

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 173

S. P. 79

In Senate, January 14, 1971

Referred to Committee on Agriculture. Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Chick of Kennebec.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

AN ACT Creating the Maine Commercial Feed Law.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 7, c. 103, sub-c. IV-A, additional. Chapter 103 of Title 7 of the Revised Statutes is amended by adding a new subchapter IV-A to read as follows:

SUBCHAPTER IV-A

FEEDS

§ 711. Title

This subchapter shall be known as the "Maine Commercial Feed Law of 1971."

§ 712. Definitions

As used in this subchapter, the following words and phrases shall have the following meanings:

1. **Brand.** "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.

2. **Commercial feed.** "Commercial feed" means all materials except unmixed seed, whole or processed, when not adulterated within the meaning of section 717, subsections 1 to 4 which are distributed for use as feed or for mixing in feed, provided that the commissioner 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 com-

pounds 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 717, subsection 1, paragraph A.

3. **Contract feeder.** "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.

4. **Customer-formula feed.** "Customer-formula feed" means commercial feed which consists of a mixture of commercial feeds or feed ingredients or both, each batch of which is manufactured according to the specific instructions of the final purchaser.

5. **Distribute.** "Distribute" means to offer for sale, sell, exchange or barter commercial feed; or to supply, furnish or otherwise provide commercial feed to a contract feeder.

6. **Distributor.** The term "distributor" means any person who distributes.

7. **Drug.** "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.

8. **Feed ingredient.** "Feed ingredient" means each of the constituent materials making up a commercial feed.

9. **Label.** "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.

10. **Labeling.** "Labeling" means all labels and other written, printed or graphic matter upon a commercial feed or any of its containers or wrapper, or accompanying such commercial feed.

11. **Manufacture.** "Manufacture" means to grind, mix or blend, or further process a commercial feed for distribution.

12. **Mineral feed.** "Mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.

13. **Official sample.** "Official sample" means a sample of feed taken by the commissioner or his agent in accordance with section 1721, subsections 3, 5 or 6.

14. **Percent.** "Percent" or "percentages" means percentages by weights.

15. **Person.** "Person" includes individual, partnership, corporation and association.

16. **Pet food.** "Pet food" means any commercial feed prepared and distributed for consumption by pets.

17. Product name. "Product name" means the name of the commercial feed which identifies it as to kind, class or specific use.

§ 713. Enforcing official

This subchapter shall be administered by the Commissioner of Agriculture, hereinafter in this subchapter called the "commissioner."

§ 714. Registration

1. Application for registration. No person shall distribute in this State a commercial feed, except a customer-formula feed, which has not been registered pursuant to this section. The application for registration shall be submitted in the manner prescribed by the commissioner on forms furnished by the commissioner, and shall be accompanied by a fee of \$25 per brand. Upon approval by the commissioner the registration shall be issued to the applicant. All registrations expire on the 31st day of December of each year.

2. Fees. The fees so collected by the commissioner shall be deposited with the Treasurer of State and appropriated for carrying out this subchapter, including the cost of inspection, sampling and analysis of commercial feed. Such funds shall not lapse, but shall remain a continuing carrying account.

3. Refusal. The commissioner is empowered to refuse registration of any commercial feed not in compliance with this subchapter and to cancel any registration subsequently found not to be in compliance with any provision of this subchapter. No registration shall be refused or canceled unless the registrant shall have been given an opportunity to be heard before the commissioner and to amend his application in order to comply with the requirements of this subchapter.

§ 715. Labeling

A commercial feed shall be labeled as follows:

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

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 commissioner 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 must be determinable by laboratory methods such as the methods published by the Association of Official Analytical Chemists;

D. The common or usual name of each ingredient used in the manufacture of the commercial feed:

The commissioner by regulation may permit the use of a collective term for a group of ingredients 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;

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 commissioner may require by regulation as necessary for their safe and effective use;

G. Such precautionary statements as the commissioner by regulation determines are necessary for the safe and effective use of the commercial feed.

2. Customer-formula 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:

A. Name and address of the manufacturer;

B. Name and address of the purchaser;

C. Date of delivery;

D. 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;

E. Adequate directions for use for all customer formula feeds containing drugs and for such other feeds as the commissioner may require by regulation as necessary for their safe and effective use;

F. Such precautionary statements as the commissioner by regulation determines are necessary for the safe and effective use of the customer formula feed.

§ 716. Misbranding

1. A commercial feed shall be deemed to be misbranded:

A. If its labeling is false or misleading in any particular;

B. If it is distributed under the name of another commercial feed;

C. If it is not labeled as required in section 715;

D. If it purports to be or is represented as a commercial feed, 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, if any, prescribed by regulation by the commissioner;

E. If any word, statement, or other information required by or under authority of this subchapter 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.

§ 717. Adulteration

1. A commercial feed shall be deemed to be adulterated:

A. If it bears or contains any poisonous or deleterious substance which may render it injurious to health, but in case the substance is not an added substance, such commercial feed shall not be considered adulterated under this subsection if the quantity of such substance in such commercial feed does not ordinarily render it injurious to health; or

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

C. If it is, or it bears or contains any food additive which is unsafe within the meaning of section 409 of the Federal Food, Drug and Cosmetic Act; or

D. If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section 408 (a) of the Federal Food, Drug and Cosmetic Act; provided that where 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 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 processed 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), of the Federal Food, Drug and Cosmetic Act.

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 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 regulations promulgated by the commissioner to assure that the drug meets the requirement of this 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 promulgating such regulations, the commissioner shall adopt the current 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 determines that they are not appropriate to the conditions which exist in this State;

5. If it contains viable weed seeds in amounts exceeding the limits which the commissioner shall establish by rule or regulation.

§ 718. Prohibited acts

1. The following acts and the causing thereof within the State of Maine are prohibited:

- A. The manufacture or distribution of any commercial feed that is adulterated or misbranded;
- B. The adulteration or misbranding of any commercial feed;
- C. The distribution of agricultural commodities such as whole seed, hay, straw, stover, silage, cobs, husks and hulls, which are adulterated within the meaning of section 717, subsection 1;
- D. The removal or disposal of a commercial feed in violation of an order under section 722;
- E. The failure or refusal to register in accordance with section 714;
- F. The violation of the last paragraph of section 723;
- G. Failure to file reports as required by section 719.

§ 719. Tonnage reports

1. Reports. Any person, firm or corporation who shall manufacture, sell, distribute, transport, offer or expose for sale, distribution or transportation in this State any commercial feeds shall on or before September 1st in each year file with the commissioner on forms prescribed by the commissioner the number of net tons sold by him in the State during the 12 months preceding July 1st of the current year.

2. Records. Each person who is liable for filing such reports shall keep such records as may be necessary or required by the commissioner to indicate accurately the tonnage of commercial feed distributed in this State, and the commissioner shall have the right to examine such records to verify statements of tonnage. Failure to make an accurate statement of tonnage shall constitute sufficient cause for the cancellation of all registration on file by the registrant.

§ 720. Rules and regulations

1. Promulgation. The commissioner is authorized to promulgate such rules and regulations for commercial feeds and pet foods as are specifically authorized in this subchapter and such other reasonable rules and regulations as may be necessary for the efficient enforcement of this subchapter. In the interest of uniformity the commissioner shall by regulation adopt, unless he determines that they are inconsistent with this subchapter or are not appropriate to conditions which exist in this State, the following:

- A. The official definitions of seed 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 promulgated pursuant to the authority of the Federal Food, Drug and Cosmetic Act (U. S. C. Sec. 301, et seq.); provided that the

commissioner would have the authority under this subchapter to promulgate such regulations.

2. **Publication.** Before the issuance, amendment or repeal of any rule or regulation authorized by this subchapter, the commissioner shall publish the proposed regulation, amendment or notice to repeal an existing regulation in a manner reasonably calculated to give interested parties, including all current registrants, adequate notice and shall afford all interested persons an opportunity to present their views thereon, orally or in writing, within a reasonable period of time. After consideration of all views presented by interested persons, the commissioner shall take appropriate action to issue the proposed rule or regulation or to amend or repeal an existing rule or regulation. Notwithstanding this paragraph, if the commissioner, pursuant to the authority of this subchapter, adopts the official definitions of feed ingredients or official feed terms as adopted by the Association of American Feed Control Officials, or regulations promulgated pursuant to the authority of the Federal Food, Drug and Cosmetic Act, any amendment or modification adopted by said association or by the Secretary of Health, Education and Welfare in the case of regulations promulgated pursuant to the Federal Food, Drug and Cosmetic Act, shall be adopted automatically under this subchapter without regard to the publication of the notice required by this subsection unless the commissioner by order specifically determines that said amendment or modification shall not be adopted.

§ 721. Inspection, sampling and analysis

1. **Inspection.** For the purpose of enforcement of this subchapter, 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 duly designated by the commissioner is authorized to enter, during normal business hours, any factory, warehouse or establishment within the State in which commercial feeds are manufactured, processed, packed or held for distribution, or to enter any vehicle being used to transport or hold such feeds, and 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 good manufacturing practice regulations established under section 717, subsection 4.

2. **Completion.** 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. **Receipt of sample.** 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 shall give to the owner, operator or agent in charge a receipt describing the samples obtained.

4. **Warrant.** If the owner of any factory, warehouse or establishment described in subsection 1, or his agent, refuses to admit the commissioner or

his agent to inspect in accordance with subsections 1 and 2, the commissioner is authorized to obtain from any state court a warrant directing such owner or his agent to submit the premises described in such warrant to inspection.

5. **Entry.** For the purpose of the enforcement of this subchapter, the commissioner 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.

6. **Methods.** 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. The Director of the Maine Agricultural Experiment Station shall annually analyze, or cause to be analyzed, samples of commercial feeds submitted by the commissioner.

7. **Results.** The results of all analyses of official samples shall be forwarded by the commissioner to the person named on the label and to the purchaser. When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded, and upon request within 30 days following receipt of the analysis, the commissioner shall furnish to the registrant a portion of the sample concerned.

8. **Official sample.** The commissioner, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided by the official sample as defined in section 713, subsection 13 and obtained and analyzed as provided for in section 721, subsections 3, 5 and 6.

§ 722. Detained commercial feeds

1. **Withdrawal from distribution.** "Withdrawal from distribution" orders. When the commissioner 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 subchapter or of any of the prescribed regulations under this subchapter, he 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 commissioner or the court. The commissioner shall release the lot of commercial feed so withdrawn when said provisions and regulations have been complied with. If compliance is not obtained within 30 days, the commissioner may begin, or upon request of the distributor or registrant shall begin, proceedings for condemnation.

2. **Condemnation and confiscation.** "Condemnation and confiscation." Any lot of commercial feed not in compliance with said provisions and regulations shall be subject to seizure on complaint of the commissioner 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 subchapter 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 giv-

ing 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 subchapter.

§ 723. Penalties

Any person convicted of violating any of the provisions of this subchapter or who shall impede, hinder or otherwise prevent, or attempt to prevent, said commissioner or his duly authorized agent in performance of his duty in connection with this subchapter, shall be adjudged guilty of a misdemeanor and shall be punished by a fine of not less than \$100 nor more than \$200 for the first violation, and not less than \$200 nor more than \$500 for a subsequent violation.

Nothing in this subchapter shall be construed as requiring the commissioner or his representative to report for prosecution or institute seizure proceedings or issue a withdrawal from distribution order, as a result of minor violations of this subchapter, or when he believes the public interest will best be served by suitable notice of warning in writing.

It shall be the duty of each county attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

The commissioner is 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 subchapter or any rule or regulation promulgated under this subchapter notwithstanding the existence of other remedies at law. Said injunction to be issued without bond.

Any person adversely affected by an act, order or ruling made pursuant to this subchapter may within 45 days thereafter bring action in the Superior Court in the county where the enforcement official has his office for judicial review of such actions. The form of the proceeding shall be any which may be provided by statutes of this State to review decisions of administrative agencies, or in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunctions.

Any person who uses to his own advantage, or reveals to other than the commissioner or officers of the Maine Department of Agriculture, or to the courts when relevant in any judicial proceeding, any information acquired under the authority of this subchapter, 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 be punished by a fine of not less than \$100 or by imprisonment for not less than one year, or by both. This prohibition shall not be deemed as prohibiting the commissioner 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.

§ 724. Cooperation with other entities

The commissioner may cooperate with and enter into agreements with governmental agencies of this State, other states, agencies of the Federal Govern-

ment and private associations in order to carry out the purpose of this subchapter.

§ 725. Publication

The commissioner shall publish at least annually, 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; provided that the information concerning production and use of commercial feed shall not disclose the operations of any person. The results of analysis of commercial feeds as determined by the Director of the Maine Agricultural Experiment Station shall be published by him in the bulletins or reports of the experiment station, together with the names of persons from whom the samples were obtained, the names of the manufacturers thereof and such additional information as to him may seem advisable.

Sec. 2. R. S., T. 7, §§ 691 - 701, repealed. Sections 691 to 701 of Title 7 of the Revised Statutes are repealed.

Sec. 3. Effective date. This Act shall take effect and be in force from and after the first day of January, 1972.

STATEMENT OF FACT

This Act is being introduced to promote uniformity in the law, regulations and enforcement policies concerning the sale and distribution of animal feeds in line with recommendations of national associations of the feed industry and state and federal government agencies.