

LEGISLATIVE BILL 322

Approved by the Governor March 18, 1986

Introduced by Eret, 32

AN ACT relating to agriculture; to adopt the Commercial Feed Act; to create a fund; to provide penalties; to repeal the Nebraska Commercial Feed Law; to eliminate a fund; to provide an operative date; to provide severability; and to repeal sections 54-819 to 54-828, 54-830 to 54-843, 54-845, and 54-846, Reissue Revised Statutes of Nebraska, 1943.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 17 of this act shall be known and may be cited as the Commercial Feed Act.

Sec. 2. The Commercial Feed Act shall be administered by the Department of Agriculture.

Sec. 3. As used in the Commercial Feed Act, unless the context otherwise requires:

(1) Brand name shall mean any word, name, symbol, or device, or any combination thereof, identifying the commercial feed of a distributor or registrant and distinguishing it from that of others;

(2) Commercial feed shall mean all materials, except whole seeds unmixed or physically altered entire unmixed seeds, when not adulterated pursuant to subdivision (1) of section 8 of this act, which are distributed for use as feed or for mixing in feed. The director may, by regulation, exempt from this definition or from specific provisions of the Commercial Feed Act commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when such commodities, compounds, or substances are not intermixed or mixed with other materials and are not adulterated within the meaning of subdivision (1) of section 8 of this act;

(3) Customer-formula feed shall mean commercial feed which consists of a mixture of commercial feeds or feed ingredients manufactured according to the specific instructions of the final purchaser;

(4) Department shall mean the Department of Agriculture;

(5) Director shall mean the Director of Agriculture or his or her authorized agent;

(6) Distribute shall mean to offer for sale, sell, exchange, barter, or otherwise supply commercial feed;

(7) Distributor shall mean any person who distributes;

(8) Drug shall mean any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals other than humans and articles other than feed intended to affect the structure or any function of the animal body;

(9) Feed ingredient shall mean each of the constituent materials making up a commercial feed;

(10) Label shall mean 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 is distributed;

(11) Labeling shall mean all labels and other written, printed, or graphic matter (a) upon a commercial feed or any of its containers or wrappers or (b) accompanying such commercial feed;

(12) Manufacture shall mean to grind, mix, blend, or further process a commercial feed for distribution;

(13) Mineral feed shall mean a commercial feed intended to supply primarily mineral elements or inorganic nutrients;

(14) Official sample shall mean a sample of feed taken by the director in accordance with section 13 of this act;

(15) Per cent or percentages shall mean percentages by weight;

(16) Person shall mean any individual, partnership, cooperative, corporation, firm, trustee, or association;

(17) Pet shall mean any domesticated animal normally maintained in or near the household of the owner thereof;

(18) Pet food shall mean any commercial feed prepared and distributed for consumption by pets;

(19) Product name shall mean the name of the commercial feed which identifies it as to kind, class, or specific use;

(20) Specialty pet shall mean any domesticated animal pet normally maintained in a cage or tank including, but not limited to, gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes, and turtles;

(21) Specialty pet food shall mean any

commercial feed prepared and distributed for consumption by specialty pets; and

(22) Ton shall mean a net weight of two thousand pounds avoirdupois.

Sec. 4. (1) No person shall manufacture or distribute commercial feed in this state unless such person holds a valid license for each manufacturing and distribution facility in this state. Any out-of-state manufacturer or distributor who has no distribution facility within this state shall obtain a license for his or her principal out-of-state office if he or she markets or distributes commercial feed in the State of Nebraska.

(2) Application for a license shall be made to the department on forms prescribed and furnished by the department. The application shall be accompanied by an annual license fee of fifteen dollars. Licenses shall be renewed on or before January 1 of each year.

(3) A copy of the valid license shall be posted in a conspicuous place in each manufacturing or distribution facility.

(4) This section shall not apply to any person who distributes less than a five-ton volume of commercial feed annually.

(5) The director may refuse to issue a license for any commercial feed facility not in compliance with the Commercial Feed Act and may cancel any license subsequently found not in compliance with such act. No license shall be refused or canceled unless the applicant has been given an opportunity to be heard before the director.

Sec. 5. (1) No person shall distribute a commercial feed in this state, except a customer-formula feed, which has not been registered. The person whose name appears on the label shall be responsible for registration of the product. The application for registration shall be submitted to the director on forms prescribed and furnished by the director and shall be accompanied by one copy of the label or label facsimile for each product. Upon approval by the director, the registration shall be issued to the applicant. The registration shall continue in effect unless it is canceled by the registrant or the director. The director may periodically request a registrant to review and update a listing of all products registered by the registrant and, when necessary, to resubmit current labels.

(2) The director may refuse to issue a registration for any commercial feed not in compliance

with the Commercial Feed Act and may cancel any registration subsequently found not in compliance with such act. No registration shall be refused or canceled unless the registrant has been given an opportunity to be heard before the director and to amend his or her application for registration in order to comply with the requirements of such act.

(3) Any commercial feed which is registered by the department prior to the operative date of this act shall be deemed to be registered by the department for purposes of the Commercial Feed Act unless such registration is canceled by the registrant or the director.

Sec. 6. A commercial feed shall be labeled as follows:

(1) In the case of a commercial feed, except a customer-formula feed, it shall be accompanied by a label bearing the following:

(a) The net weight;

(b) The product name and the brand name, if any, under which the commercial feed is distributed;

(c) The guaranteed analysis stated in such terms as the director, by regulation, determines is required to advise the user of the composition of the feed or to support claims made in the labeling. In all cases, the substances or elements guaranteed shall be determinable by laboratory methods such as the methods published by the Association of Official Analytical Chemists or other generally recognized methods;

(d) The common or usual name of each feed ingredient used in the manufacture of the commercial feed, except that the director, by regulation, may permit the use of a collective term of a group of feed ingredients which perform a similar function or he or she may exempt such commercial feeds, or any group thereof, from this requirement of a feed ingredient statement if he or she finds that such statement is not required in the interest of consumers;

(e) The name and principal mailing address of the manufacturer or the person responsible for distributing the commercial feed;

(f) Adequate directions for use for all commercial feeds containing drugs and for such other feeds as the director, by regulation, may deem necessary for their safe and effective use; and

(g) Such precautionary statements as the director, by regulation, determines are necessary for the safe and effective use of the commercial feed; and

(2) In the case of a customer-formula feed, it

shall be accompanied by a label, invoice, delivery slip, or other shipping document bearing the following information:

- (a) Name and address of the manufacturer;
- (b) Name and address of the purchaser;
- (c) Date of manufacture;
- (d) The product name and net weight of each commercial feed and each other feed ingredient used in the mixture;
- (e) Adequate directions for use for all customer-formula feeds;
- (f) The directions for use and precautionary statements as required by rules and regulations adopted and promulgated by the director; and
- (g) If a drug-containing product is used:
- (i) The purpose of the medication or a claim statement;
- (ii) The established name and level of each active drug ingredient and the level of each drug used in the final mixture expressed in accordance with rules and regulations adopted and promulgated by the director; and
- (iii) All appropriate precautions, warnings, and withdrawal statements as required by the director.

A duplicate copy of all the information required in subdivision (2) of this section shall be kept by the manufacturer for use by the department for sampling and inspection purposes.

Sec. 7. A commercial feed shall be deemed to be misbranded if:

- (1) Its labeling is false or misleading in any particular;
- (2) It is distributed under the name of another commercial feed;
- (3) It is not labeled as required in section 6 of this act;
- (4) It purports to be or is represented as a commercial feed, or it purports to contain or is represented as containing a feed ingredient, unless such commercial feed or feed ingredient conforms to the definition, if any, prescribed by regulation by the director; or
- (5) Any word, statement, or other information required by or under authority of the Commercial Feed Act to appear on the label is not prominently placed thereon with such conspicuousness and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

Sec. 8. A commercial feed shall be deemed to be adulterated if:

(1)(a) It bears or contains any poisonous or deleterious substance which may render it injurious to health, except that if the substance is not an added substance, such commercial feed shall not be considered adulterated under this subdivision if the quantity of such substance in such commercial feed does not ordinarily render it injurious to health;

(b) It bears or contains any added poisonous, deleterious, or nonnutritive substance which is unsafe within the meaning of section 406, as amended, of the Federal Food, Drug, and Cosmetic Act, other than one which is (i) a pesticide chemical in or on a raw agricultural commodity or (ii) a food additive;

(c) It is or it bears or contains any food additive which is unsafe within the meaning of section 409, as amended, of the Federal Food, Drug, and Cosmetic Act;

(d) It is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section 408(a), as amended, of the Federal Food, Drug, and Cosmetic Act, except that when a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 408, as amended, of the Federal Food, Drug, and Cosmetic Act and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed feed shall not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity, unless the feeding of such proposed feed will result or is likely to result in a pesticide residue in the edible product of the animal which is unsafe within the meaning of section 408(a), as amended, of the Federal Food, Drug, and Cosmetic Act; or

(e) It is or it bears or contains any color additive which is unsafe within the meaning of section 706, as amended, of the Federal Food, Drug, and Cosmetic Act;

(2) Any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor;

(3) Its composition or quality falls below or

differs from that which it is purported or is represented to possess by its labeling;

(4) It contains a drug and the methods used in or the facilities or controls used for its manufacture, processing, or packaging do not conform to current good manufacturing practice rules and regulations adopted and promulgated by the director to assure that the drug meets the requirements of the Commercial Feed Act as to safety and has the identity and strength and meets the quality and purity characteristics which it purports or is represented to possess. In adopting and promulgating such rules and regulations, the director shall adopt and promulgate the current federal Good Manufacturing Practice Regulations for medicated feed premixes and for medicated feeds established under authority of the Federal Food, Drug, and Cosmetic Act unless he or she determines that they are not appropriate to the conditions which exist in this state;

(5) It contains viable weed seeds in amounts exceeding the limits which the director shall establish by rule or regulation; or

(6) It has been manufactured, ground, mixed, bagged, or held under unsanitary conditions whereby it may have become contaminated with filth or been rendered injurious to animal health. An animal feed may be deemed to be contaminated with filth if not protected by all reasonable means and as far as necessary from dust, dirt, insect, or bird, rodent, or other animal excretion, and other foreign or injurious contamination.

Sec. 9. The following acts are prohibited:

(1) The manufacture or distribution of any commercial feed that is adulterated or misbranded;

(2) The adulteration or misbranding of any commercial feed;

(3) The distribution of agricultural commodities, such as whole seed, hay, straw, stover, silage, cobs, husks, and hulls, which are adulterated within the meaning of subdivision (1) of section 8 of this act;

(4) The removal or disposal of any commercial feed in violation of an order under section 14 of this act;

(5) The failure or refusal to comply with section 4 or 5 of this act;

(6) The violation of subsection (6) of section 15 of this act; and

(7) Failure to pay inspection fees and file reports as required by section 10 of this act.

Sec. 10. (1) There shall be paid to the

director an inspection fee of ten cents per ton on all commercial feed distributed in the State of Nebraska during the six-month period following the operative date of this act. After the first six months of operation, the fee may be raised or lowered by the director after a public hearing is held outlining the reason for any proposed change in the rate. The maximum rate fixed by the director shall not exceed fifteen cents per ton. The inspection fee shall be paid on commercial feed distributed by the person whose name appears on the label as the manufacturer, guarantor, or distributor, except that a person other than the manufacturer, guarantor, or distributor may assume liability for the inspection fee, subject to the following:

(a) No fee shall be paid on a commercial feed if the payment has been made by a previous distributor;

(b) No fee shall be paid on customer-formula feed if the inspection fee is paid on the commercial feed which is used as ingredients therein;

(c) No fee shall be paid on commercial feed used as ingredients for the manufacture of commercial feed which is registered. If the fee has already been paid, credit shall be given for such payment;

(d) In the case of a commercial feed which is distributed in the state only in packages of ten pounds or less, an annual fee fixed by the director, not to exceed twenty-five dollars, shall be paid in lieu of the inspection fee. The annual fee shall be paid not later than the last day of January each year; and

(e) The minimum inspection fee shall be five dollars for any six-month reporting period.

(2) If the director determines that it is necessary to adjust the rate of the inspection fee being paid to the department, all registrants shall be so notified and shall be given an opportunity to offer comment at a public hearing which shall be required prior to any inspection fee rate change.

(3) Each person who is liable for the payment of such fee shall:

(a) File, not later than January 31 and July 31 of each year, a semiannual statement setting forth the number of tons of commercial feed distributed in this state during the preceding six-month period, which statement shall cover the periods from July 1 to December 31 and January 1 to June 30, and upon filing such statement, pay the inspection fee at the rate specified by this section. Inspection fees which are due and owing and have not been remitted to the director within fifteen days following the date due shall have a

penalty of twenty-five per cent of the fees due added to the amount due when payment is made, and an additional penalty of twenty-five per cent of the fees due shall be added if such fees are not paid within thirty days of the due date. The assessment of this penalty fee shall not prevent the director from taking other actions as provided in the Commercial Feed Act; and

(b) Keep such records as may be necessary or required by the director to indicate accurately the tonnage of commercial feed distributed in this state. The director shall have the right to examine such records to verify statements of tonnage. Failure to make an accurate statement, to pay the inspection fee, or to comply as provided in this section shall constitute sufficient cause for the cancellation of all registrations and licenses on file.

Sec. 11. All money received pursuant to the Commercial Feed Act shall be remitted by the director to the State Treasurer and by the State Treasurer credited to the Commercial Feed Administration Cash Fund, which is hereby created. Such fund shall be used by the department to aid in defraying the expenses of administering the act. Any money in the Commercial Feed Administrative Fund on January 1, 1987, shall be transferred to the Commercial Feed Administration Cash Fund. Any money in the Commercial Feed Administration Cash Fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1269.

Sec. 12. (1) The director shall adopt and promulgate such rules and regulations for commercial feed and pet food as are specifically authorized in the Commercial Feed Act and such other reasonable rules and regulations as may be necessary for the efficient enforcement of the act. In the interest of uniformity, the director shall adopt and promulgate as rules and regulations, unless he or she determines that they are inconsistent with the act or are not appropriate to conditions which exist in this state, the following:

(a) The Official Definitions of Feed Ingredients and Official Feed Terms adopted by the Association of American Feed Control Officials and published in the official publication of that organization; and

(b) Any regulation relating to commercial feed adopted and promulgated pursuant to the authority of the Federal Food, Drug, and Cosmetic Act.

(2) Chapter 84, article 9, shall apply to the Commercial Feed Act, except that it shall be the duty of

the department to provide adequate notice to all current registrants of any proposed rule or regulation, amendment to a rule or regulation, or intent to repeal an existing rule or regulation.

Sec. 13. (1) For the purpose of enforcement of the Commercial Feed Act and in order to determine whether its provisions have been complied with, including whether or not any operations may be subject to such provisions, officers or employees authorized by the director, upon presenting appropriate credentials and notice to the owner, operator, or agent in charge, are authorized (a) to enter during normal business hours any factory, warehouse, or establishment in which commercial feed is manufactured, processed, packed, or held for distribution or to enter any vehicle being used to transport or hold such feed and (b) to inspect at reasonable times and within reasonable limits and in a reasonable manner such factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling therein. The inspection may include the verification of only such records and production and control procedures as may be necessary to determine compliance with the federal Good Manufacturing Practice Regulations.

(2) Credentials shall not be required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle shall be so notified.

(3) If the officer or employee making such inspection of a factory, warehouse, or other establishment has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises, he or she shall give to the owner, operator, or agent in charge a receipt describing the samples obtained.

(4) If the owner of any factory, warehouse, or establishment or his or her agent refuses to admit the director to inspect pursuant to this section, the director may obtain a warrant from a court of competent jurisdiction directing such owner or his or her agent to submit the premises described in such warrant to inspection.

(5) The director may enter upon any public or private premises, including any vehicle of transport, during regular business hours to obtain samples and to examine records relating to the distribution of

commercial feed.

(6) Sampling and analysis shall be conducted in accordance with methods published by the Association of Official Analytical Chemists or in accordance with other generally recognized methods.

(7) The results of all analyses of official samples shall be forwarded by the director to the person named on the label. When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded and upon request within thirty days following receipt of the analysis, the director shall furnish to the registrant a portion of the sample concerned.

(8) The director, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided by the official sample obtained and analyzed pursuant to this section.

Sec. 14. (1) When the director has reasonable cause to believe any lot of commercial feed is being distributed in violation of the Commercial Feed Act or any rule or regulation adopted and promulgated pursuant thereto, he or she may issue and enforce a written or printed withdrawal-from-distribution order warning the distributor not to dispose of the lot of commercial feed in any manner until written permission is given by the director or a court of competent jurisdiction. The director shall release the lot of commercial feed so withdrawn when the provisions, rules, and regulations of the act have been complied with. If compliance is not obtained within thirty days, the director may begin, or upon request of the distributor or registrant shall begin, proceedings for condemnation.

(2) Any lot of commercial feed not in compliance with the Commercial Feed Act and the rules and regulations adopted and promulgated pursuant thereto shall be subject to seizure on complaint of the director to a court of competent jurisdiction in the area in which such commercial feed is located. If the court finds the commercial feed to be in violation of the act or such rules and regulations and orders the condemnation of the commercial feed, such feed shall be disposed of in any manner consistent with the quality of the commercial feed and the laws of the state. In no instance shall the disposition of the commercial feed be ordered by the court without first giving the claimant an opportunity to apply to the court for release of such commercial feed or for permission to process or relabel the commercial feed to bring it into compliance with the

act.

Sec. 15. (1) Except as otherwise provided in subsection (6) of this section, any person convicted of violating any of the provisions of the Commercial Feed Act or any rules and regulations adopted and promulgated pursuant thereto or who shall impede, hinder, or otherwise prevent or attempt to prevent the director in the performance of his or her duty shall be guilty of a Class IV misdemeanor for the first violation and guilty of a Class II misdemeanor for any subsequent violation.

(2) Nothing in the Commercial Feed Act shall be construed as requiring the director to (a) report for prosecution, (b) institute seizure proceedings, or (c) issue a withdrawal-from-distribution order, as a result of minor violations of the act or when he or she believes the public interest will best be served by suitable notice of warning in writing.

(3) It shall be the duty of the county attorney of the county in which any violation occurs or is about to occur, when notified by the department of such violation or threatened violation, to pursue appropriate proceedings pursuant to subsection (1) or (4) of this section without delay. Before the director reports a violation, an opportunity shall be given the manufacturer or distributor to present his or her view to the director.

(4) In order to insure compliance with the Commercial Feed Act, the department may apply for a restraining order, a temporary or permanent injunction, or a mandatory injunction against any person violating or threatening to violate the act or the rules and regulations adopted and promulgated pursuant to such act. The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

(5) Any person adversely affected by an act, order, or ruling made by the department pursuant to the Commercial Feed Act may within thirty days thereafter bring action in the district court of Lancaster County for judicial review of such actions.

(6) Any person who uses to his or her own advantage or reveals to other than the director, representatives of the department, the Attorney General, other legal representatives of the state, or the courts when relevant in any judicial proceeding any information acquired under the authority of the Commercial Feed Act

concerning any method, record, formulation, or process which as a trade secret is entitled to protection shall be guilty of a Class IV misdemeanor. The director shall not be prohibited from exchanging information of a regulatory nature with duly appointed officials of the federal government or other states who are similarly prohibited by law from revealing this information.

Sec. 16. The director may cooperate with and enter into agreements with governmental agencies of this state, other states, agencies of the federal government, and private associations in order to carry out the purpose of the Commercial Feed Act.

Sec. 17. The director shall publish at least annually, in such form as he or she may deem proper, information concerning the sales of commercial feed together with such data on their production and use as he or she may consider advisable and a report of the results of the analyses of official samples of commercial feed sold within the state as compared with the analyses guaranteed in the registration and on the label, except that the information concerning production and use of commercial feed shall not disclose the operations of any person.

Sec. 18. This act shall become operative on January 1, 1987.

Sec. 19. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 20. That sections 54-819 to 54-828, 54-830 to 54-843, 54-845, and 54-846, Reissue Revised Statutes of Nebraska, 1943, are repealed.