

No. 84

AN ACT

SB 776

Amending the act of September 1, 1965 (P.L.436), entitled "An act 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," conforming the act to the model act and providing penalties.

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

Section 1. Clause (4) of section 3, act of September 1, 1965 (P.L.436), known as the "Pennsylvania Commercial Feed Law of 1966," is amended to read:

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

(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] *except unmixed seed, whole or processed, when not adulterated within the meaning of section 7, which are distributed for use as feed or for mixing in feed: Provided, That the secretary by regulation may exempt from this definition, or from specific provisions of this 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 section 7 of this act.*

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Section 2. Section 3 of the act is amended by adding clauses to read:

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

(16) *The term "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 feed intended to affect the structure or any function of the animal body.*

(17) *The term "manufacture" means to grind, mix, or blend, or further process a commercial feed for distribution.*

(18) *The term "pet food" means any commercial feed prepared and distributed for consumption by pets.*

(19) *The term "portable grinding mill" shall mean an apparatus or machine, so constructed as to be moved from place to place and which*

is not located in a permanent place, used and employed as a food or feed grinder or mill to manufacture commercial feed.

Section 3. Section 5, clause (1) of subsection (b) of section 6 and section 9 of the act are amended to read:

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.] stated in such terms as the secretary by regulation determines is required to advise the user of the composition of the feed to support the claims made in the labeling. In all cases the substances or elements must be determinable by laboratory methods from generally recognized sources such as the methods published by the Association of Official Analytical Chemists.**
- (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.] which perform a similar function, or he may exempt such commercial feeds, or any group thereof, from this requirement of an ingredient statement if he finds that such statement is not required in the interest of consumers.**
- (5) The name and principal *mailing* address of the *manufacturer* or the person responsible for distributing the commercial feed.
- (6) *Adequate directions for use for all commercial feeds containing drugs and for such other feeds as the secretary may require by regulation as necessary for their safe and effective use.*
- (7) *Such warning or caution statements as the secretary by regulation determines are necessary for the safe and effective use of 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 nonnutritive 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.] *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:*

- (1) *Name and address of the manufacturer.*
- (2) *Name and address of the purchaser.*
- (3) *Date of delivery.*
- (4) *The product name and brand name, if any, and the net weight of each registered commercial feed used in the mixture, and the net weight of each other ingredient used.*
- (5) *Adequate directions for use for all customer-formula feeds containing drugs and for such other feeds as the secretary may require by regulation as necessary for their safe and effective use.*
- (6) *Such warning or caution statements as the secretary by regulation determines are necessary for the safe and effective use of the customer-formula feed.*

Section 6. Inspection Fees.—* * *

(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.

Inspection fees which are due and owing and have not been remitted to the Commonwealth within fifteen days following the due date shall have a penalty fee of ten per cent or a minimum of ten dollars (\$10) added to the amount due when payment is finally made. The assessment of this penalty fee shall not prevent the Commonwealth from taking other actions as provided in this act.

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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.] *A separate notice shall be given for each such inspection, but a notice 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.*

(c) *If the office or employe 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 shall give to the owner, operator, or agent in charge a receipt describing the samples obtained.*

(d) *If the owner of any factory, warehouse, or establishment described in subsection (a), or his agent, refuses to admit the secretary or his agent to inspect in accordance with subsections (a) and (b), the secretary is authorized to obtain from any court of competent*

jurisdiction a warrant directing such owner or his agent to submit the premises described in such warrant to inspection.

(e) For the purpose of the enforcement of this act, the secretary or his duly designated agent is authorized to enter upon any public or private premises, including any vehicle of transport during regular business hours to have access to, and to obtain samples, and to examine records relating to distribution of commercial feeds.

(f) 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.

(g) 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 (f) of this section.

(h) The results of analysis of an official sample shall be forwarded by the secretary to the distributor and the purchaser within a reasonable time. Upon request, within thirty days the secretary shall furnish to the distributor a portion of the sample concerned.

Section 4. Section 12 of the act, amended June 3, 1968 (Act No. 77), is amended to read:

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, upon conviction thereof in a summary proceeding, 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 is 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 *Commonwealth* 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.

(f) Any person who uses to his own advantage, or reveals to other than the secretary, or officers of the Pennsylvania Department of Agriculture, or to the courts when relevant in any judicial proceeding, any information acquired under the authority of this act, concerning any method, records, formulations, or processes which as a trade secret is entitled to protection, is guilty of a misdemeanor and shall, on conviction thereof, be fined not less than five hundred dollars (\$500) or imprisoned for not less than one year, or both: Provided, That this prohibition shall not be deemed as prohibiting the secretary or his duly authorized agent, from exchanging information of a regulatory nature with duly appointed officials of the United States Government, or of other states, who are similarly prohibited by law from revealing this information.

APPROVED—The 12th day of August, A. D. 1971.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly No. 84.

A handwritten signature in cursive script, reading "C. McLaughlin Tucker".

Secretary of the Commonwealth.