

CHAPTER 255

AGRICULTURE

SENATE BILL 07-207

BY SENATOR(S) Schwartz, Fitz-Gerald, Isgar, Romer, Shaffer, and Tochtrop;
also REPRESENTATIVE(S) Sonnenberg, Carroll M., Curry, Gibbs, Hodge, and Labuda.

AN ACT

CONCERNING THE "COLORADO FEED LAW".

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 35-60-101, Colorado Revised Statutes, is amended to read:

35-60-101. Short title. This article shall be known and may be cited as the "Colorado ~~Commercial~~ Feed Law".

SECTION 2. 35-60-102 (6), (10), (11), (12), and (13), Colorado Revised Statutes, are amended, and the said 35-60-102 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

35-60-102. Definitions. As used in this article, unless the context otherwise requires:

(3.5) "CONTRACT FEEDER" MEANS A PERSON WHO, AS AN INDEPENDENT CONTRACTOR, FEEDS COMMERCIAL FEED TO ANIMALS PURSUANT TO A CONTRACT WHEREBY SUCH PERSON'S REMUNERATION IS DETERMINED WHOLLY OR PARTIALLY BY FEED CONSUMPTION, MORTALITY, PROFITS, OR AMOUNT OR QUALITY OF PRODUCT.

(6) "Distribute" means to sell, offer to sell, exchange, ~~or barter, commercial feed or to supply, furnish, or otherwise provide commercial feed. to a contract feeder.~~ "Distribute" does not include sales of commercial feed by a contract ~~finisher~~ FEEDER as a part of a custom feeding agreement.

(9.5) "FEEDER" MEANS ANY PERSON WHO PROVIDES FEED DIRECTLY TO ANY CATTLE, SHEEP, GOATS, SWINE, POULTRY, OR ANY OTHER ANIMALS IF SUCH ANIMALS

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

ARE RAISED TO PRODUCE HUMAN FOOD. "FEEDER" INCLUDES A CONTRACT FEEDER.

(10) "Feed ingredient" means a constituent material used in the manufacture of a ~~commercial~~ feed that becomes part of the ~~commercial~~ feed.

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

(12) "Labeling" means all labels and other written, printed, or graphic matter upon a ~~commercial~~ feed or any of its containers or wrappers or ~~accompanying~~ THAT ACCOMPANY THE FEED OR ARE OTHERWISE PUBLISHED OR COMMUNICATED IN ANY MANNER BY A DISTRIBUTOR OF such ~~commercial~~ feed.

(13) "Manufacture" means to grind, mix, blend, or further process a ~~commercial~~ feed. ~~for distribution.~~

SECTION 3. 35-60-103 (1) and (2) (c) (I), Colorado Revised Statutes, are amended to read:

35-60-103. Commercial feed registration - rules. (1) No person shall manufacture commercial feed within the state, or allow his or her name to appear on the label of a commercial feed as guarantor, without first registering with the department. Such registration shall expire ~~on the last day of April of each year and may be renewed annually, except that a registration that occurs between January 1, 2000, and April 29, 2000, shall expire on April 30, 2001~~ ON THE DATE SPECIFIED BY THE COMMISSIONER BY RULE AND MAY BE RENEWED ANNUALLY.

(2) Nothing in this article shall require a person to register with the department to do the following:

(c) Manufacture or distribute a customer-formula feed; except that the manufacturer of such customer-formula feed shall:

(I) Distribute such customer-formula feed only to the ~~retail~~ FINAL purchaser for whom the feed was formulated;

SECTION 4. 35-60-104 (1) (d), (2) (b), and (4), Colorado Revised Statutes, are amended to read:

35-60-104. Registration fees. (1) A person registering with the department pursuant to section 35-60-103 (1) shall submit a form provided by the department that includes the following information:

(d) A statement that the ~~inspection~~ DISTRIBUTION fees and feed tonnage report required under section 35-60-105 have been paid and are current. ~~A feed manufacturer is not required to pay inspection fees on grain used in a customer-formula feed.~~

(2) (b) Any person who fails to register within fifteen business days after notification of the requirement to register, or any registrant who fails to comply with

the registration renewal requirements, shall pay a late fee in addition to the registration fee. To and including June 30, 2007, the late fee shall be ~~equal to the annual registration fee~~ established by the agricultural commission. On and after July 1, 2007, the late fee shall be ten dollars.

(4) The commissioner, after an administrative hearing pursuant to article 4 of title 24, C.R.S., may deny registration, place a registrant on probation, or restrict, suspend, revoke, or refuse to renew the registration of a person who has violated any provision of this article or any rule of the commissioner promulgated pursuant to this article OR FALSIFIED ANY INFORMATION REQUESTED BY THE COMMISSIONER. The commissioner may place conditions that limit production or distribution of a particular ~~commercial~~ feed on the registration of any person found to have violated any provision of this article. Such restriction, revocation, suspension, or refusal to renew a registration, or the placement of ~~condition~~ CONDITIONS on a registration, may be in addition to or in lieu of penalties or fines imposed by section 35-60-113.

SECTION 5. The introductory portion to 35-60-105 (1), 35-60-105 (1) (a), (1) (b), (1) (c) (I) (A), (1) (c) (II), (1) (d) (I) (A), (1) (d) (II), (2) (a) (I), and (2) (b), the introductory portion to 35-60-105 (3), and 35-60-105 (3) (a), (4), and (5), Colorado Revised Statutes, are amended to read:

35-60-105. Distribution fees - reports - repeal. (1) Except as provided in subsection (5) of this section, ~~an inspection fee~~ DISTRIBUTION FEES of fifteen cents per ton or, to and including June 30, 2007, in an amount established by the agricultural commission shall be paid on commercial feeds distributed in this state by the person whose name appears on the label as the manufacturer, guarantor, or distributor, subject to the following conditions:

(a) No fee shall be paid on a commercial feed if the payment has already been made by a previous distributor. IF THE FEE HAS NOT BEEN PAID BY A PREVIOUS DISTRIBUTOR, THE FINAL DISTRIBUTOR LISTED ON THE LABEL AS THE MANUFACTURER, GUARANTOR, OR DISTRIBUTOR SHALL PAY THE FEE.

(b) No fee shall be paid on customer-formula feeds if the ~~inspection~~ DISTRIBUTION fee has been paid on the commercial feeds that are used as ingredients in the customer-formula feeds. NO FEED INGREDIENT THAT IS SUPPLIED BY A FARMER OR FEEDER TO A MANUFACTURER SHALL BE SUBJECT TO A FEE WHEN USED BY THE MANUFACTURER TO PRODUCE A CUSTOMER-FORMULA FEED FOR THE FARMER OR FEEDER.

(c) (I) (A) To and including June 30, 2007, an annual ~~inspection~~ DISTRIBUTION fee ~~as~~ established by the agricultural commission shall be paid in lieu of the ~~inspection~~ DISTRIBUTION fee on commercial feed that is distributed in the state only in packages of ten pounds or less. Products sold in packages of ten pounds or less are not subject to the minimum set forth in paragraph (d) of this subsection (1).

(II) On and after July 1, 2007, an annual ~~inspection~~ DISTRIBUTION fee of ten dollars per product shall be paid in lieu of the ~~inspection~~ DISTRIBUTION fee on commercial feed that is distributed in the state only in packages of ten pounds or less. Products sold in packages of ten pounds or less are not subject to the ~~twenty-five-dollar per year~~ minimum set forth in paragraph (d) of this subsection

(1).

(d) (I) (A) To and including June 30, 2007, the minimum total ~~inspection~~ DISTRIBUTION fee paid shall be as established by the agricultural commission.

(II) On and after July 1, 2007, the minimum total ~~inspection~~ DISTRIBUTION fee paid shall be twenty-five dollars per year.

(2) (a) (I) To and including June 30, 2007, in the case of a commercial feed that is distributed in the state both in packages of ten pounds or less and in packages weighing over ten pounds, the ~~inspection~~ DISTRIBUTION fee required pursuant to subsection (1) of this section shall be paid on the commercial feeds distributed in package weights over ten pounds with a minimum ~~inspection~~ DISTRIBUTION fee as established by the agricultural commission. The annual flat ~~inspection~~ DISTRIBUTION fee required pursuant to paragraph (c) of subsection (1) of this section shall be paid on the products sold in packages of ten pounds or less.

(b) On and after July 1, 2007, in the case of a commercial feed that is distributed in the state both in packages of ten pounds or less and in packages weighing over ten pounds, the fifteen-cent per ton ~~inspection~~ DISTRIBUTION fee shall be paid on the commercial feeds distributed in package weights over ten pounds with a minimum ~~inspection~~ DISTRIBUTION fee of twenty-five dollars. The annual flat fee of ten dollars per product shall be paid on the products sold in packages of ten pounds or less.

(3) Each person who is required to pay the ~~inspection~~ DISTRIBUTION fee set forth in subsection (1) of this section shall:

(a) File with the department EACH YEAR, not later than the ~~last day of January of each year~~ ~~an annual~~ DUE DATE SPECIFIED BY THE COMMISSIONER BY RULE, A statement that sets forth the number of net tons of commercial feeds distributed in the state ~~during the preceding calendar year.~~ ~~Inspection~~ AND ANY OTHER INFORMATION REQUIRED BY THE COMMISSIONER AS SET FORTH IN RULE. DISTRIBUTION fees that are due in accordance with subsection (1) of this section shall be paid when the annual statement is filed. ~~Inspection~~ DISTRIBUTION fees that have not been remitted to the department ~~within fifteen calendar days following~~ BY the due date shall be assessed a penalty fee of ten percent of the amount due or a minimum fee as established by the agricultural commission, whichever amount is greater, which shall be added to the ~~inspection~~ DISTRIBUTION fees that are due and owed. The assessment of a penalty fee is in addition to and not a substitute for any other penalties or remedies available to the commissioner under this article.

(4) (a) A distributor who is subject to the ~~inspection~~ DISTRIBUTION fees for small packages of ten pounds or less shall file with the commissioner, along with the annual statement required by paragraph (a) of subsection (3) of this section, a list of all small package items weighing ten pounds or less that are distributed in this state. New products added during the year must be submitted to the commissioner as a supplement to this list before distribution.

(b) If the list required in paragraph (a) of this subsection (4) is not received with the annual statement or ~~within fifteen days after its~~ BY THE due date SPECIFIED BY

THE COMMISSIONER, a penalty fee of ten dollars per product or, to and including June 30, 2007, in an amount established by the agricultural commission, shall be added to the amount due. The assessment of a penalty fee is in addition to and not a substitute for any other penalties or remedies available to the commissioner under this article.

(5) A person other than the manufacturer, guarantor, or distributor may assume liability for payment of the ~~inspection~~ DISTRIBUTION fee pursuant to subsection (1) of this section.

SECTION 6. The introductory portion to 35-60-106 (1), Colorado Revised Statutes, is amended to read:

35-60-106. Labeling - general requirements - commercial and customer-formula feeds. (1) **Commercial feed label contents.** A commercial feed ~~or independent feed formula~~ shall be labeled with the information required in this subsection (1). Such information shall appear on the label in the following order:

SECTION 7. 35-60-106 (2), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

35-60-106. Labeling - general requirements - commercial and customer-formula feeds. (2) **Customer-formula feed label contents.** The manufacturer of a customer-formula feed shall provide the purchaser of that feed with all of the following information, in writing, when the manufacturer delivers the customer-formula feed to the purchaser:

(i) A STATEMENT ON THE LABEL OR LABELING THAT STATES "THIS FEED WAS MANUFACTURED ACCORDING TO SPECIFIC INSTRUCTIONS PROVIDED BY _____ (INSERT NAME OF PERSON WHO PROVIDED THE INSTRUCTIONS) AND CANNOT BE SOLD TO ANY OTHER PERSON."

SECTION 8. 35-60-107 (1), (2) (a), (2) (i), (2) (k), (3) (d), and (3) (e), Colorado Revised Statutes, are amended, and the said 35-60-107 (2) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

35-60-107. Adulteration and misbranding. (1) (a) No person may ~~sell~~ MANUFACTURE or distribute in this state ~~a~~ ANY feed that is adulterated or misbranded.

(b) NO PERSON MAY USE ANY FEED THAT IS ADULTERATED FOR ANY CATTLE, SHEEP, GOATS, SWINE, POULTRY, OR ANY OTHER ANIMALS IF SUCH ANIMALS ARE RAISED TO PRODUCE HUMAN FOOD.

(2) A feed is adulterated if any of the following apply:

(a) The feed bears or contains any poisonous or deleterious substance that may render the feed harmful to ~~public~~ health; except that, if the poisonous or deleterious substance is not an added substance, a ~~commercial~~ feed shall not be considered adulterated under this subsection (2) if the quantity of such substance in the

~~commercial~~ feed does not ordinarily render it harmful to ~~public~~ health.

(i) The feed is manufactured, packaged, or held under unsanitary conditions that may contaminate it with filth or make it harmful to ~~public~~ health.

(k) The feed container is composed, in whole or in part, of any poisonous or deleterious substance that may render the contents harmful to ~~public~~ health.

(p) THE FEED IS MANUFACTURED OR DISTRIBUTED OR USED AS FEED IN A MANNER THAT DOES NOT CONFORM WITH, OR CONTAINS ANY SUBSTANCE THAT IS PROHIBITED BY, ANY RULES ADOPTED BY THE COMMISSIONER UNDER THIS ARTICLE, INCLUDING, BUT NOT LIMITED TO, RULES PERTAINING TO THE PREVENTION OF TRANSMISSIBLE SPONGIFORM ENCEPHALOPATHIES.

(3) A feed is misbranded if any of the following circumstances occur:

(d) The feed purports ~~to be or is represented as containing a commercial feed, or if it purports to contain or is represented as containing a commercial feed ingredient~~ that does not conform to the definition of that ~~commercial feed or commercial feed ingredient~~ prescribed by rule of the commissioner; or

(e) Any word, statement, or other information required by or under authority of this article OR ANY RULE ADOPTED PURSUANT TO THIS ARTICLE to appear on the feed label or labeling is not prominently and conspicuously placed on the label 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. 35-60-108 (1) (a), (1) (b), (1) (d), and (1) (g), Colorado Revised Statutes, are amended, and the said 35-60-108 (1) is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

35-60-108. Prohibited acts. (1) The following acts and the causing thereof are prohibited:

(a) The manufacture or distribution of any ~~commercial~~ feed that is adulterated or misbranded;

(a.5) THE USE OF FEED THAT IS ADULTERATED FOR ANY CATTLE, SHEEP, GOATS, SWINE, POULTRY, OR ANY OTHER ANIMALS IF SUCH ANIMALS ARE RAISED TO PRODUCE HUMAN FOOD;

(b) The adulteration or misbranding of any ~~commercial~~ feed;

(d) The removal or disposal of a ~~commercial~~ feed in violation of section 35-60-111;

(g) THE failure OR REFUSAL to pay ~~inspection~~ DISTRIBUTION fees and file reports in accordance with section 35-60-105;

(h) THE SALE OF CUSTOMER-FORMULA FEED TO ANY PERSON OTHER THAN THE PERSON WHO PROVIDED THE MANUFACTURING INSTRUCTIONS;

(i) THE FAILURE TO MAINTAIN ANY RECORDS REQUIRED BY THIS ARTICLE OR ANY RULE PROMULGATED PURSUANT TO THIS ARTICLE;

(j) THE FAILURE TO COMPLY WITH ANY OTHER PROVISION OF THIS ARTICLE OR THE RULES PROMULGATED PURSUANT TO THIS ARTICLE NOT OTHERWISE SPECIFIED IN THIS SECTION; AND

(k) THE FALSIFICATION OF ANY INFORMATION GIVEN TO THE COMMISSIONER.

SECTION 10. The introductory portion to 35-60-109 (1), Colorado Revised Statutes, is amended to read:

35-60-109. Authority of the commissioner - rules. (1) The commissioner is authorized to promulgate, amend, and repeal, in accordance with the provisions of the "State Administrative Procedure Act", article 4 of title 24, C.R.S., such rules as are specifically required by this article and such other reasonable rules, INCLUDING ANY RECORD-KEEPING REQUIREMENTS, as may be necessary for the efficient enforcement of this article. In the interest of uniformity, the commissioner shall by rule adopt, unless the commissioner determines that they are inconsistent with the provision of this article or are not appropriate to conditions that exist in this state, the following:

SECTION 11. 35-60-110 (1), (3), and (5), Colorado Revised Statutes, are amended to read:

35-60-110. Enforcement - inspection - sampling - analysis. (1) For the purpose of enforcing this article and the rules promulgated pursuant thereto, including the determination of whether or not an operation may be subject to ~~the provisions of~~ this article, the commissioner, upon presenting appropriate credentials to the owner, operator, or agent in charge, is authorized to:

(a) Enter, during normal business hours, any ~~factory, warehouse, or establishment~~ BUILDING, STRUCTURE, LAND, VEHICLE, OR OTHER PREMISES OR PROPERTY, public or private, within the state, in OR ON which ~~commercial~~ feeds are manufactured, processed, packed, ~~sold, or held for distribution~~ DISTRIBUTED, TRANSPORTED, STORED, DISPOSED OF, OR USED AS FEED FOR ANY CATTLE, SHEEP, GOATS, SWINE, POULTRY, OR ANY OTHER ANIMALS IF SUCH ANIMALS ARE RAISED TO PRODUCE HUMAN FOOD, and to inspect such ~~factory, warehouse, establishment~~ PREMISES, PROPERTY, OR VEHICLE and all pertinent equipment, finished and unfinished materials, containers, RECORDS, and labeling ~~therein~~ IN OR ON SUCH PREMISES, PROPERTY, OR VEHICLE. The inspection may include obtaining samples and the verification of records and production and control procedures as may be necessary to determine compliance with the ~~good manufacturing practices as established~~ RULES ADOPTED under section 35-60-107 (2) (n) OR (2) (p).

(b) ~~Enter and inspect any vehicle being used to transport or hold commercial feeds, including inspection of all pertinent equipment, finished and unfinished materials, containers, and labeling therein.~~

(3) If the owner, or the owner's agent, of any ~~factory, warehouse, establishment,~~ OR BUILDING, STRUCTURE, LAND, vehicle, OR OTHER PREMISES OR PROPERTY

described in subsection (1) of this section refuses to admit the commissioner to inspect such premises, property, or vehicle, the commissioner is authorized to obtain from the district or county court for the district or county in which such premises, property, or vehicle is located a warrant to enter and inspect such premises, property, or vehicle and to sample such ~~commercial~~ feeds, feed ingredients, or raw agricultural commodities according to ~~the provisions of this section~~ prior to entry, inspection, and sampling. The district and county courts of this state are empowered to issue such warrants upon a proper showing of the need for such entry, inspection, and sampling. Any information concerning any methods, records, formulations, or processes that are entitled to protection as trade secrets UNDER THE PUBLIC RECORDS ACT, PART 2 OF ARTICLE 72 OF TITLE 24, C.R.S., and that are obtained in the course of the inspection or sampling shall be kept confidential.

(5) The commissioner, in determining whether a ~~commercial~~ feed is in violation in any component, shall be guided by the official sample as defined in section 35-60-102 (15) and obtained and analyzed in accordance with subsections (1) and (2) of this section.

SECTION 12. 35-60-111, Colorado Revised Statutes, is amended to read:

35-60-111. Detained feeds. (1) **Stop distribution, manufacture, or use as feed.** When the commissioner has reasonable cause to believe any lot of ~~commercial~~ feed is ~~being distributed~~ in violation of any of the provisions of this article or any rules promulgated pursuant thereto, the commissioner may issue and enforce a written or printed "stop ~~sale~~" or "~~withdrawal from distribution~~" DISTRIBUTION, MANUFACTURE, OR USE AS FEED" order, warning ~~the distributor not to dispose~~ ANY DISTRIBUTOR, MANUFACTURER, OR FEEDER of the lot of ~~commercial~~ feed NOT TO DISTRIBUTE, USE AS FEED, OR DISPOSE OF SUCH 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~~ SUBJECT TO THE ORDER when such provisions and ~~regulations~~ RULES have been complied with. If the distributor does not come into compliance within thirty days, the commissioner may begin, or upon request of the distributor, ~~or~~ manufacturer, OR FEEDER shall begin, proceedings for condemnation.

(2) **Condemnation and confiscation.** Any lot of ~~commercial~~ feed not in compliance with the provisions of this article or rules promulgated pursuant thereto shall be subject to seizure on complaint of the commissioner to a court of competent jurisdiction in the district or county where the ~~commercial~~ feed is located. In the event the court finds the ~~commercial~~ feed to be in noncompliance ~~of~~ WITH this article or rules promulgated pursuant thereto and orders the condemnation of ~~said~~ ~~commercial~~ SUCH feed, it shall be disposed of in any manner consistent with the quality of the ~~commercial~~ feed and the laws of this state; except that such disposal of the ~~commercial~~ feed shall not be ordered by the court without first giving the distributor or other claimant an opportunity to apply to the court for release of the ~~commercial~~ feed or for permission to process or relabel the ~~commercial~~ feed to bring it into compliance with this article or rules promulgated pursuant thereto.

SECTION 13. 35-60-112 (2) (c) and (3), Colorado Revised Statutes, are amended to read:

35-60-112. Penalties. (2) Nothing in this article shall be construed to require the commissioner or agent to:

(c) Issue a "stop sale" or "~~withdrawal from distribution~~" DISTRIBUTION, MANUFACTURE, OR USE AS FEED" order as a result of minor violations of this article or rules promulgated pursuant thereto.

(3) 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 commissioner reports a violation for prosecution, the commissioner shall allow an opportunity for the ~~distributor~~ ALLEGED VIOLATOR to present his or her view to the commissioner.

SECTION 14. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 22, 2007