WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1991

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ENROLLED
Committee Substitute
for
HOUSE BILL No. 2583

(By Mr. Delegates D. Miller & Compton

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Passed February 27, 1991

In Effect ninety days from Passage
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 Commercial Feed Law of 1991.”

§19-14-2. Definitions.
(a) "Brand name" means any word, name, symbol or device, or any combination thereof, identifying the commercial feed of a distributor or manufacturer and distinguishing it from all others.

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

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

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

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

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

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

(h) "Distributor" means any person who sells, exposes for sale, offers for sale, exchanges, barters, gives, parcels out, allots, shares, or dispenses a commercial feed.
(i) "Domesticated animal" means any species of animal living and bred in a tame condition.

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

(k) "Feed ingredient" means each constituent material making up commercial feed, including individual chemical compounds labeled for use as a feed ingredient.

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

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

(n) "Manufacture" means to grind, mix, blend, package, pack, repackage, repack, or process a commercial feed for distribution.

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

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

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

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

(s) "Person" means an individual, partnership, association, fiduciary, firm, company, corporation or any
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organized group of persons whether incorporated or not.

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

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

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

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

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

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

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

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

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

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


The commissioner has the power and authority to:

(a) Enter and inspect, during reasonable hours, any
location where commercial feeds are manufactured,
distributed, transported or used, and where records
relating to the manufacture, distribution, shipment,
labeling or sale of commercial feed are kept. Such inspection includes, but is not limited to, examining, photographing, verifying, copying, and auditing records as is necessary to determine compliance with this article, labels, consumer complaints, and papers relating to the manufacturing, distribution, sampling, testing and sale of commercial feeds.

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

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

(d) Refuse, suspend, or revoke permits and registrations as provided in this article.

(e) Issue embargoes as provided in this article.

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

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

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

(i) Conduct hearings as provided by this article.

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

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

(l) Establish and maintain feed testing facilities; establish reasonable fees for such tests; incur expenses; and conduct tests in accordance with the official methods published in the current edition of the Official Methods of Analysis of the Association of Official
Analytical Chemists and supplements thereto, or methods approved by the commissioner by rules.

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

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

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

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

(q) To cooperate with and enter into agreements with governmental agencies of this state and other states, agencies of the federal government and foreign governments, and private associations in order to carry out the purpose and provisions of this article.

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

§19-14-4. Special revenue fund.

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

§19-14-5. Permits; registration.

(a) Permits and registrations shall not be transferra-
(b) A person must apply for a permit or registration at least fifteen days prior to the expiration of the current permit or registration expires; or at least fifteen days prior to the date that the person intends to engage in business or market products in this state. All applications shall be accompanied by the fee established in this section. A penalty of two dollars shall be added to the fee for all permits or registrations that are not applied for or renewed within the time limit.

c (c) Persons manufacturing commercial feed or customer-formula feed in this state must obtain a Commercial Feed Manufacturing Permit, except all persons manufacturing feed for only his/her animals on his/her premises. Application forms shall be provided by the commissioner and include such information as established by rules. A separate permit shall be obtained for each manufacturing facility or location in this state. Each Commercial Feed Manufacturing Permit application shall be accompanied by an application fee of fifteen dollars. Each permit issued shall expire on the thirty-first day of December next following the date of issue.

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

(e) All commercial feed distributed or used in this state, except customer-formula feed, must be registered. Commercial feed that can be uniquely identified by its brand name, product name, physical form or other descriptive term shall be registered as a separate
product. Commercial feed that is packaged in such weights as to apply to several categories shall be registered in each applicable category. Application forms shall be provided by the commissioner and include such information as established by rules.

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

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

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

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

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

(g) Alteration of commercial feed that changes the
 §19-14-6. Refusal of applications; suspension and revocation of registrations and permits.

The commissioner may refuse to grant, or may suspend or revoke registration of any commercial feed; any commercial feed manufacturing permit; or any commercial feed distributor permit when it is determined that: (a) The applicant, permittee, or registrant has violated the provisions of this article or any official rule promulgated hereunder; or (b) this article or the rules promulgated hereunder cannot be or will not be complied with: Provided, That the permittee or registrant shall have the opportunity to be heard prior to the suspension or revocation of the registration or permit.


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

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

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


(a) When commercial feed, except customer-formula feed, is distributed in this state in bags or other containers, the label shall be affixed to the container; when commercial feed is distributed in bulk, the label shall accompany delivery.
(b) All commercial feed labels, except customer-formula feeds, shall state the following:

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

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

(3) The guaranteed analysis stating what the commissioner determines by rules is required to advise the user of the composition of the feed and other necessary information to support claims made on the label. The substances or elements guaranteed must be determinable by laboratory methods published by the association of official analytical chemists or by an acceptable method supplied by the registrant.

(4) An ingredient statement, except that an ingredient statement is not required for single standardized ingredient feeds or when such statement is not in the interest of consumers. An ingredient statement shall include:

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

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

(C) The common or usual name of substances generally recognized as safe (GRAS) as authorized by 21 Code of Federal Regulations 570.30 (April 1, 1990) of the Federal Drug and Cosmetic Act as amended August, 1985;

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

(E) Other ingredients or additives that the commissioner, by rules, deems necessary.
(5) The name and principal mailing address of the manufacturer or the distributor.

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

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

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

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

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

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

(E) Withdrawal statements, if applicable;

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

(c) Pet food labels shall have such additional information as required by the commissioner through rules.

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

(1) Name and address of the manufacturer.

(2) Name and address of the purchaser.

(3) Date of manufacture.

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

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

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

(A) The established name of each active drug ingredient;
(B) The level of each drug used in the final mixture;
(C) The purpose of the medication (claim statement);
(D) Appropriate cautions and warnings on the use of the commercial feed;
(E) Withdrawal statements, if applicable;
(F) The word “medicated” shall appear directly following and below the product name in type size no smaller than one-half the type size of the product name.

§19-14-9. Tonnage reports; inspection fees.
(a) Each person holding a Commercial Feed Manufacturing Permit, a Commercial Feed Distributor Permit, and every registrant, except those persons exempted in subsection (b) of this section, shall report the number of tons of commercial feed distributed and pay an inspection fee on all feed distributed, except no inspection fee shall be due on:
(1) Commercial feed, if the payment was made by a previous distributor.
(2) Customer-formula feeds or commercial feeds manufactured in this state, if the inspection fee was paid on the commercial feed or all the feed ingredients used as ingredients therein. For the purpose of this exemption, the sale of the feed ingredients used in customer-formula feeds are considered to have taken place before the processing of these items.
(3) Commercial feeds or commercial feeds manufactured in this state which are subsequently used as ingredients in the continuing manufacture of commercial feeds in which the end product is registered.
(4) Commercial feed supplied to a poultry contract feeder.
(5) Commercial feed in packages of ten pounds or less.
(6) Pet food or specialty pet food.
(7) Commercial feed, where the inspection fee was paid during a previous quarter and is offered for sale in the current quarter.
(b) Each person holding a Commercial Feed Manufacturing Permit, a Commercial Feed Distributor Permit, or a registrant, except those persons: (1) exclusively distributing or manufacturing pet food or specialty pet food; or (2) exclusively distributing or manufacturing commercial feed in packages of ten pounds or less, shall file a semiannual statement under oath before the thirty-first day of January and July of each year. The statement shall include the number of net tons of commercial feeds and feed ingredients manufactured or first distributed in this state during the preceding six-month period.

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

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

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

§19-14-10. Adulteration.

Commercial feed or feed ingredients is adulterated:

(a) If it contains any poisonous, deleterious or nonnutritive substance, including pesticide chemical residues, food additives, color additives or drugs which is or may be injurious to animals when fed such feed in accordance with the directions, or to humans who consume the resultant food product of the animal;

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

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

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

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


Commercial feed is misbranded:

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

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

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

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

e) If any damage or inferiority has been concealed.

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

(a) Embargo orders: When the commissioner has reasonable cause to believe any lot of commercial feed is being manufactured, distributed, offered for sale, exposed for sale, or used in this state in violation of the provisions of this article or any rule promulgated hereunder, then he/she may issue and enforce a written embargo order, warning the custodian of the commercial feed not to manufacture, distribute, use, remove, or dispose of the commercial feed in any manner until the
embargo is released by the commissioner or by court order.

When the embargo is issued, the commissioner shall affix a tag or other marking to the commercial feed and/or to the manufacturing device warning that such product or process is under embargo and notify the custodian that he/she has a right to request an immediate hearing.

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

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

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

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

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

(c) Injunctions: Upon application by the commissioner, 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.


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.


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

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

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

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


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

(b) Civil penalties.

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

(2) The commissioner may assess a penalty of not more than five hundred dollars for the first offense or
nonserious violation, as determined by the commissioner in accordance with the rules promulgated in accordance with the provisions of chapter twenty-nine-a of this code, and not more than one thousand dollars for a serious, repeat, or intentional violation, as determined by the commissioner in accordance with such promulgated rules.

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

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

(d) 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.

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

(f) No state court may allow the recovery of damages for administrative action taken if the court finds that there was probable cause for such action.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 21st day of March, 1991.

Governor