

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1965



ENROLLED

HOUSE BILL No. 637

(By Mr. Slonaker and Mr. Owers)



PASSED March 12 1965

In Effect ninety days from Passage



FILED IN THE OFFICE OF
JOE F. PURBITT
SECRETARY OF STATE
THIS DATE 3-18-65

#637

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[Passed March 12, 1965; in effect ninety days from passage.]

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article fourteen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and a new article fourteen be enacted in lieu thereof, to read as follows: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
2 “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;

18 (f) the term "mineral feed" shall mean a substance or
19 mixture of substances designed or intended to supply
20 primarily mineral elements or inorganic nutrients; (g)
21 the term "customer-formula feed" means a mixture of
22 commercial feeds and/or materials each batch of which
23 mixture is mixed according to the specific instructions
24 of the final purchaser or contract feeder; (h) the term
25 "brand name" means any word, name, symbol or device,
26 or any combination thereof, identifying the commercial
27 feed of a distributor and distinguishing it from that of
28 others; (i) the term "product name" means the name of
29 the commercial feed which identifies it as to kind, class
30 or specific use; (j) the term "label" means a display of
31 written, printed, or graphic matter upon or affixed to the
32 container in which a commercial feed is distributed, or
33 on the invoice or delivery slip with which a commercial
34 feed or customer-formula feed is distributed; (k) the
35 term "ton" means a net weight of two thousand pounds
36 avoirdupois; (l) the term "per cent" or "percentage"
37 means percentage by weight; (m) the term "official
38 sample" means any sample of feed taken by the commis-

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

14 (2), (3), (4), and (5) of paragraph (a) of section
15 five. The commissioner may by regulation permit on the
16 registration the alternative listing of ingredients of com-
17 parable feeding value, provided that the label for each
18 package shall state the specific ingredients which are in
19 such package. (b) A distributor shall not be required
20 to register any brand of commercial feed which is already
21 registered under this article by another person. (c)
22 Changes in the guarantee of either chemical or ingredient
23 composition of a registered commercial feed may be per-
24 mitted provided there is satisfactory evidence that such
25 changes would not result in a lowering of the feeding
26 value of the product for the purpose for which designed.
27 Any changes permitted shall be considered as a new
28 registration. (d) The commissioner is empowered to re-
29 fuse registration of any application not in compliance with
30 the provisions of this article and to cancel any registration
31 subsequently found not to be in compliance with any pro-
32 vision of this article: *Provided, however,* That no regis-
33 tration shall be refused or cancelled until the registrant
34 shall have been given opportunity to be heard before

35 the commissioner and to amend his application in order
36 to comply with the requirements of this article.

Sec. 5. Labeling.—(a) Any commercial feed distrib-
2 uted in this state shall be accompanied by a legible label
3 bearing the following information: (1) The net weight.
4 (2) The product name, brand name, if any, under which
5 the commercial feed is distributed. (3) The guaranteed
6 analysis of the commercial feed, listing the minimum per-
7 centage of crude protein, minimum percentage of crude
8 fat, and maximum percentage of crude fiber. For all
9 mineral feeds and for those commercial feeds containing
10 a level of added mineral ingredients established by reg-
11 ulation, the list shall include the following, if added:
12 minimum and maximum percentages of calcium (Ca),
13 minimum percentage of phosphorus (P), minimum per-
14 centage of iodine (I), and minimum and maximum per-
15 centage of salt (NaCl). Other substances or elements,
16 determinable by laboratory methods, may be guaranteed
17 by permission of the commissioner. When any items are
18 guaranteed, they shall be subject to inspection and anal-
19 ysis in accordance with the methods and regulations that

20 may be prescribed by the commissioner. Products dis-
21 tributed solely as mineral and/or vitamin supplements
22 and guaranteed as specified in this section need not show
23 guarantees for protein, fat and fiber. (4) The common
24 or usual name of each ingredient used in the manufacture
25 of the commercial feed, except as the commissioner may,
26 by regulation, permit the use of a collective term for a
27 group of ingredients all of which perform the same func-
28 tion. An ingredient statement is not required for single
29 standardized ingredient feeds which are officially defined.
30 (5) The name and principal address of the person re-
31 sponsible for distributing the commercial feed. (b) When
32 a commercial feed is distributed in this state in bags or
33 other containers, the label shall be placed on or affixed
34 to the container; when a commercial feed is distributed
35 in bulk the label shall accompany delivery or be furnished
36 to the purchaser. (c) A customer-formula feed shall be
37 labeled by invoice. The invoice, which is to accompany
38 delivery and be supplied to the purchaser at the time of
39 delivery, shall bear the following information: (1) Name
40 and address of the mixer. (2) Name and address of the

41 purchaser. (3) Date of sale. (4) The product name and
42 brand name, if any, and number of pounds of each regis-
43 tered commercial feed used in the mixture and the name
44 and number of pounds of each other feed ingredient
45 added. (d) If a commercial feed or a customer-formula
46 feed contains a non-nutritive substance which is intended
47 for use in the diagnosis, cure, mitigation, treatment or
48 prevention of disease or which is intended to effect the
49 structure or any function of the animal body, the com-
50 missioner may require the label to show the amount
51 present, directions for use, and/or warnings against mis-
52 use of the feed.

Sec. 6. Inspection Fees.—(a) There shall be paid to
2 the commissioner for all commercial feeds distributed in
3 this state an inspection fee at the rate of twenty cents
4 per ton: *Provided, however,* That customer-formula feeds
5 are hereby exempted if the inspection fee is paid on the
6 commercial feeds which they contain: *And provided fur-*
7 *ther,* That distribution of commercial feeds to manufac-
8 turers are hereby exempted if the commercial feeds so
9 distributed are used solely in manufacture of feeds which

10 are registered: *And provided further*, That the manufac-
11 turer of commercial feeds or his designated dealer who
12 furnishes or supplies feed to a person to be fed to poultry
13 owned by the manufacturer or his designated dealer is
14 hereby exempt from paying the inspection fee on all such
15 feed actually fed to poultry owned by the feed manufac-
16 turer or his designated dealer: *And provided further*,
17 That any distributor shall pay an annual registration fee
18 of twenty-five dollars for each brand of commercial feed
19 distributed in individual packages of ten pounds or less,
20 and the distributor of such brand shall not be required
21 to pay the inspection fee on such packages of the brand
22 so registered. Fees so collected shall constitute a fund
23 for the payment of the cost of inspection, sampling, and
24 analysis, and other expenses necessary for the admini-
25 stration of this article. All moneys collected under the
26 provisions of this article shall be deposited with the state
27 treasurer in a "special revenue account," and shall be
28 expended upon order of the commissioner of agriculture.

29 (b) Every person, except as hereinafter provided, who
30 distributes commercial feed in this state shall: (1) File,

31 not later than the twentieth day of January and July of
32 each year, a semi-annual statement under oath, setting
33 forth the number of net tons of commercial feeds dis-
34 tributed in this state during the preceding six-month
35 period and upon filing such statement shall pay the in-
36 spection fee at the rate stated in paragraph (a) of this
37 section. When more than one person is involved in the
38 distribution of a commercial feed, the person who dis-
39 tributes to the consumer is responsible for reporting the
40 tonnage and paying the inspection fee unless the report
41 and payment have been made by a prior distributor of
42 the feed. (2) Keep such records as may be necessary or
43 required by the commissioner to indicate accurately the
44 tonnage of commercial feed distributed in this state,
45 and the commissioner shall have the right to examine
46 such records to verify statements of tonnage.

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

Sec. 7. Adulteration.—No person shall distribute an
2 adulterated feed. A commercial feed or customer-formula

3 feed shall be deemed to be adulterated: (a) If any poison-
4 ous, deleterious or non-nutritive ingredient has been
5 added in sufficient amount to render it injurious to the
6 health of a human who may consume the resultant food
7 product of the animal or to the health of the animal when
8 fed in accordance with directions for use on the label.
9 (b) If any valuable constituent has been in whole or
10 in part omitted or abstracted therefrom or any less valu-
11 able substance substituted therefor. (c) If its composi-
12 tion or quality falls below or differs from that which it
13 is purported or is represented to possess by its labeling.
14 (d) If it contains added hulls, screenings, straw, cobs,
15 or other high fiber material unless the name of each
16 such material is stated on the label. (e) If it contains
17 whole weed seeds in amounts exceeding the limits which
18 the commissioner shall establish by rule or regulation.

Sec. 8. Misbranding.—No person shall distribute mis-
2 branded feed. A commercial feed or customer-formula
3 feed shall be deemed to be misbranded: (a) If its
4 labeling is false or misleading in any particular. (b) If
5 it is distributed under the name of another feed. (c) If

6 it is not labeled as required in section five of this article
7 and in regulations prescribed under this article. (d) If
8 it purports to be or is represented as a feed ingredient,
9 or if it purports to contain or is represented as contain-
10 ing a feed ingredient, unless such feed ingredient con-
11 forms to the definition of identity, if any, prescribed by
12 regulation of the commissioner; in the adopting of such
13 regulations the commissioner shall give due regard to
14 commonly accepted definitions such as those issued by
15 the association of American feed control officials, incor-
16 porated. (e) If any word, statement, or other infor-
17 mation required by or under authority of this article
18 to appear on the label or labeling is not prominently
19 placed thereon with such conspicuousness (as compared
20 with other words, statements, designs, or devices, in the
21 labeling) and in such terms as to render it likely to be
22 read or understood by the ordinary individual under
23 customary conditions of purchase and use.

Sec. 9. Inspection; Sampling; Analysis.—(a) It shall
2 be the duty of the commissioner, who may act through
3 his authorized agent, to sample, inspect, make analyses
4 of, and test commercial feeds and customer-formula feeds

5 distributed within this state at such time and place and to
6 such an extent as he may deem necessary to determine
7 whether such feeds are in compliance with the provi-
8 sions of this article. The commissioner, individually or
9 through his agent, is authorized to enter upon any public
10 or private premises including any vehicle of transport
11 during regular business hours in order to have access to
12 commercial feeds and customer-formula feeds and to rec-
13 ords relating to their distribution. (b) The methods of
14 sampling and analysis shall be those adopted by the com-
15 missioner from sources such as the journal of the associa-
16 tion of official agricultural chemists. (c) The commis-
17 sioner, in determining for administrative purposes whe-
18 ther a commercial feed is deficient in any component,
19 shall be guided solely by the official sample as defined
20 in paragraph (m) of section three, which sample is ob-
21 tained and analyzed as provided for in paragraph (b) of
22 this section. (d) When the inspection and analysis of an
23 official sample indicates a commercial feed has been adul-
24 terated or misbranded, the results of analysis shall be
25 forwarded by the commissioner to the distributor and

26 the purchaser. Upon request made within thirty days the
27 commissioner shall furnish to the distributor a portion of
28 the sample concerned.

Sec. 10. Rules and Regulations.—The commissioner is
2 hereby charged with the enforcement of the provisions
3 of this article, and is empowered to promulgate and adopt
4 such reasonable rules and regulations as may be neces-
5 sary to administer and enforce the provisions of this
6 article.

**Sec. 11. Right to Inspect; “Stop Sale” Orders and Em-
2 bargos”; Hearings; Appeals; Condemnation and Confis-
3 cation.**—(a) The commissioner or his agent shall have
4 free access to all places of business, mills, buildings and
5 conveyances of any kind used in the transportation, im-
6 portation, manufacture, sale or storage of any commercial
7 feeding stuffs, with power and authority to open any
8 parcel containing or supposed to contain any commercial
9 feeding stuffs, and upon full payment of the selling price,
10 to take therefrom samples for analyses, and to examine
11 the books and all records pertaining to the shipment,
12 manufacture, sale or distribution of any commercial feed-
13 ing stuffs.

14 (b) Whenever it appears that any commercial feeding
15 stuff is being offered or exposed for sale in this state in
16 violation of any of the provisions of this article, the com-
17 missioner is hereby authorized to issue a written or
18 printed "stop sale" order or "embargo," and it shall be
19 unlawful for any person, firm, corporation or manufac-
20 turer to permit any such commercial feed to be moved
21 or disposed of in any manner except upon written order
22 of the commissioner of agriculture or by court order.
23 The commissioner shall cause notice of such violation to
24 be given to the person affected thereby, and any person
25 so notified shall be given an opportunity to be heard un-
26 der such rules and regulations as the commissioner may
27 prescribe. Any person aggrieved by any such "stop sale"
28 order or "embargo" may appeal to the circuit court of
29 the county in which the alleged infraction ^{oc-} ~~in~~ curred, and
30 jurisdiction is hereby conferred upon such circuit court
31 to hear and determine such appeal.

32 (c) Any lot of commercial feed not in compliance
33 with the provisions of this article or any reasonable rules
34 and regulations promulgated by the commissioner shall

cc - [unclear]
[unclear]

35 be subject to seizure and confiscation on complaint of the
36 commissioner to the circuit court of the county in which
37 the commercial feeding stuff in question is located, and
38 jurisdiction is hereby conferred upon such circuit court
39 to hear and determine such matter. If the court finds
40 that said commercial feeding stuff is in violation of the
41 provisions of this article or such reasonable rules and
42 regulations, and if the court determines that such feeding
43 stuff should be confiscated, the court shall order the
44 destruction of such commercial feeding stuff or its dis-
45 position in any manner consistent with the quality of
46 such commercial feeding stuff and not in violation of any
47 other laws of this state: *Provided*, That if the court de-
48 termines not to order the destruction of such commercial
49 feeding stuff, it shall not order the same to be disposed
50 of in any manner without first giving the owner thereof
51 an opportunity to process or relabel such commercial
52 feeding stuff or otherwise dispose of the same in full com-
53 pliance with the provisions of this article and any reason-
54 able rules and regulations of the commissioner.

55 (d) Any party aggrieved by a final judgment entered

56 by a circuit court in accordance with the provisions of
57 this section may seek a review thereof by appeal to the
58 supreme court of appeals of this state, and jurisdiction is
59 hereby conferred upon such court to hear and entertain
60 such appeals upon application made therefor in the man-
61 ner and within the time provided by law for civil appeals
62 generally.

Sec. 12. Penalties.—(a) Any person violating any of
2 the provisions of this article or the rules and regulations
3 issued thereunder or who shall impede, obstruct, hinder,
4 or otherwise prevent or attempt to prevent said com-
5 missioner or his duly authorized agent in the performance
6 of his duty in connection with the provisions of this
7 article, shall be guilty of a misdemeanor, and, upon con-
8 viction thereof, shall be fined not less than twenty-five
9 dollars nor more than one hundred dollars for the first
10 violation, and not less than fifty dollars nor more than
11 two hundred dollars for any subsequent violation. In all
12 prosecutions under this article involving the composition
13 of a lot of commercial feed, a certified copy of the official
14 analysis signed by the commissioner or his agent shall

15 be accepted as prima facie evidence of the composition.

16 (b) Nothing in this article shall be construed as re-

17 quiring the commissioner or his representative to report

18 for prosecution or for the institution of seizure and con-

19 fiscation proceedings as a result of minor violations of the

20 article when he believes that the public interest will be

21 best served by a suitable notice of warning in writing.

22 (c) It shall be the duty of each prosecuting attorney to

23 whom any violation is reported to cause appropriate pro-

24 ceedings to be instituted and prosecuted in a court of

25 competent jurisdiction without delay. Before the commis-

26 sioner reports a violation for such prosecution, an oppor-

27 tunity shall be given the distributor to present his view to

28 the commissioner. (d) Upon application by the commis-

29 sioner therefor, the circuit court of the county in which

30 the violation is occurring, has occurred or is about to

31 occur, as the case may be, may grant a temporary or

32 permanent injunction restraining any person from vio-

33 lating or continuing to violate any of the provisions of

34 this article or any rule or regulation promulgated under

35 this article, notwithstanding the existence of other reme-

36 dies at law. Any such injunction shall be issued without
37 bond.

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

Sec. 14. Constitutionality.—If any clause, sentence,
2 paragraph, or part of this article shall for any reason
3 be judged invalid by any court of competent jurisdiction,
4 such judgment shall not affect, impair, or invalidate the
5 remainder thereof but shall be confined in its operation
6 to the clause, sentence, paragraph or part thereof directly
7 involved in the controversy in which such judgment shall
8 have been rendered.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

C. Kay Parker
Chairman Senate Committee

James W. Loop
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Howard Meyer
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Samuel Wilson
President of the Senate

H. Lebau White
Speaker House of Delegates

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

Arlett C. Smith
Governor

