

No. 221

AN ACT

SB 800

Regulating the distribution of commercial feeds and customer-formula feeds in the Commonwealth of Pennsylvania; conferring powers and imposing duties on the Department of Agriculture; and prescribing penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short Title.—This act shall be known and may be cited as the “Pennsylvania Commercial Feed Law of 1966.”

Section 2. Enforcing Official.—This act shall be administered by the Secretary of Agriculture of Pennsylvania hereinafter referred to as the “secretary.”

Section 3. Definitions of Words and Terms.—When used in this act:

(1) The term “person” includes individual, partnership, corporation and association.

(2) The term “distribute” means to offer for sale, sell or barter commercial feed or customer-formula feeds; or to supply, furnish or otherwise provide commercial feed or customer-formula feed to a contract feeder; the term “distributor” means any person who distributes.

(3) The term “sell” or “sale” includes exchange.

(4) The term “commercial feed” means all materials which are distributed for use as feed or for mixing in feed, for animals other than man except: (i) unmixed whole seeds or grains and meals made directly from the entire seeds, (ii) unground hay, straw, stover, silage, cobs, husks and hulls when not mixed with other materials, (iii) individual chemical compounds when not mixed with other materials.

(5) The term “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.

(6) The term “feed ingredient” means each of the constituent materials making up a commercial feed.

(7) The term “mineral feed” shall mean a substance or mixture of substances designed or intended to supply primarily mineral elements or inorganic nutrients.

(8) The term “brand name” means any word, name, symbol or device, or any combination thereof, identifying the commercial feed of a distributor and distinguishing it from that of others.

(9) The term “product name” means the name of the commercial feed which identifies it as to kind, class or specific use.

(10) The term "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.

(11) The term "ton" means a net weight of two thousand pounds avoirdupois.

(12) The terms "percent" or "percentage" means percentage by weight.

(13) The term "official sample" means any sample of feed taken by the secretary or his agent and designated as "official" by the secretary.

(14) The term "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.

(15) The term "facility" means each separate mill or plant, fixed or mobile.

Section 4. Registration.—(a) Every facility engaged in the manufacture of commercial feed or customer-formula feed to be distributed in Pennsylvania shall on January 1 of each year, or prior to manufacture or distribution of such feed, register each such facility on a form furnished by the secretary, the application to be accompanied by a fee of ten dollars (\$10). Upon approval by the secretary, a copy of the registration shall be furnished to the applicant and displayed in the facility.

(b) The secretary is empowered to refuse the registration of any facility not in compliance with the provisions of this act or to cancel the registration of any facility subsequently found not to be in compliance with any provision of this act: Provided, however, That no registration shall be refused or cancelled until the registrant shall have been given opportunity to be heard before the secretary.

Section 5. Labeling.—(a) Any commercial feed distributed in this Commonwealth shall be accompanied by a legible label bearing the following information:

(1) The net weight.

(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 and maximum percentages of salt (NaCl). Other substances or elements, determinable by laboratory methods, may be guaranteed by permission of the secretary. 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 secretary. The secretary may by regulation designate certain commercial feeds which need not be labeled to show guarantees for crude protein, crude fat and crude fiber.

(4) The common or usual name of each ingredient used in the manufacture of the commercial feed, except as the secretary 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 address of the person responsible for distributing the commercial feed.

(b) When a commercial feed is distributed in this Commonwealth 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.

(c) 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:

- (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 commercial feed used in the mixture and the name and number of pounds of each other feed ingredient added.

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

Section 6. Inspection Fees.—(a) There shall be paid to the secretary for all commercial feeds distributed in this Commonwealth an inspection fee at the rate of five cents (5¢) per ton annually: Provided, however, That customer-formula feeds are hereby exempted: And, provided

further, That distribution of commercial feeds to manufacturers are hereby exempted if the commercial feeds so distributed are used solely in the manufacture of feeds: And, provided further, That the distribution of single feed ingredients is hereby exempted: And, provided further, That the distribution of commercial feeds by a manufacturer to his contract feeder is hereby exempted. However, in no case shall the inspection fee paid annually amount to less than one dollar (\$1). Fees so collected as well as moneys derived from registration and fines shall be placed in a fund to be administered by the secretary and shall be used solely for the cost of inspection, sampling and analysis and other expenses necessary for the administration of this act and acts specified by the General Assembly. Such funds shall be known as the Feed and Fertilizer Fund. The secretary, having determined after a public hearing following notice to the registrants that moneys derived from the registration and inspection fees are either greater or less than that required to administer this act, is hereby authorized and empowered to reduce or increase the inspection fee so as to maintain revenues sufficient to administer this act, but such revenues shall not exceed one hundred twenty-five thousand dollars (\$125,000) for any one year.

(b) Every person, except as hereinafter provided, who distributes commercial feed in this Commonwealth shall:

(1) File, not later than the last day of January of each year, an annual statement, under oath, setting forth the number of net tons of commercial feeds distributed in this Commonwealth during the preceding calendar year; and upon filing such statement shall pay the inspection fee at the rate stated in subsection (a) of this section or, in lieu thereof, at the rate established by the secretary by regulation promulgated under subsection (a) of this section. 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 payment have been made by a prior distributor of the feed.

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

(c) Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided herein shall constitute sufficient cause for the cancellation of the registration on file for the distributor.

Section 7. 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 in whole or in 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 secretary shall establish by rule or regulation.

Section 8. 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 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 secretary; in the adopting of such regulations the secretary 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 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.

Section 9. Inspection, Sampling, Analysis.—(a) It shall be the duty of the secretary, who may act through his authorized agent, to sample, inspect, make analyses of and test commercial feeds and customer-formula feeds distributed within this Commonwealth at such time and place to such an extent as he may deem necessary to determine whether such feeds are in compliance with the provisions of this act. The secretary individually or through his agent, is authorized to 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.

(b) The methods of sampling and analysis shall be those adopted by the secretary from sources such as the Journal of the Association of Official Agriculture Chemists.

(c) The secretary, 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 clause (13) of section 3 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 secretary to the distributor and the purchaser. Upon request within thirty days, the secretary shall furnish to the distributor a portion of the sample concerned.

Section 10. Rules and Regulations.—The secretary is hereby charged with the enforcement of this act and after due publicity and due public hearing is empowered to promulgate and adopt such reasonable rules and regulations as may be necessary in order to secure the efficient administration of this act. Publicity concerning the public hearing shall be reasonably calculated to give interested parties adequate notice and adequate opportunity to be heard.

Section 11. Detained Commercial Feeds.—(a) “Withdrawal from Distribution” orders. When the secretary or his authorized agent has reasonable cause to believe any lot of commercial feed is being distributed in violation of any of the provisions of this act or of any of the prescribed regulations under this act, he 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 secretary or a court of competent jurisdiction. The secretary 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 secretary may begin, or upon request of the distributor shall begin, proceedings for condemnation.

(b) Condemnation and Confiscation. Any lot of commercial feed not in compliance with the provisions and regulations shall be subject to seizure on complaint of the secretary 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 Commonwealth: 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.

Section 12. Penalties.—(a) 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 said secretary or his duly authorized agent in performance of his 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 (\$50) or more than one hundred dollars (\$100) for the first violation, and not less than five hundred dollars (\$500) or more than one thousand dollars (\$1,000) for a subsequent violation in any one year. 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 secretary shall be accepted as prima facie evidence of the composition.

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

(c) It shall be the duty of each district 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 secretary reports a violation for such prosecution, an opportunity shall be given the distributor to present his view to the secretary.

(d) The secretary 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. Such injunction ¹is to be issued without bond.

(e) Any person adversely affected by an act, order or ruling made pursuant to the provisions of this act may within forty-five days thereafter bring action in the Court of Common Pleas of Dauphin County for new trial of the issues bearing upon such act, 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.

Section 13. Publications.—The secretary shall publish at least an-

¹ "is" not in original.

nually, in such forms as he may deem proper, information concerning the sales of commercial feeds, together with such data on their production and use as he may consider advisable, and a report of the results of the analyses of official samples of commercial feeds sold within the State as compared with the analyses guaranteed in the registration and on the label: Provided, however, That the information concerning production and use of commercial feeds shall not disclose the operations of any person.

Section 14. Constitutionality.—If any clause, sentence, paragraph, or part of this act shall for any reason be judged invalid by any court of competent jurisdiction, such judgment shall not affect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Section 15. Repeals.—The act of July 17, 1935 (P. L. 1166), entitled “An act requiring the licensing of portable grinding mills by the respective counties; fixing fees therefor; and prescribing penalties,” and the act of May 29, 1956 (P. L. 1788), entitled “An act to regulate the sale and distribution of commercial feeds in the Commonwealth of Pennsylvania; conferring powers and imposing duties on the Department of Agriculture; and prescribing penalties,” are repealed.

Section 16. Effective Date.—This act shall take effect January 1, 1966.

APPROVED—The 1st day of September, A. D. 1965.

WILLIAM W. SCRANTON

No. 222

AN ACT

SB 809

Amending the act of May 29, 1945 (P. L. 1108), entitled “An act authorizing the establishment, construction and maintenance of limited access highways and local service highways; and providing for closing certain highways; providing for the taking of private property and for the payment of damages therefor; providing for sharing the costs involved and for the control of traffic thereover; providing penalties, and making an appropriation,” providing for connecting limited access highways with routes in other states and providing for the payment of costs incidental to the lighting thereof.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 2, act of May 29, 1945 (P. L. 1108), entitled “An