

CHAPTER 31.

[House Bill No. 240.]

WASHINGTON COMMERCIAL FEED LAW.

AN ACT relating to commercial feed including customer-formula feed; repealing sections 15.53.010 through 15.53.900, chapter 11, Laws of 1961 and RCW 15.53.010 through 15.53.900; providing penalties; and making an effective date.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. This act shall be known as the "Washington Commercial Feed Law".

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feed law.
Short title.

SEC. 2. For the purposes of this act:

Definitions.

(1) "Department" means the department of agriculture of the state of Washington or its duly authorized representative.

(2) "Person" means a natural person, individual, firm, partnership, corporation, company, society, or association.

(3) "Distribute" means to offer for sale, hold for sale, sell, or barter, commercial feed, or to supply, furnish or otherwise provide commercial feed to a contract feeder.

(4) "Distributor" means any person who distributes.

(5) "Sell" or "sale" includes exchange.

(6) "Commercial feed" means all materials including customer-formula feed which are distributed for use as feed or for mixing in feed, for animals other than man except:

(a) Unmixed seed, whole or processed, made directly from the entire seed;

(b) Unground hay, straw, stover, silage, cobs, husks, and hulls when not mixed with other materials;

(c) Individual chemical compounds when not mixed with other materials; or

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(d) Bona fide experimental feeds, on which accurate records and experimental programs are maintained.

(7) "Feed ingredient" means each of the constituent materials making up a commercial feed.

(8) "Customer-formula feed" means a mixture of commercial feed and/or materials each batch of which mixture is mixed according to the specific instructions of the final purchaser, or contract feeder.

(9) "Brand" means the term, design, trademark, or other specific designation under which an individual commercial feed is distributed in this state.

(10) "Label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed, or on the invoice or delivery slip with which a commercial feed is distributed.

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

(12) "Percent" or "percentage" means percentage by weight.

(13) "Official sample" means any sample of feed taken by the department, obtained and analyzed as provided in section 9 of this act.

(14) "Contract feeder" means an independent contractor, or any other person who feeds commercial feed to animals pursuant to an oral or written agreement whereby such commercial feed is supplied, furnished or otherwise provided to such person by any distributor and whereby such person's remuneration is determined all or in part by feed consumption, mortality, profits, or amount or quality of product: *Provided*, That it shall not include a bona fide employee of a manufacturer or distributor of commercial feed.

(15) "Retail" means to distribute to the ultimate consumer.

SEC. 3. The department shall administer, enforce and carry out the provisions of this act and may adopt rules necessary to carry out its purpose. The adoption of rules shall be subject to a public hearing and all other applicable provisions of chapter 34.04 RCW (Administrative Procedure Act), as enacted or hereafter amended.

Administration
of law—Rules
and
regulations.

The director when adopting rules in respect to the feed industry shall consult with affected parties, such as manufacturers and distributors of commercial feed and any final rule adopted shall be designed to promote orderly marketing and shall be reasonable and necessary and based upon the requirements and condition of the industry and shall be for the purpose of promoting the well-being of the members of the feed industry as well as the well-being of the purchasers and users of feed and for the general welfare of the people of the state.

SEC. 4. (1) Each commercial feed shall be registered with the department and such registration shall be renewed annually before such commercial feed may be distributed in this state: *Provided*, That customer-formula feeds are exempt from such registration.

Registration—
Fees—Appli-
cation—
Changes in
guarantee per-
mitted, when—
Refusal or
cancellation,
when.

(a) The first and original application for a brand registration for a commercial feed, under the provisions of this act, shall be accompanied by a registration fee of ten dollars.

(b) Each annual renewal of a brand registration for a commercial feed shall be accompanied by a renewal fee of five dollars.

(c) Any person who distributes a commercial feed in packages of less than ten pounds shall pay an annual registration fee of ten dollars on each such commercial feed so distributed: *Provided*, That no inspection fee shall be collected on packages of less than ten pounds of the commercial feed so registered.

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Application—
Changes in
guarantee per-
mitted, when—
Refusal or
cancellation,
when.

(2) The application for registration shall be on forms provided by the department.

(3) The department may require that such application be accompanied by a label and/or other printed matter describing the product. All registrations issued on or after January 1, 1966, shall be renewable as provided in (1) (b) of this section unless such registration is canceled by the department or it has called for a new registration, or unless canceled by the registrant.

(4) The application shall include the information required by section 5 (1) (b) through (1) (e) of this act.

(5) A distributor shall not be required to register any brand of commercial feed which is already registered under the provisions of this act by any other person.

(6) Changes in the guarantee of either chemical or ingredient composition of a commercial feed registered under the provisions of this act may be permitted provided there is satisfactory evidence that such changes would not result in a lowering of the feed value of the product for the purpose for which designed.

(7) The department is empowered to refuse registration of any application not in compliance with the provisions of this act and to cancel any registration subsequently found not to be in compliance with any provisions of the act: *Provided*, That no registration shall be refused or canceled until the registrant shall have been given opportunity to be heard before the department and to amend his application in order to comply with the requirements of this act.

Registration—
Label—Con-
tents—
Customer-
formula feed
labeled by in-
voice, contents.

SEC. 5. (1) Any commercial feed registered with the department and distributed in this state shall be accompanied by a legible label bearing the following information:

(a) The net weight as required under chapter 19.93 RCW as enacted or hereinafter amended.

(b) The name or brand under which the commercial feed is distributed.

(c) The guaranteed analysis of the commercial feed, listing the minimum percentage of crude protein, minimum percentage of crude fat, and maximum percentage of crude fiber. For mineral feeds the list shall include the following if added: Minimum and maximum percentages of calcium (Ca), minimum percentage of phosphorus (P), minimum percentage of iodine (I), and minimum and maximum percentages of salt (NaCl). Other substances or elements, determinable by laboratory methods, may be guaranteed by permission of the department. When any items are guaranteed, they shall be subject to inspection and analysis in accordance with the methods and regulations that may be prescribed by the department. Products distributed solely as mineral and/or vitamin supplements and guaranteed as specified in this section need not show guarantees for protein, fat, and fiber.

(d) The common or usual name of each ingredient used in the manufacture of the commercial feed, except as the department may, by regulation, permit the use of a collective term for a group of ingredients all of which perform the same function. An ingredient statement is not required for single standardized ingredient feeds which are officially defined.

(e) The name and principal address of the person responsible for distributing the commercial feed.

(2) When a commercial feed is distributed in this state in bags or other containers, the label shall be placed on or affixed to the container; when a commercial feed is distributed in bulk the label shall accompany delivery and be furnished to the purchaser at time of delivery.

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Customer-for
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labeled by in-
voice, contents.

(3) A customer-formula feed shall be labeled by invoice. The invoice, which is to accompany delivery and be supplied to the purchaser at the time of delivery, shall bear the following information:

- (a) Name and address of the mixer;
- (b) Name and address of the purchaser;
- (c) Date of sale; and

(d) Brand name and number of pounds of each registered commercial feed used in the mixture and the name and number of pounds of each other feed ingredient added.

(4) If a commercial feed contains a nonnutritive substance which is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease or which is intended to affect the structure or any function of the animal body, the department may require the label to show the amount present, directions for use, and/or warnings against misuse of the feed.

(5) A customer-formula feed shall be considered to be in violation of this act if it does not conform to the invoice labeling. Upon request of the department it shall be the duty of the person distributing the customer-formula feed to supply the department with a copy of the invoice which represents that particular feed: *Provided*, That such person shall not be required to keep such invoice for a period of longer than six months.

Inspection fee
on distributors
—Payment—
Records—
Additional fee
for late
payment—
Application to
feed brought
into state for
use.

SEC. 6. (1) On or after October 1, 1965, there shall be due and owing to the department an inspection fee of four cents per ton on all commercial feed distributed in this state. Such inspection fee shall be paid by any person who distributes commercial feed in this state: *Provided*, That when more than one person is involved in the distribution of a commercial feed, the person who distributes to the consumer is responsible for reporting the tonnage and paying the inspection fee unless the report and pay-

ment have been made by a prior distributor of the feed: *And provided further*, That no inspection fee shall be paid on that part of any commercial feed on which an inspection fee has been paid to the department, or any commercial feed which is shipped out of state.

(2) The distributor of any commercial feed to a consumer in this state shall:

(a) File, not later than the last day of January, April, July, and October of each year, a quarterly statement under oath, setting forth the number of net tons of commercial feed distributed in this state during the preceding calendar quarter; and upon filing such statement shall pay the inspection fee at the rate stated in subsection (1) hereof;

(b) Keep such reasonable and practical records as may be necessary or required by the department to indicate accurately the tonnage of commercial feed distributed in this state, and the department shall have the right to examine such records to verify statements of tonnage.

Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided herein shall constitute a violation of this act.

(3) Inspection fees which are due and owing and have not been remitted to the department within thirty days following the due date shall have a collection fee of ten percent added to the amount due when payment is finally made. The assessment of this collection fee shall not prevent the department from taking other actions as provided for in this act.

(4) Any commercial feed purchased by a consumer or contract feeder outside the jurisdiction of this state and brought into this state for use shall be subject to all the provisions of this act including inspection fees.

Commercial
feed law.
Adulterated
feed—Defined
—Unlawful to
distribute.

SEC. 7. It shall be unlawful for any person to distribute an adulterated feed. A commercial feed shall be deemed to be adulterated:

(1) If any poisonous, deleterious, or nonnutritive ingredient has been added in sufficient amount to render it injurious to health when fed in accordance with directions for use on the label;

(2) If any valuable constituent has been in whole or in part omitted or abstracted therefrom and/or any less valuable substance added;

(3) If it contains viable primary noxious weed seeds in excess of one per pound, or if it contains viable secondary noxious weed seeds in excess of twenty-five per pound. The primary and secondary noxious weed seeds shall be those as named pursuant to the provisions of chapter 15.48 RCW as enacted or hereafter amended and rules adopted thereunder.

Misbranded
feed—Defined
—Unlawful to
distribute.

SEC. 8. It shall be unlawful for any person to distribute misbranded feed. A commercial feed shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular;

(2) If it is distributed under the name of another feed;

(3) If it is not labeled as required in section 5 of this act and in regulations prescribed under this act;

(4) If it purports to be or is represented as a feed ingredient, or if it purports to contain or is represented as containing a feed ingredient, unless such feed ingredient conforms to the definition of identity, if any, prescribed by regulation of the department. In the adopting of such regulations the department may consider commonly accepted definitions such as those issued by nationally recognized associations or groups of feed control officials;

(5) If any word, statement, or other information required by or under authority of this act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(6) If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling.

SEC. 9. (1) It shall be the duty of the department to sample, inspect, make analysis of, and test commercial feed distributed within this state at such time and place and to such an extent as it may deem necessary to determine whether such feeds are in compliance with the provisions of this act. The department is authorized to stop any commercial vehicle transporting feed on the public highways and direct it to the nearest scales approved by the department to check weights of feeds being delivered. The department is also authorized, upon presentation of proper identification, to enter any distributor's premises including any vehicle of transport at all reasonable times in order to have access to commercial feed and to records relating to their distribution. This includes the determining of the weight of packages and bulk shipments.

(2) The methods of sampling and analysis shall be those adopted by the department from officially recognized sources.

(3) The department, in determining for administrative purposes whether a feed is deficient in any component, shall be guided solely by the official sample as defined in subsection (13) of section 2 of this act and obtained and analyzed as provided for in this section.

Sampling,
testing and
analysis of
commercial
feed, depart-
mental powers
relating to—
Methods—
Analysis as
evidence.

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feed law.
Sampling,
testing and
analysis of
commercial
feed—
Analysis as
evidence.

(4) When the inspection and analysis of an official sample has been made the results of analysis shall be forwarded by the department to the distributor and to the purchaser if known. Upon request and within thirty days the department shall furnish to the distributor a portion of the sample concerned.

(5) Analysis of an official sample by the department shall be accepted as prima facie evidence by any court of competent jurisdiction.

Distribution at
retail—
Annual
license fee.

SEC. 10. No person shall distribute commercial feed at retail without first having obtained an annual license from the department which shall expire on the thirty-first day of December. A separate license shall be required for each establishment or vehicle used by the applicant to sell commercial feed at retail: *Provided*, That such license shall not be required of any vehicle used by a licensee merely in delivering commercial feed, nor to any dealer as to his sales of foods for domestic pets, such as dogs, cats, and birds.

—Applica-
tion—Contents.

SEC. 11. Application for a license to distribute feed at retail shall be on a form prescribed by the department and shall include the following:

(1) The full name of the person applying for the license;

(2) If such applicant is an individual, receiver, trustee, firm, partnership, association, or corporation, the full name of each member of the firm or partnership or the names of the officers of the association or corporation shall be given on the application;

(3) The principal business address of the applicant in the state and elsewhere;

(4) The name of a person domiciled in this state authorized to receive and accept service or legal notices of all kinds;

(5) Any other reasonable and practical information prescribed by the department necessary to carry out the purposes and provisions of this act.

The department shall issue a license to an applicant upon its satisfaction that the applicant has satisfied the requirements of this act and rules adopted hereunder and that such applicant has paid the required license fee.

SEC. 12. The application for an annual license to distribute feed at retail shall be accompanied by an annual license fee of ten dollars. —Fee.

SEC. 13. If an application for renewal of the license provided for in section 10 of this act is not filed prior to January 1st of any one year, a penalty of five dollars shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: *Provided*, That such penalty shall not apply if the applicant furnishes an affidavit that he has not acted as a retail feed dealer subsequent to the expiration of his prior license. —Penalty for late renewal.

SEC. 14. The department is authorized to deny, suspend, or revoke the license provided for in section 10 of this act subsequent to a hearing, in any case in which it finds that there has been a failure or refusal to comply with the provisions of this act or rules adopted hereunder. —Denial, suspension or revocation authorized—Grounds.

SEC. 15. All hearings for a denial, suspension, or revocation of any license or registration provided for in this act shall be subject to the provisions of chapter 34.04 RCW (The Administrative Procedure Act) concerning contested cases, as enacted or hereafter amended. Hearings subject to Administrative Procedure Act.

SEC. 16. (1) When the department has determined that any lot of commercial feed is adulterated or misbranded and is being distributed in violation "Withdrawal from distribution order".

Commercial feed law. "Withdrawal from distribution order" for adulterated or misbranded feeds—Proceedings for condemnation.

of this act or any regulations hereunder it may issue and enforce a written or printed "withdrawal from distribution" order, warning the distributor not to dispose of the lot of feed in any manner until written permission is given by the department or a court of competent jurisdiction. The department shall release the lot of commercial feed so withdrawn when said provisions and regulations have been complied with. If compliance is not obtained within thirty days, the department may begin proceedings for condemnation.

(2) Any lot of commercial feed not in compliance with said provisions and regulations shall be subject to seizure on complaint of the department to a court of competent jurisdiction in the area in which said commercial feed is located. In the event the court finds the said commercial feed to be in violation of this act and orders the condemnation of said commercial feed, it shall be disposed of in any manner consistent with the quality of the commercial feed and the laws of the state: *Provided*, That in no instance shall the disposition of said commercial feed be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial feed or for permission to process or relabel said commercial feed to bring it into compliance with this act.

Violations, generally—Penalty—Prosecuting attorney to act—Injunctive relief.

SEC. 17. (1) Any person convicted of violating any of the provisions of this act or the rules and regulations issued thereunder or who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent the department in the performance of its duty in connection with the provisions of this act, shall be adjudged guilty of a misdemeanor and shall be fined not less than fifty dollars nor more than one hundred dollars for the first violation, and not less than two hundred dollars nor more than five hundred dollars for a subsequent violation. In

all prosecutions under this act involving the composition of a lot of commercial feed, a certified copy of the official analysis signed by the department shall be accepted as prima facie evidence of the composition.

(2) Nothing in this act shall be construed as requiring the department to report for prosecution or for the institution of seizure proceedings as a result of minor violations of the act when it believes that the public interest will be best served by a suitable notice of warning in writing.

(3) It shall be the duty of each prosecuting attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the department reports a violation for such prosecution, an opportunity shall be given the distributor to present his view in writing or orally to the department.

(4) The department is hereby authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this act or any rule or regulation promulgated under the act notwithstanding the existence of other remedies at law. Said injunction to be issued without bond.

SEC. 18. The department shall publish at least annually, in such forms as it may deem proper, information concerning the distribution of commercial feed, together with such data on their production and use as it may consider advisable, and a report of the results of the analyses of official samples of commercial feed within the state as compared with the analyses guaranteed in the registration and on the label or as calculated from the invoice data for customer-formula feeds: *Provided*, That the information concerning production and use of com-

Information to
be published.

mercial feeds shall not disclose the operations of any person.

Commercial feed law. Disposition of fees.

SEC. 19. All fees collected under the provisions of this act shall be paid to the state treasurer to be deposited in the commercial feed account in the state general fund as provided in RCW 43.79.330 to be used only in the enforcement of this act. All moneys collected under the provisions of chapter 15.53 RCW and remaining in such commercial feed account on the effective date of this act, shall be used in enforcement of this act.

Act cumulative, not exclusive.

SEC. 20. The provisions of this act shall be cumulative and nonexclusive and shall not affect any other remedy.

Civil and criminal liability continued.

SEC. 21. The enactment of this act shall not have the effect of terminating, or in any way modifying any liability, civil or criminal, which shall already be in existence on the effective date of this act.

Prior rules and regulations continued.

SEC. 22. The repeal of sections 15.53.010 through 15.53.900, chapter 11, Laws of 1961 and chapter 15.53 RCW and the enactment of this act shall not be deemed to have repealed any rules adopted under the provisions of sections 15.53.010 through 15.53.900, chapter 11, Laws of 1961 and chapter 15.53 RCW and in effect immediately prior to such repeal and not inconsistent with the provisions of this act. All such rules shall be considered to have been adopted under the provisions of this act.

Prior registrations and licenses continued—No refunds on registrations.

SEC. 23. All registrations and licenses in effect under sections 15.53.010 through 15.53.900, chapter 11, Laws of 1961, and RCW 15.53.010 through 15.53.900 on the effective date of this act shall continue in full force and effect until December 31, 1965. No registration that has already been paid under the requirements of any prior act shall be refunded.

SEC. 24. 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 and provisions of this chapter.

Agreements
agencies.
with other
governmental

SEC. 25. Sections 15.53.010 through 15.53.900, chapter 11, Laws of 1961 and RCW 15.53.010 through 15.53.900 are each repealed.

Repeal.

SEC. 26. The effective date of this act is July 1, 1965.

Effective date.

SEC. 27. If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole or any section, provision, or part thereof, not adjudged invalid or unconstitutional.

Severability.

Passed the House March 18, 1965.

Passed the Senate March 24, 1965.

Approved by the Governor April 2, 1965.