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SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1991



# ENROLLED

Committee Substitute  
for  
HOUSE BILL No. 2583

(By ~~Mr.~~ Delegates D. Miller & Compton)



Passed February 27, 1991

In Effect ninety days from Passage

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**H. B. 2583**  
(By DELEGATES D. MILLER AND COMPTON)

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[Passed February 27, 1991; in effect ninety days from passage.]

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AN ACT to amend and reenact article fourteen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia Commercial Feed Law of 1991; definitions; commissioner's powers and duties; special revenue fund; permits; registration; refusal of applications; suspension and revocation of registrations and permits; hearings and appeals; labeling; tonnage reports; inspection fees; adulteration; misbranding; embargoes; condemnation and confiscation; injunctions; confidentiality of trade secrets; prohibited acts; criminal and civil 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 amended and reenacted all to read as follows:

**ARTICLE 14. WEST VIRGINIA COMMERCIAL FEED LAW.**

**§19-14-1. Title.**

1 This article shall be known as the "West Virginia  
2 Commercial Feed Law of 1991."

**§19-14-2. Definitions.**

1 (a) "Brand name" means any word, name, symbol or  
2 device, or any combination thereof, identifying the  
3 commercial feed of a distributor or manufacturer and  
4 distinguishing it from all others.

5 (b) "Bulk" refers to commercial feed distributed in  
6 nonpackaged form and accompanied by an invoice or  
7 delivery slip.

8 (c) "Commercial feed" means all materials distributed  
9 for use as feed or for mixing in feed for animals, other  
10 than man, except: (1) unmixed or unprocessed whole  
11 seeds when such whole or unprocessed seeds are not  
12 chemically changed or adulterated; (2) unground hay,  
13 straw, stover, silage, cobs, husks, hulls, and raw meat  
14 when not mixed with other materials and when not  
15 adulterated; (3) individual chemical compounds when  
16 not mixed with other materials. The term commercial  
17 feed shall include the categories of feed ingredients,  
18 customer-formula feeds, pet foods and specialty pet  
19 foods.

20 (d) "Commissioner" refers to the commissioner of  
21 agriculture of the state of West Virginia or a duly  
22 authorized employee.

23 (e) "Contract feeder" means a person who, as an  
24 independent contractor, feeds commercial feed to  
25 animals pursuant to a contract and the commercial feed  
26 is supplied, furnished, or provided to the independent  
27 contractor and such contractor's remuneration is  
28 determined all or in part by feed consumption, mortal-  
29 ity, profits, or the amount or quality of the product.

30 (f) "Customer-formula feed" means a commercial feed  
31 which is manufactured according to the specific  
32 instructions of the final purchaser.

33 (g) "Distribute" means to offer for sale, sell, expose for  
34 sale, exchange, or barter commercial feed; or to supply,  
35 furnish, or provide commercial feed to a contract feeder.

36 (h) "Distributor" means any person who sells, exposes  
37 for sale, offers for sale, exchanges, barters, gives,  
38 parcels out, allots, shares, or dispenses a commercial  
39 feed.

40 (i) "Domesticated animal" means any species of  
41 animal living and bred in a tame condition.

42 (j) "Drug" means any substance intended for use in  
43 the diagnosis, cure, mitigation, treatment, or prevention  
44 of disease in animals, other than man; and substances,  
45 other than nutritive components, intended to affect the  
46 structure or any function of the animal body.

47 (k) "Feed ingredient" means each constituent mate-  
48 rial making up commercial feed, including individual  
49 chemical compounds labeled for use as a feed  
50 ingredient.

51 (l) "Label" means a display of written, printed, or  
52 graphic matter affixed to the container in which  
53 commercial feed is distributed; or affixed to the invoice,  
54 delivery slip, or other shipping document which accom-  
55 panies bulk shipments of commercial feed or customer-  
56 formula feed. All such labels shall be legible and in  
57 English.

58 (m) "Labeling" means all written, printed, or graphic  
59 matter, or advertising referencing such commercial  
60 feed.

61 (n) "Manufacture" means to grind, mix, blend,  
62 package, pack, repackage, repack, or process a commer-  
63 cial feed for distribution.

64 (o) "Medicated feed" means any commercial feed  
65 which contains one or more drugs.

66 (p) "Mineral feed" means a commercial feed designed  
67 or intended to supply primarily mineral elements or  
68 inorganic nutrients.

69 (q) "Official sample" means any sample of commercial  
70 feed taken by the commissioner in accordance with the  
71 provisions of this article and rules promulgated  
72 hereunder.

73 (r) "Percent" or "percentage" means percentage by  
74 weights.

75 (s) "Person" means an individual, partnership, associ-  
76 ation, fiduciary, firm, company, corporation or any

77 organized group of persons whether incorporated or not.

78 (t) "Pet" means any domesticated species of animal  
79 normally maintained in or near the household of the  
80 owner including, but not limited to, dogs, cats and  
81 specialty pets.

82 (u) "Pet food" means any commercial feed manufac-  
83 tured and distributed for consumption by pets.

84 (v) "Principal display panel" means the part of a label  
85 that is intended to be shown and examined when the  
86 product is on display for retail sale.

87 (w) "Process" means any treatment that changes a  
88 feed ingredient so that it can no longer be restored to  
89 its previous form.

90 (x) "Product name" means the name of the commer-  
91 cial feed which identifies it such as: Species of animal,  
92 age group of animal, characterizing ingredients, specific  
93 use, or other descriptive terms.

94 (y) "Registrant" means any person who registers  
95 commercial feed for distribution or use in this state.

96 (z) "Repack" or "repackaging" means to pack and  
97 label a previously manufactured and packaged commer-  
98 cial feed prior to a specific request of a customer.

99 (aa) "Specialty pet" means any domesticated pet  
100 normally maintained in a cage or tank including, but  
101 not limited to, gerbils, hamsters, birds, tropical fish,  
102 goldfish, snakes and turtles.

103 (bb) "Specialty pet food" means any commercial feed  
104 intended for consumption by specialty pets.

105 (cc) "Ton" means a net weight of two thousand pounds  
106 avoirdupois.

### **§19-14-3. Powers and duties of the commissioner.**

1 The commissioner has the power and authority to:

2 (a) Enter and inspect, during reasonable hours, any  
3 location where commercial feeds are manufactured,  
4 distributed, transported or used, and where records  
5 relating to the manufacture, distribution, shipment,

6 labeling or sale of commercial feed are kept. Such  
7 inspection includes, but is not limited to, examining,  
8 photographing, verifying, copying, and auditing records  
9 as is necessary to determine compliance with this  
10 article, labels, consumer complaints, and papers relat-  
11 ing to the manufacturing, distribution, sampling,  
12 testing and sale of commercial feeds.

13 (b) Open, examine, sample and test commercial feed,  
14 unmixed or unprocessed whole seeds, equipment,  
15 containers, transport containers, and packages used or  
16 intended to be used in the manufacture and distribution  
17 of commercial feeds.

18 (c) Issue permits and registrations pursuant to this  
19 article.

20 (d) Refuse, suspend, or revoke permits and registra-  
21 tions as provided in this article.

22 (e) Issue embargoes as provided in this article.

23 (f) Condemn and confiscate any product that is not  
24 brought into compliance with this article.

25 (g) Collect fees and penalties, and expend moneys  
26 under the terms of this article.

27 (h) Conduct sampling in accordance with the official  
28 methods published in the current edition of the Official  
29 Methods of Analysis of the Association of Official  
30 Analytical Chemists and supplements thereto, or  
31 methods approved by the commissioner by rules.

32 (i) Conduct hearings as provided by this article.

33 (j) Assess civil penalties and refer violations to a court  
34 of competent jurisdiction.

35 (k) Obtain court orders directing any person refusing  
36 to submit to inspection, sampling, and auditing to  
37 submit.

38 (l) Establish and maintain feed testing facilities;  
39 establish reasonable fees for such tests; incur expenses;  
40 and conduct tests in accordance with the official  
41 methods published in the current edition of the Official  
42 Methods of Analysis of the Association of Official

43 Analytical Chemists and supplements thereto, or  
44 methods approved by the commissioner by rules.

45 (m) Be guided by the analytical results of the official  
46 sample when determining whether the commercial feed  
47 is deficient in any component.

48 (n) Report the analytical results on all official samples  
49 to the registrant and, in the case of deficient samples,  
50 also to the dealer and the purchaser, if known.

51 (o) Upon request made within thirty days from the  
52 date the official sample results are reported, furnish a  
53 portion of the official sample to the registrant.

54 (p) Publish and distribute annually a composite  
55 report containing: (1) the sales of commercial feeds and  
56 feed ingredients during the preceding period, (2) the  
57 results of the analysis of official samples as compared  
58 with the guarantee on the label, (3) firms responsible for  
59 the product, and (4) such other data the commissioner  
60 deems necessary: *Provided*, That the information on  
61 production and use so provided does not disclose the  
62 operations of any person.

63 (q) To cooperate with and enter into agreements with  
64 governmental agencies of this state and other states,  
65 agencies of the federal government and foreign govern-  
66 ments, and private associations in order to carry out the  
67 purpose and provisions of this article.

68 (r) Promulgate rules, in accordance with chapter  
69 twenty-nine-a of this code, dealing with commercial  
70 feeds and enforcement of this article.

**§19-14-4. Special revenue fund.**

1 All fees and penalties collected under the provisions  
2 of this article shall be deposited with the state treasurer  
3 in a special revenue account. Such moneys shall be  
4 expended by the commissioner of agriculture for  
5 inspection, sampling, analysis, and other expenses  
6 necessary for the administration of this article.

**§19-14-5. Permits; registration.**

1 (a) Permits and registrations shall not be transferra-

2 ble with respect to persons or locations.

3 (b) A person must apply for a permit or registration  
4 at least fifteen days prior to the expiration of the current  
5 permit or registration expires; or at least fifteen days  
6 prior to the date that the person intends to engage in  
7 business or market products in this state. All applica-  
8 tions shall be accompanied by the fee established in this  
9 section. A penalty of two dollars shall be added to the  
10 fee for all permits or registrations that are not applied  
11 for or renewed within the time limit.

12 (c) Persons manufacturing commercial feed or cus-  
13 tomer-formula feed in this state must obtain a Commer-  
14 cial Feed Manufacturing Permit, except all persons  
15 manufacturing feed for only his/her animals on his/her  
16 premises. Application forms shall be provided by the  
17 commissioner and include such information as estab-  
18 lished by rules. A separate permit shall be obtained for  
19 each manufacturing facility or location in this state.  
20 Each Commercial Feed Manufacturing Permit applica-  
21 tion shall be accompanied by an application fee of fifteen  
22 dollars. Each permit issued shall expire on the thirty-  
23 first day of December next following the date of issue.

24 (d) Each person first distributing commercial feed  
25 into West Virginia trade channels must obtain a  
26 Commercial Feed Distributor Permit, except: (1)  
27 Persons distributing pet food exclusively, (2) persons  
28 holding a valid Commercial Feed Manufacturing  
29 Permit, and (3) persons distributing only those feeds  
30 that they register. Application forms shall be provided  
31 by the commissioner and include such information as  
32 established by rules. Each Commercial Feed Distributor  
33 Permit application shall be accompanied by an applica-  
34 tion fee of ten dollars. Each permit issued shall expire  
35 on the thirty-first day of December next following the  
36 date of issue.

37 (e) All commercial feed distributed or used in this  
38 state, except customer-formula feed, must be registered.  
39 Commercial feed that can be uniquely identified by its  
40 brand name, product name, physical form or other  
41 descriptive term shall be registered as a separate



42 product. Commercial feed that is packaged in such  
43 weights as to apply to several categories shall be  
44 registered in each applicable category. Application  
45 forms shall be provided by the commissioner and  
46 include such information as established by rules.

47 (1) Commercial feed, other than pet food, in packages  
48 over ten pounds or bulk shall be registered permanently.  
49 A registration fee of ten dollars per product shall  
50 accompany each application for registration, except that  
51 there will be no fee for a revision of a commercial feed  
52 already on file that involves a change in the net weight,  
53 a change in the list of ingredients, and/or a change in  
54 the guarantee for vitamins or minerals.

55 (2) On the thirty-first day of August, 1991, permanent  
56 registrations for pet food in packages over ten pounds  
57 are void and application for registration and payment  
58 of fees will be required. Pet food, including specialty pet  
59 foods, in packages over ten pounds or bulk shall be  
60 registered annually. A registration fee of fifty dollars  
61 per product shall accompany each application for  
62 registration. The registration shall expire the thirty-  
63 first day of August next following the date of issue.

64 (3) Commercial feed, excluding specialty pet food in  
65 packages of one pound or less, in packages of ten pounds  
66 and under shall be registered annually. A registration  
67 fee of forty dollars per product shall accompany each  
68 application for registration. The registration shall  
69 expire on the thirty-first day of December next follow-  
70 ing the date of issue.

71 (4) Specialty pet food in packages of one pound or less  
72 shall be registered annually. A registration fee of twenty  
73 dollars per product shall accompany each application  
74 for registration. The registration shall expire on the  
75 thirty-first day of December next following the date of  
76 issue.

77 (f) A person is not required to register any brand  
78 name or product name of commercial feed which is  
79 already registered by another person.

80 (g) Alteration of commercial feed that changes the

81 label requires a new application for a Commercial Feed  
82 Registration be made and approved before distribution.

**§19-14-6. Refusal of applications; suspension and revocation of registrations and permits.**

1 The commissioner may refuse to grant, or may  
2 suspend or revoke registration of any commercial feed;  
3 any commercial feed manufacturing permit; or any  
4 commercial feed distributor permit when it is deter-  
5 mined that: (a) The applicant, permittee, or registrant  
6 has violated the provisions of this article or any official  
7 rule promulgated hereunder; or (b) this article or the  
8 rules promulgated hereunder cannot be or will not be  
9 complied with: *Provided*, That the permittee or regis-  
10 trant shall have the opportunity to be heard prior to the  
11 suspension or revocation of the registration or permit.

**§19-14-7. Hearings and appeals.**

1 (a) No application shall be refused until the applicant  
2 has the opportunity to amend his/her application to  
3 comply with the requirements of this article.

4 No registration or permit shall be refused, suspended  
5 or revoked until the registrant or permittee shall have  
6 the opportunity to have a hearing before the commis-  
7 sioner.

8 (b) Any person adversely affected by an act, order or  
9 ruling made pursuant to the provisions of this article,  
10 may within forty-five days thereafter, bring an action  
11 for judicial review in the circuit court of the county in  
12 which the violation occurred.

13 Any party aggrieved by a final judgment entered by  
14 a circuit court, may appeal to the West Virginia  
15 supreme court of appeals.

**§19-14-8. Labeling.**

1 (a) When commercial feed, except customer-formula  
2 feed, is distributed in this state in bags or other  
3 containers, the label shall be affixed to the container;  
4 when commercial feed is distributed in bulk, the label  
5 shall accompany delivery.

6 (b) All commercial feed labels, except customer-  
7 formula feeds, shall state the following:

8 (1) The net weight avoirdupois. The net weight may  
9 also be stated in metric units.

10 (2) The product name, including brand name, if any,  
11 under which the commercial feed is distributed.

12 (3) The guaranteed analysis stating what the commis-  
13 sioner determines by rules is required to advise the user  
14 of the composition of the feed and other necessary  
15 information to support claims made on the label. The  
16 substances or elements guaranteed must be determin-  
17 able by laboratory methods published by the association  
18 of official analytical chemists or by an acceptable  
19 method supplied by the registrant.

20 (4) An ingredient statement, except that an ingre-  
21 dient statement is not required for single standardized  
22 ingredient feeds or when such statement is not in the  
23 interest of consumers. An ingredient statement shall  
24 include:

25 (A) The common or usual name of each ingredient as  
26 officially defined in the annual Official Publication of  
27 the Association of American Feed Control Officials;

28 (B) Collective terms as defined in the annual Official  
29 Publication of the Association of American Feed Control  
30 Officials;

31 (C) The common or usual name of substances gener-  
32 ally recognized as safe (GRAS) as authorized by 21 Code  
33 of Federal Regulations 570.30 (April 1, 1990) of the  
34 Federal Drug and Cosmetic Act as amended August,  
35 1985;

36 (D) The common or usual name of substances which  
37 are so common so as to not need a definition, have a  
38 substantially safe history, and no safety hazard is known  
39 to exist after consumption by a significant number of  
40 animals, including, but not limited to, salt and sugar;  
41 or

42 (E) Other ingredients or additives that the commis-  
43 sioner, by rules, deems necessary.

44 (5) The name and principal mailing address of the  
45 manufacturer or the distributor.

46 (6) Adequate directions and precautionary statements  
47 for safe and effective use.

48 (7) If a drug or drug containing product is used, then  
49 the following shall be stated:

50 (A) The established name of each active drug  
51 ingredient;

52 (B) The level of each drug used in the final mixture;

53 (C) The purpose of the medication (claim statement);

54 (D) Appropriate cautions and warnings on the use of  
55 the medicated commercial feed;

56 (E) Withdrawal statements, if applicable;

57 (F) The word "medicated" shall appear directly  
58 following and below the product name in type size, no  
59 smaller than one-half the type size of the product name.

60 (c) Pet food labels shall have such additional informa-  
61 tion as required by the commissioner through rules.

62 (d) All customer-formula feeds shall be labeled at all  
63 times and shall be supplied to the purchaser at the time  
64 of delivery. The label shall bear the following  
65 information:

66 (1) Name and address of the manufacturer.

67 (2) Name and address of the purchaser.

68 (3) Date of manufacture.

69 (4) Net weight (avoirdupois) of the commercial feed  
70 and each feed ingredient used in the customer-formula  
71 feed.

72 (5) Adequate directions and precautionary statements  
73 for safe and effective use.

74 (6) If a drug or drug containing product is used, then  
75 the following shall be stated:

76 (A) The established name of each active drug  
77 ingredient;

- 78 (B) The level of each drug used in the final mixture;
- 79 (C) The purpose of the medication (claim statement);
- 80 (D) Appropriate cautions and warnings on the use of  
81 the commercial feed;
- 82 (E) Withdrawal statements, if applicable;
- 83 (F) The word "medicated" shall appear directly  
84 following and below the product name in type size no  
85 smaller than one-half the type size of the product name.

**§19-14-9. Tonnage reports; inspection fees.**

- 1 (a) Each person holding a Commercial Feed Manufac-  
2 turing Permit, a Commercial Feed Distributor Permit,  
3 and every registrant, except those persons exempted in  
4 subsection (b) of this section, shall report the number of  
5 tons of commercial feed distributed and pay an inspec-  
6 tion fee on all feed distributed, except no inspection fee  
7 shall be due on:
  - 8 (1) Commercial feed, if the payment was made by a  
9 previous distributor.
  - 10 (2) Customer-formula feeds or commercial feeds  
11 manufactured in this state, if the inspection fee was paid  
12 on the commercial feed or all the feed ingredients used  
13 as ingredients therein. For the purpose of this exemp-  
14 tion, the sale of the feed ingredients used in customer-  
15 formula feeds are considered to have taken place before  
16 the processing of these items.
  - 17 (3) Commercial feeds or commercial feeds manufac-  
18 tured in this state which are subsequently used as  
19 ingredients in the continuing manufacture of commer-  
20 cial feeds in which the end product is registered.
  - 21 (4) Commercial feed supplied to a poultry contract  
22 feeder.
  - 23 (5) Commercial feed in packages of ten pounds or less.
  - 24 (6) Pet food or specialty pet food.
  - 25 (7) Commercial feed, where the inspection fee was  
26 paid during a previous quarter and is offered for sale  
27 in the current quarter.

28 (b) Each person holding a Commercial Feed Manu-  
 29 facturing Permit, a Commercial Feed Distributor  
 30 Permit, or a registrant, except those persons: (1)  
 31 exclusively distributing or manufacturing pet food or  
 32 specialty pet food; or (2) exclusively distributing or  
 33 manufacturing commercial feed in packages of ten  
 34 pounds or less, shall file a semiannual statement under  
 35 oath before the thirty-first day of January and July of  
 36 each year. The statement shall include the number of  
 37 net tons of commercial feeds and feed ingredients  
 38 manufactured or first distributed in this state during  
 39 the preceding six-month period.

40 Each report shall be accompanied by an inspection fee  
 41 at the rate of thirty-five cents per ton on commercial  
 42 feed and feed ingredients with the minimum inspection  
 43 fee being ten dollars each statement. The minimum fee  
 44 is waived if the total amount of the calculated inspection  
 45 fee due is two dollars or less. Such fees become effective  
 46 on the first day of July, 1991.

47 Inspection fees which are due and payable and not  
 48 remitted to the commissioner within fifteen days  
 49 following the due date shall be assessed a penalty of ten  
 50 percent of the amount due, except that semiannual  
 51 reports with no fees due received fifteen days after the  
 52 due date shall be assessed a penalty of ten dollars. The  
 53 assessment of this penalty fee shall not prevent the  
 54 commissioner from taking other actions as provided in  
 55 this chapter.

56 (c) All persons must keep accurate records, as may be  
 57 necessary or required by the commissioner, to indicate  
 58 the tonnage of commercial feed distributed in this state.

**§19-14-10. Adulteration.**

1 Commercial feed or feed ingredients is adulterated:

2 (a) If it contains any poisonous, deleterious or nonnu-  
 3 tritive substance, including pesticide chemical residues,  
 4 food additives, color additives or drugs which is or may  
 5 be injurious to animals when fed such feed in accor-  
 6 dance with the directions, or to humans who consume  
 7 the resultant food product of the animal;

8 (b) If its composition or quality falls below or differs  
9 from what is stated on the label or by its labeling;

10 (c) If it contains viable weed seeds exceeding the  
11 limits set by the commissioner by rules;

12 (d) If the facilities, controls, or methods used in the  
13 manufacture, processing, or packaging do not conform  
14 to industry standards set by the commissioner by rules;  
15 or

16 (e) If it was manufactured or held under conditions  
17 whereby it became contaminated by dust, dirt, insects,  
18 birds, rodents, or animal excretion thereby rendering it  
19 injurious to animal health.

**§19-14-11. Misbranding.**

1 Commercial feed is misbranded:

2 (a) If its label or labeling is false or misleading;

3 (b) If it is not labeled as required by this article;

4 (c) If any word, statement, or other information  
5 required by this article to appear on the label is not  
6 prominently and conspicuously placed so that it can be  
7 read and understood by the ordinary individual under  
8 customary conditions of purchase and use;

9 (d) If it purports to or contains a feed ingredient that  
10 does not conform to the definition of identity prescribed  
11 by the commissioner by rules; or

12 (e) If any damage or inferiority has been concealed.

**§19-14-12. Embargoes; condemnation and confiscation;  
injunctions.**

1 (a) Embargo orders: When the commissioner has  
2 reasonable cause to believe any lot of commercial feed  
3 is being manufactured, distributed, offered for sale,  
4 exposed for sale, or used in this state in violation of the  
5 provisions of this article or any rule promulgated  
6 hereunder, then he/she may issue and enforce a written  
7 embargo order, warning the custodian of the commer-  
8 cial feed not to manufacture, distribute, use, remove, or  
9 dispose of the commercial feed in any manner until the

10 embargo is released by the commissioner or by court  
11 order.

12 When the embargo is issued, the commissioner shall  
13 affix a tag or other marking to the commercial feed  
14 and/or to the manufacturing device warning that such  
15 product or process is under embargo and notify the  
16 custodian that he/she has a right to request an imme-  
17 diate hearing.

18 The commissioner shall release the commercial feed  
19 so embargoed when said commercial feed has been  
20 brought into compliance with this article and its rules.

21 The commissioner shall have the authority to issue an  
22 embargo against a perishable product, even if the result  
23 is the involuntary disposal of the product.

24 The commissioner may take action to seize and  
25 condemn any product if not brought into compliance  
26 with this article and the rules issued hereunder, within  
27 ninety days of the notice to the custodian.

28 (b) Condemnation and confiscation: Any commercial  
29 feed not in compliance with the provisions of this article  
30 or the rules promulgated hereunder, shall be subject to  
31 condemnation and confiscation on complaint of the  
32 commissioner to the circuit court of the county in which  
33 the commercial feed in question is located. Jurisdiction  
34 is hereby conferred upon the circuit courts to hear and  
35 determine such matter.

36 If the court finds that the commercial feed is in  
37 violation of the provisions of this article or its rules and  
38 should be confiscated, then the court shall order the  
39 condemnation and confiscation of such commercial feed  
40 and its disposition in a manner consistent with the  
41 quality of such commercial feed which is not in violation  
42 of any other laws of this state: *Provided*, That the owner  
43 thereof must first be given an opportunity to process or  
44 relabel such commercial feed or dispose of the same in  
45 full compliance with the provisions of this article and  
46 its rules.

47 (c) Injunctions: Upon application by the commis-  
48 sioner, the circuit court of the county in which the



49 violation is occurring, has occurred or is about to occur,  
50 may grant a temporary or permanent injunction  
51 restraining any person from violating or continuing to  
52 violate any of the provisions of this article or any rule  
53 promulgated hereunder. An injunction shall be issued  
54 without bond.

**§19-14-13. Confidentiality of trade secrets.**

1 The commissioner may not make public any informa-  
2 tion which contains or relates to trade secrets, acquired  
3 under the authority of this article, concerning any  
4 methods, formulas, processes, sales, or distribution  
5 information: *Provided*, That the commissioner may  
6 exchange information of a regulatory nature with duly  
7 appointed officials of the United States Government, of  
8 other states, or of other foreign governments who are  
9 similarly prohibited by law from revealing this informa-  
10 tion.

**§19-14-14. Prohibited acts.**

- 1 It shall be unlawful:
- 2 (a) To manufacture, distribute, or knowingly use any  
3 commercial feed that is adulterated or misbranded.
- 4 (b) To adulterate or misbrand any commercial feed.
- 5 (c) To distribute, use, remove, or dispose of commer-  
6 cial feed in violation of an embargo order, or condem-  
7 nation and confiscation order provided for under this  
8 article.
- 9 (d) To manufacture, distribute, or use any commercial  
10 feed containing a drug or drugs that cause or may cause  
11 residue of the drug or drugs in the edible tissues, milk,  
12 or eggs of the animals fed such feed in excess of the  
13 acceptable residue levels set by the commissioner by  
14 rules.
- 15 (e) To fail or refuse to register commercial feeds.
- 16 (f) To fail or refuse to obtain permits required under  
17 this article.
- 18 (g) To fail to make an accurate statement of tonnage.

19 (h) To fail to pay inspection fees as required under  
20 this article.

21 (i) To distribute or knowingly use any commercial  
22 feed that has not had an accurate statement of tonnage  
23 reported to the commissioner in the previous reporting  
24 period.

25 (j) To use or imply the name West Virginia depart-  
26 ment of agriculture, or reference any inspection or  
27 sample findings made by the West Virginia department  
28 of agriculture on labels or labeling of commercial feed.

29 (k) To interfere with the commissioner's official  
30 duties.

**§19-14-15. Penalties.**

1 (a) Criminal penalties—Any person violating any of  
2 the provisions of this article is guilty of a misdemeanor,  
3 and upon conviction thereof, shall be fined not less than  
4 one hundred dollars nor more than five hundred dollars  
5 for the first offense, and for each subsequent offense,  
6 shall be fined not less than five hundred nor more than  
7 one thousand dollars, or imprisoned in the county jail  
8 not more than six months, or both fined and imprisoned.  
9 Magistrates have concurrent jurisdiction with circuit  
10 courts to enforce the provisions of this article.

11 (b) Civil penalties.

12 (1) Any person violating any of the provisions of this  
13 article or the rules adopted hereunder may be assessed  
14 a civil penalty by the commissioner. In determining the  
15 amount of any civil penalty, the commissioner shall give  
16 due consideration to the history of previous violations of  
17 any person; the seriousness of the violation, including  
18 any irreparable harm to the environment, any hazards  
19 to the health and safety of the public and to the animals  
20 consuming or intended to consume the commercial feed;  
21 and the demonstrated good faith of any person charged  
22 in attempting to achieve compliance with this article  
23 after written notification of the violation.

24 (2) The commissioner may assess a penalty of not  
25 more than five hundred dollars for the first offense or

26 nonserious violation, as determined by the commissioner  
27 in accordance with the rules promulgated in accordance  
28 with the provisions of chapter twenty-nine-a of this code,  
29 and not more than one thousand dollars for a serious,  
30 repeat, or intentional violation, as determined by the  
31 commissioner in accordance with such promulgated  
32 rules.

33 (3) The civil penalty is payable to the state of West  
34 Virginia and is collectible in any manner now or  
35 hereafter provided for collection of a debt. Any person  
36 liable to pay the civil penalty and neglecting or refusing  
37 to pay the same, shall be assessed interest at ten percent  
38 from the date the penalty was assessed. Such penalty  
39 and interest constitute a lien in favor of the state of West  
40 Virginia and shall attach on the person's property when  
41 such lien is properly recorded in the county where such  
42 property is located. There shall be no cost as a condition  
43 precedent to recording.

44 (c) Notwithstanding any other provision of law to the  
45 contrary, the commissioner may promulgate and adopt  
46 rules which permit consent agreements or negotiated  
47 settlements for the civil penalties assessed as a result of  
48 a violation of the provisions of this article.

49 (d) It shall be the duty of each prosecuting attorney  
50 to whom any violation is reported to cause appropriate  
51 proceedings to be instituted and prosecuted in a court  
52 of competent jurisdiction without delay.

53 (e) Nothing in this article shall be construed as to  
54 require the commissioner to report minor violations of  
55 this article when he/she believes that the public interest  
56 will be best served by a written notice.

57 (f) No state court may allow the recovery of damages  
58 for administrative action taken if the court finds that  
59 there was probable cause for such action.

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

*Homer Heck*  
-----  
Chairman Senate Committee

*Ernest C Moore*  
-----  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

*Harriet Pittman*  
-----  
Clerk of the Senate

*Donald L Kopp*  
-----  
Clerk of the House of Delegates

*Neil Burdette*  
-----  
President of the Senate

*Bob Call*  
-----  
Speaker of the House of Delegates

The within is approved this the *21<sup>st</sup>*  
day of *March*, 1991.

*Yaston Caperton*  
-----  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/7/91

Time 2:50 pm