



SPONSOR: Sen. Ennis & Rep. Carson
Sens. Hocker, Lopez, Wilson; Rep. Briggs King

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 97

AN ACT TO AMEND TITLE 3 OF THE DELAWARE CODE RELATING TO COMMERCIAL FEEDS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend Title 3 of the Delaware Code by amending Chapter 17 by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

CHAPTER 17. COMMERCIAL FEEDS

§ 1701. Title.

This chapter shall be known as the "Delaware Commercial Feed Law of ~~1967~~ 2021."

§ 1702. Enforcing agency.

This chapter shall be administered by the Department of Agriculture of this State, hereinafter referred to as the "Department."

§ 1703. Definitions of words and terms.

When used in this chapter:

(1) "Person" ~~includes~~ means an individual, partnership, ~~corporation~~ corporation, and ~~association~~ association, and other entities;

(2) "Distribute" means to offer for sale, ~~sell~~ sell, or barter, commercial feed or customer-formula feed; or to supply, furnish or otherwise provide commercial feed or customer-formula feed to a contract feeder;

(3) "Distributor" means any person who distributes pursuant to ~~subdivision~~ subsection (2) of this section;

(4) "Sell" or "sale" includes exchange;

(5) "Commercial feed" means all materials or combination of materials which are distributed for the use as feed or for mixing in feed, for animals and cultured aquatic stock other than man except:

a. Unmixed or unprocessed whole seeds and meals made directly from the entire seed;

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

c. Individual chemical compounds when not mixed with other materials;

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

- (7) "Mineral feed" means a ~~substance or mixture of substances designed or~~ commercial feed intended to supply primarily mineral elements or inorganic nutrients;
- (8) "Customer-formula feed" means a mixture of commercial feeds ~~and/or~~ materials each batch of which mixture is mixed according to the specific instructions of the final purchaser, or contract feeder;
- (9) "Brand name" means 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;
- (10) "Product name" means the name of the commercial feed which identifies it as to kind, class or specific use; and distinguishes it from all other products bearing the same brand name.
- (11) "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 or customer-formula feed is distributed;
- (12) "Ton" means a net weight of 2,000 pounds avoirdupois;
- (13) "Percent" or "percentage" means percentage by weight;
- (14) "Official sample" means any sample of feed taken by the Department or its agent and designated as "official" by the Department;
- (15) "Contract feeder" means a person who, as an independent contractor, feeds commercial feed to animals pursuant to a contract whereby such commercial feed is supplied, furnished or otherwise provided to such person and whereby such person's remuneration is determined all or in part by feed consumption, mortality, profits, or amount or quality of product.
- (16) "Drug" means any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals other than man; and articles other than commercial feed intended to affect the structure or any function of the animal body.
- (17) "Manufacture" means to grind, mix, or blend, or further process a commercial or customer-formula feed for distribution.
- (18) "Pet food" means any commercial feed prepared and distributed for consumption by pets.
- (19) "Pet" means dog or cat.
- (20) "Specialty pet" means any animal normally maintained in a household, such as, but not limited to, rodents, ornamental birds, ornamental fish, reptiles, and amphibians, ferrets, hedgehogs, marsupials, and rabbits not raised for food or fur.
- (21) "Specialty pet food" means any commercial feed prepared and distributed for consumption by specialty pets.

(22) "Quantity statement" means the net weight (mass), liquid measure, or count.

(23) "Supplement" means a feed used with another to improve the nutritive balance or performance of the total.

(24) "Medicated feed" means any feed which contains drug ingredients intended or presented for the cure, mitigation, treatment, or prevention of diseases of animals other than man or which contains drug ingredients intended to affect the structure or any function of the body of animals other than man.

§ 1704. Registration.

(a) Each commercial feed, such as animal food, pet food, specialty pet food, supplements, or medicated feed shall be registered before being distributed in this State; provided, however, that customer-formula feeds are exempt from registration. The application for registration shall be submitted on forms furnished by the Department, and shall also be accompanied by a label or other printed matter describing the product. Upon approval by the Department, a copy of the registration shall be furnished to the applicant. All registrations expire on December 31 of each year. The application shall include the information required by paragraphs (2), (3), (4), and (5) of subsection (a) of § 1705 of this title. The Department may permit on the registration the alternative listing of ingredients of comparable feeding value, provided that the label for each package shall state the specific ingredients which are in such package.

(b) A distributor shall not be required to register any ~~brand of~~ commercial feed product which is already registered under this chapter by another person, provided that the label does not differ in any respect.

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

(d) The Department may refuse registration of any application not in compliance with this chapter and may cancel any registration subsequently found not to be in compliance with any provision of this chapter; provided, however, that no registration shall be refused or cancelled until the registrant shall have been given the opportunity to be heard before the Department and to amend his application in order to comply with the requirements of this chapter.

§ 1705. Labeling.

(a) Any commercial feed distributed in this State shall be accompanied by a legible label bearing the following information:

(1) The ~~net weight~~ quantity statement;

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

(3) 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 all mineral feeds and for those commercial

feeds containing a level of added mineral ingredients established by regulation, 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 percentage 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. The Department may by regulation designate certain commercial feeds which need not be labeled to show guarantees for crude protein, crude ~~fat~~ fat, and crude fiber;

(4) 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;

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

(6) If a drug containing product is used, the label, invoice, delivery slip, or other shipping document must contain the following:

(a) Directions for safe and effective use;

(b) The purpose of the medication (claim statement); and

(c) The established name of each active drug ingredient and the level of each drug used in the final mixture.

(b) 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~~ bulk, the label shall accompany delivery and be furnished to the purchaser at the time of delivery.

(c) A customer-formula feed shall be ~~labeled~~ accompanied by an invoice, label, delivery slip, or other shipping document. The invoice, which is to accompany delivery and be supplied to the purchaser at the time of delivery, shall bearing the following information:

(1) Name and address of the mixer;

(2) Name and address of the purchaser;

(3) Date of sale;

(4) The product name and brand name, if any, 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:~~ added;

(5) If a drug containing product is used:

(a) Directions for safe and effective use;

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

(c) The established name of each active drug ingredient and the level of each drug used in the final mixture.

~~(d) If a commercial feed or a customer-formula 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.~~

§ 1706. Registration fees.

(a) There shall be paid to the Department for each commercial feed distributed in this State an annual registration fee of \$23 per each product of each brand; provided, however, that the customer-formula feeds are exempt if the registration fee is paid on the commercial feeds which they contain.

(b) All registration fees shall be transferred to the State Treasurer and paid into the General Fund of the State.

§ 1707. Adulteration.

No person shall distribute an adulterated feed. A commercial feed or customer-formula 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~~ been, in whole or in ~~part~~ part, omitted or abstracted therefrom or any less valuable substance substituted therefor;

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

(4) If it contains added hulls, screenings, straw, cobs or other high fiber material unless the name of each such material is stated on the label;

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

(6) If it contains any added poisonous, deleterious, non-nutritive substance, food or color additive, or new animal drug which is unsafe within the meaning of the Federal Food, Drug, and Cosmetic Act;

(7) If it consists in whole or part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for feed;

(8) If it has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

§ 1708. Misbranding.

No person shall distribute misbranded feed. A commercial feed or customer-formula 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 § 1705 of this title and in regulations prescribed under this chapter;

(4) If it purports to be or is represented as a commercial feed ~~ingredient~~, or if it purports to contain or is represented as containing a commercial feed ingredient, unless such commercial feed or feed ingredient conforms to the definition of identity, if any, prescribed by regulation of the Department; in the adopting of such regulations the Department shall give due regard to commonly accepted definitions such as those issued by the Association of American Feed Control Officials;

(5) If any word, statement, or other information required by or under authority of this chapter 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 the customary conditions of purchase and use.

§ 1709. Inspections; sampling; analysis.

(a) The Department, individually or through its authorized agent, shall sample, inspect, make analyses of, and test commercial feeds and customer-formula feeds 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 this chapter. The Department, individually or through its agent, may enter upon any public or private premises including any vehicle of transport during regular business hours in order to have access to commercial feeds and customer-formula feeds and to records relating to their distribution and storage.

(b) The methods of sampling and analysis shall be those adopted by the ~~Department from sources such as the~~ AOAC International, Journal of the Association of Official Agricultural Chemists In cases not covered by such methods, or in cases where methods are available in which improved applicability has been demonstrated, the Secretary may adopt such appropriate methods from other sources.

(c) The Department, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided solely by the official sample as defined in subdivision (14) of § 1703 of this title and obtained and analyzed as provided for in subsection (b) of this section.

(d) When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded, the results of analysis shall be forwarded by the Department to the distributor and the purchaser. ~~Upon request within~~ Within 30 days of a request, the Department shall furnish to the distributor a portion of the samples concerned.

§ 1710. Regulations.

The Department shall enforce this chapter, and after due publicity and due public hearing may promulgate and adopt such reasonable regulations as may be necessary in order to secure the efficient administration of this chapter. Publicity concerning the public hearing shall be reasonably calculated to give interested parties adequate notice and adequate opportunity to be heard.

§ 1711. Detained commercial feeds; "withdrawal from distribution" orders; condemnation and confiscation.

(a) When the Department or its authorized agent has reasonable cause to believe any lot of commercial feed is being distributed in violation of this chapter or of any of the regulations promulgated under this chapter, 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 the Court. The Department shall release any lot of commercial feeds so withdrawn when such distributor has complied with this chapter and the regulations issued hereunder. If compliance is not obtained within 30 days, the Department may begin, or upon request of the distributor shall begin, proceedings for condemnation.

(b) Any lot of commercial feed not in compliance with this chapter or regulations promulgated hereunder 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 chapter or regulations promulgated hereunder and orders the condemnation of said commercial feed, the same 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 chapter.

§ 1712. Penalties.

(a) Any person convicted of violating any of the provisions of this chapter or any regulations hereunder or the rules and regulations issued thereunder, or who shall impede, obstruct, hinder or otherwise prevent or attempt to prevent the Department or its duly authorized agent in performing duties prescribed by this chapter or regulations issued hereunder, shall be fined not more than ~~\$50~~ \$250 for the first violation, and not less than ~~\$50~~ \$500 for each subsequent violation. In all prosecutions under this chapter 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.

(b) Nothing in this chapter shall be construed as requiring the Department or its representative to report for prosecution or for the institution of seizure proceedings as a result of minor violations of this chapter where the public interest will be best served by a suitable notice of warning in writing.

(c) When any violation of this chapter is reported to the Attorney General, he or she shall cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the Department reports a violation for prosecution, an opportunity shall be given the distributor to present his or her views to the Department.

(d) The Department may apply for and the court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate this chapter or any rule or regulation promulgated thereunder notwithstanding the existence of other remedies at law. Any injunction shall be issued without bond.

(e) Any person adversely affected by an act, order or ruling made pursuant to this chapter may within 45 days thereafter, bring an action in the Superior Court in the county where the enforcement official has his office, for a new trial of the issues bearing upon such chapter, order or ruling, and upon such trial the Court may issue and enforce such orders, judgments or decrees as the Court may deem proper, just and equitable.

§ 1713. Publications.

The Department shall publish at least semiannually, in such form as it may deem proper, a report of the results of the analyses of official samples of commercial feeds sold within this State as compared with the analyses guaranteed in the registration and on the label.

§ 1714. Cooperation with Other Entities.

The Department may cooperate 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.

SYNOPSIS

This bill authorizes the Department of Agriculture to update the Delaware Commercial Feed Law of 1967. Changes to this law include updating language to align with current industry terminology and includes applicable language

from the most recent version of the Association of American Feed Control Officials (AAFCO) Uniform State Bill, which is designed to create uniformity amongst states. This bill authorizes the Department of Agriculture to add criteria for defining an adulterated feed and adjusts penalties for violators of this chapter. The proposed changes will provide clarity to distributors and Department staff regarding product labeling, registration, and violations as well as providing updated terminology to make regulating this program more efficient.

This bill also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator Ennis