the commissioner. When any items are
guaranteed, they shall be subject to inspection and anal-
ysis in accordance with the methods and regulations that
may be prescribed by the commissioner. Products distributed solely as mineral and/or vitamin supplements and guaranteed as specified in this section need not show guarantees for protein, fat and fiber. (4) The common or usual name of each ingredient used in the manufacture of the commercial feed, except as the commissioner may, by regulation, permit the use of a collective term for a group of ingredients all of which perform the same function. An ingredient statement is not required for single standardized ingredient feeds which are officially defined. (5) The name and principal address of the person responsible for distributing the commercial feed. (b) When a commercial feed is distributed in this state in bags or other containers, the label shall be placed on or affixed to the container; when a commercial feed is distributed in bulk the label shall accompany delivery or be furnished to the purchaser. (c) A customer-formula feed shall be labeled by invoice. The invoice, which is to accompany delivery and be supplied to the purchaser at the time of delivery, shall bear the following information: (1) Name and address of the mixer. (2) Name and address of the
purchaser. (3) Date of sale. (4) The product name and
brand name, if any, and number of pounds of each regis-
tered commercial feed used in the mixture and the name
and number of pounds of each other feed ingredient
added. (d) If a commercial feed or a customer-formula
feed contains a non-nutritive substance which is intended
for use in the diagnosis, cure, mitigation, treatment or
prevention of disease or which is intended to effect the
structure or any function of the animal body, the com-
mmissioner may require the label to show the amount
present, directions for use, and/or warnings against mis-
use of the feed.

Sec. 6. Inspection Fees.—(a) There shall be paid to
the commissioner for all commercial feeds distributed in
this state an inspection fee at the rate of twenty cents
per ton: Provided, however, That customer-formula feeds
are hereby exempted if the inspection fee is paid on the
commercial feeds which they contain: And provided fur-
ther, That distribution of commercial feeds to manufac-
turers are hereby exempted if the commercial feeds so
distributed are used solely in manufacture of feeds which
are registered: *And provided further,* That the manufacturer of commercial feeds or his designated dealer who furnishes or supplies feed to a person to be fed to poultry owned by the manufacturer or his designated dealer is hereby exempt from paying the inspection fee on all such feed actually fed to poultry owned by the feed manufacturer or his designated dealer: *And provided further,* That any distributor shall pay an annual registration fee of twenty-five dollars for each brand of commercial feed distributed in individual packages of ten pounds or less, and the distributor of such brand shall not be required to pay the inspection fee on such packages of the brand so registered. Fees so collected shall constitute a fund for the payment of the cost of inspection, sampling, and analysis, and other expenses necessary for the administration of this article. All moneys collected under the provisions of this article shall be deposited with the state treasurer in a "special revenue account," and shall be expended upon order of the commissioner of agriculture. (b) Every person, except as hereinafter provided, who distributes commercial feed in this state shall: (1) File,
not later than the twentieth day of January and July of each year, a semi-annual statement under oath, setting forth the number of net tons of commercial feeds distributed in this state during the preceding six-month period and upon filing such statement shall pay the inspection fee at the rate stated in paragraph (a) of this section. When more than one person is involved in the distribution of a commercial feed, the person who distributes to the consumer is responsible for reporting the tonnage and paying the inspection fee unless the report and payment have been made by a prior distributor of the feed. (2) Keep such records as may be necessary or required by the commissioner to indicate accurately the tonnage of commercial feed distributed in this state, and the commissioner shall have the right to examine such records to verify statements of tonnage.

Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided herein shall constitute sufficient cause for the cancellation of all registrations on file for the distributor.

**Sec. 7. Adulteration.**—No person shall distribute an adulterated feed. A commercial feed or customer-formula
feed shall be deemed to be adulterated: (a) If any poisonous, deleterious or non-nutritive ingredient has been added in sufficient amount to render it injurious to the health of a human who may consume the resultant food product of the animal or to the health of the animal when fed in accordance with directions for use on the label. (b) If any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor. (c) If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling. (d) If it contains added hulls, screenings, straw, cobs, or other high fiber material unless the name of each such material is stated on the label. (e) If it contains whole weed seeds in amounts exceeding the limits which the commissioner shall establish by rule or regulation.

Sec. 8. Misbranding.—No person shall distribute misbranded feed. A commercial feed or customer-formula feed shall be deemed to be misbranded: (a) If its labeling is false or misleading in any particular. (b) If it is distributed under the name of another feed. (c) If
it is not labeled as required in section five of this article and in regulations prescribed under this article. (d) If it purports to be or is represented as a feed ingredient, or if it purports to contain or is represented as containing a feed ingredient, unless such feed ingredient conforms to the definition of identity, if any, prescribed by regulation of the commissioner; in the adopting of such regulations the commissioner shall give due regard to commonly accepted definitions such as those issued by the association of American feed control officials, incorporated. (e) If any word, statement, or other information required by or under authority of this article to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read or understood by the ordinary individual under customary conditions of purchase and use.

Sec. 9. Inspection; Sampling; Analysis.—(a) It shall be the duty of the commissioner, who may act through his authorized agent, to sample, inspect, make analyses of, and test commercial feeds and customer-formula feeds
distributed within this state at such time and place and to such an extent as he may deem necessary to determine whether such feeds are in compliance with the provisions of this article. The commissioner, individually or through his agent, is authorized to enter upon any public or private premises including any vehicle of transport during regular business hours in order to have access to commercial feeds and customer-formula feeds and to records relating to their distribution. (b) The methods of sampling and analysis shall be those adopted by the commissioner from sources such as the journal of the association of official agricultural chemists. (c) The commissioner, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided solely by the official sample as defined in paragraph (m) of section three, which sample is obtained and analyzed as provided for in paragraph (b) of this section. (d) When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded, the results of analysis shall be forwarded by the commissioner to the distributor and
the purchaser. Upon request made within thirty days the commissioner shall furnish to the distributor a portion of the sample concerned.

Sec. 10. Rules and Regulations.—The commissioner is hereby charged with the enforcement of the provisions of this article, and is empowered to promulgate and adopt such reasonable rules and regulations as may be necessary to administer and enforce the provisions of this article.

Sec. 11. Right to Inspect; “Stop Sale” Orders and Embargos; Hearings; Appeals; Condemnation and Confiscation.—(a) The commissioner or his agent shall have free access to all places of business, mills, buildings and conveyances of any kind used in the transportation, importation, manufacture, sale or storage of any commercial feeding stuffs, with power and authority to open any parcel containing or supposed to contain any commercial feeding stuffs, and upon full payment of the selling price, to take therefrom samples for analyses, and to examine the books and all records pertaining to the shipment, manufacture, sale or distribution of any commercial feeding stuffs.
(b) Whenever it appears that any commercial feeding stuff is being offered or exposed for sale in this state in violation of any of the provisions of this article, the commissioner is hereby authorized to issue a written or printed "stop sale" order or "embargo," and it shall be unlawful for any person, firm, corporation or manufacturer to permit any such commercial feed to be moved or disposed of in any manner except upon written order of the commissioner of agriculture or by court order. The commissioner shall cause notice of such violation to be given to the person affected thereby, and any person so notified shall be given an opportunity to be heard under such rules and regulations as the commissioner may prescribe. Any person aggrieved by any such "stop sale" order or "embargo" may appeal to the circuit court of the county in which the alleged infraction occurred, and jurisdiction is hereby conferred upon such circuit court to hear and determine such appeal.

(c) Any lot of commercial feed not in compliance with the provisions of this article or any reasonable rules and regulations promulgated by the commissioner shall
be subject to seizure and confiscation on complaint of the commissioner to the circuit court of the county in which the commercial feeding stuff in question is located, and jurisdiction is hereby conferred upon such circuit court to hear and determine such matter. If the court finds that said commercial feeding stuff is in violation of the provisions of this article or such reasonable rules and regulations, and if the court determines that such feeding stuff should be confiscated, the court shall order the destruction of such commercial feeding stuff or its disposition in any manner consistent with the quality of such commercial feeding stuff and not in violation of any other laws of this state: Provided, That if the court determines not to order the destruction of such commercial feeding stuff, it shall not order the same to be disposed of in any manner without first giving the owner thereof an opportunity to process or relabel such commercial feeding stuff or otherwise dispose of the same in full compliance with the provisions of this article and any reasonable rules and regulations of the commissioner.

(d) Any party aggrieved by a final judgment entered
by a circuit court in accordance with the provisions of this section may seek a review thereof by appeal to the supreme court of appeals of this state, and jurisdiction is hereby conferred upon such court to hear and entertain such appeals upon application made therefor in the manner and within the time provided by law for civil appeals generally.

Sec. 12. Penalties.—(a) Any person violating any of the provisions of this article or the rules and regulations issued thereunder or who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent said commissioner or his duly authorized agent in the performance of his duty in connection with the provisions of this article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than one hundred dollars for the first violation, and not less than fifty dollars nor more than two hundred dollars for any subsequent violation. In all prosecutions under this article involving the composition of a lot of commercial feed, a certified copy of the official analysis signed by the commissioner or his agent shall
be accepted as prima facie evidence of the composition.

(b) Nothing in this article shall be construed as requiring the commissioner or his representative to report for prosecution or for the institution of seizure and confiscation proceedings as a result of minor violations of the article when he believes that the public interest will be best served by a suitable notice of warning in writing.

(c) It shall be the duty of each prosecuting attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the commissioner reports a violation for such prosecution, an opportunity shall be given the distributor to present his view to the commissioner. (d) Upon application by the commissioner therefor, the circuit court of the county in which the violation is occurring, has occurred or is about to occur, as the case may be, may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this article or any rule or regulation promulgated under this article, notwithstanding the existence of other reme-
dies at law. Any such injunction shall be issued without
bond.

Sec. 13. Publications.—The commissioner shall pub-
lish at least annually, in such form as he may deem
proper, information concerning the sales of commercial
feeds, together with such data on their production and
use as he may consider advisable, and a report of the
results of the analyses of official samples of commercial
feeds sold within the state as compared with the analyses
guaranteed in the registration and on the label: Provided,
however, That the information concerning production
and use of commercial feeds shall not disclose the oper-
atations of any person.

Sec. 14. Constitutionality.—If any clause, sentence,
paragraph, or part of this article shall for any reason
be judged invalid by any court of competent jurisdiction,
such judgment shall not affect, impair, or invalidate the
remainder thereof but shall be confined in its operation
to the clause, sentence, paragraph or part thereof directly
involved in the controversy in which such judgment shall
have been rendered.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 18th day of March, 1965.

Governor