

ENROLLED SENATE
BILL NO. 539

By: Muegge of the Senate

and

Maddux of the House

An Act relating to the Oklahoma Commercial Feed Law; amending 2 O.S. 1991, Sections 8-41.3, 8-41.4, 8-41.5, 8-41.7, 8-41.8, 8-41.9, 8-41.11, 8-41.12 and 8-41.15, which relate to definitions, registration of feed dealers and manufacturers, feed labels, adulteration, prohibited acts, inspection fees, enforcement, violations and penalties, and annual publication of commercial feed information; modifying definitions; providing exemption for certain commodities; providing definition of deleterious substance; requiring license; prescribing form; providing procedure for setting fees; providing certain hearing; modifying label information; construing provisions; defining prohibited acts; modifying inspection fee; requiring semi-annual statement; modifying name; providing penalty; modifying certain publishing requirement of State Board of Agriculture; updating statutory references; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 2 O.S. 1991, Section 8-41.3, is amended to read as follows:

Section 8-41.3 When used in the Oklahoma Commercial Feed Law the term:

1. "Person" includes individual, partnership, corporation, ~~and~~ association or other legal entity;

2. "Distribute" means to offer for sale, sell, exchange, ~~or~~ barter, supply, furnish, or otherwise provide commercial feed;

3. "Distributor" means any person who distributes;

4. "Commercial feed" means all materials except whole seeds unmixed or physically altered entire unmixed seeds, when not adulterated within the meaning of paragraph 1 of Section 8-41.7 of this title, which are distributed for use as feed or for mixing in feed. The term commercial feed shall not include any feed or any ingredient of feed which is to be used by a contract feeder and fed to livestock and poultry, owned solely by the manufacturer of the feed. ~~The Board by regulation may exempt from this definition, or from specific provisions of this act, Provided further, that~~ 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 8-41.7 of this title, shall be exempt from this definition and from the provisions of this act;

5. "Feed ingredient" means each of the constituent materials making up a commercial feed;

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

7. "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. "Customer-formula feed" means commercial feed which consists of a mixture of commercial feeds and/or feed ingredients each batch of which is manufactured according to the specific instructions of the final purchaser;

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

10. "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;

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

12. "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;

13. "Labeling" means all labels and other written, printed, or graphic matter (1) upon a commercial feed or any of its containers or wrapper or (2) accompanying such commercial feed;

14. "Ton" means a net weight of two thousand (2,000) pounds avoirdupois;

15. "Percent" or "percentages" means percentages by weights;

16. "Official sample" means a sample of feed taken by the Board or its agent in accordance with the provisions of subsections C or D of Section 8-41.11 of this title;

17. "Contract feeder" means a person who as an independent contractor feeds animals pursuant to a contract whereby such 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;

18. "Pet food" means any commercial feed prepared and distributed for consumption by ~~pets~~ dogs and cats;

19. "Pet" means any domesticated animal normally maintained in or near the household ~~or~~ of the owner thereof;

20. "Specialty pet food" means any commercial feed prepared and distributed for consumption by specialty pets; ~~and~~

21. "Specialty pet" means any domesticated animal normally maintained in a cage or tank, such as, but not limited to, gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes and turtles; and

22. "Deleterious substance" means any substance including but not limited to dust, dirt, filth or excrement derived from insects, birds (except domestic poultry litter), rodents, or other animals that may render a feed material harmful or injurious when consumed by animals.

SECTION 2. AMENDATORY 2 O.S. 1991, Section 8-41.4, is amended to read as follows:

Section 8-41.4 A. No person shall ~~manufacture a commercial feed in this state unless he has filed with the State Board of Agriculture on forms provided by the Board, his name, place of~~

business and location of each manufacturing facility sell, offer, or expose for sale or distribute in this state any commercial feed unless such person holds a valid license. Each license application must list each manufacturing and distribution facility which is or will be engaged in distributing any feed sold, offered for sale or distributed by the applicant. No license shall be required of persons distributing or selling only packages or containers of any other licensed person as packaged and labeled by the person and whose name and address appear on the label as required in Section 8-41.5 of this title. Any out-of-state person who has no distribution facility within this state shall obtain a license for such entity's principal out-of-state office if such out-of-state person or other entity sells, offers or exposes for sale or distributes any commercial feed in this state. Application shall be made on a form prescribed and furnished by the State Board of Agriculture. The application shall be accompanied by an annual license fee established by the Board. The Board may establish an annual fee for licensing distributors pursuant to the provisions of the Oklahoma Commercial Feed Law. The maximum license fee shall not exceed Twenty Dollars (\$20.00), but in no case shall the fee exceed the reasonable costs of review and inspection services rendered by the Department in connection with implementing the provisions of the Oklahoma Commercial Feed Law. The Board shall follow the procedures required by Article I of the Administrative Procedures Act for promulgation of rules in establishing the licensing fees. Licenses shall be renewed annually on or before July 1. Commercial feed license renewal applications received after July 15 shall be subject to a late filing fee of Fifty Dollars (\$50.00).

B. No person shall distribute in this state a commercial feed, except a customer-formula feed, which has not been registered pursuant to the provisions of this section. The application for registration shall be submitted in the manner prescribed by the Board. Upon approval by the Board the registration shall be issued to the applicant. A registration shall continue in effect unless it is canceled by the registrant or unless it is canceled by the Board pursuant to subsection C of this section Any license issued hereunder may be suspended, canceled, revoked, refused issue, or refused reissue by the Board after a hearing in accordance with the Administrative Procedures Act, Section 250 et seq. of Title 75 of the Oklahoma Statutes, and opportunity to be heard has been given to the holder of the license. Notice thereof shall be given to the holder of the license by registered or certified mail at least twenty (20) days prior to the date of the hearing. Such suspension, cancellation, revocation, refusal to issue or reissue may be made if the Board finds any violation of the Oklahoma Commercial Feed Law or of rules or standards prescribed by the Board.

C. The Board is empowered to refuse registration of any commercial feed not in compliance with the provisions of this act and to cancel any registration subsequently found not to be in compliance with any provision of this act. Provided, that no registration shall be refused or canceled unless the registrant shall have been given an opportunity to be heard before the Board and to amend his application in order to comply with the requirements of this act When the Board has reasonable cause to believe a violation of the law may exist, copies of labels and labeling of commercial feed being distributed may be requested in order to determine compliance with the provisions of the Oklahoma Commercial Feed Law, Section 8-41.1 et seq. of this title. Such request shall not be construed as a registration procedure.

SECTION 3. AMENDATORY 2 O.S. 1991, Section 8-41.5, is amended to read as follows:

Section 8-41.5 A commercial feed shall be labeled as follows:

1. 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~~ contents statement (weight or volume),
- 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 Board 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 International,
- d. the official, common or usual name of each ingredient used in the manufacture of the commercial feed. Provided, that the Board by regulation may permit the use of a collective term for a group of ingredients which perform a similar function, or they may exempt such commercial feeds, or any group thereof, from this requirement of an ingredient statement if they find 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 Board may require by regulation as necessary for their safe and effective use, and
- g. such precautionary statements as the Board by regulation determines are necessary for the safe and effective use of the commercial feed.

2. Label format shall comply with applicable state and/or federal packaging and labeling regulations.

3. 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 Board may require by regulation as necessary for their safe and effective use,
- f. the direction for use and precautionary statements as required by regulations promulgated by the Board under authority of this act, and
- g. if a drug-containing product is used:
 - (1) the purpose of the medication (claim statement), and
 - (2) the established name of each active drug ingredient and the level of each drug used in the

final mixture expressed in accordance with regulations promulgated by the Board under authority of this act.

SECTION 4. AMENDATORY 2 O.S. 1991, Section 8-41.7, is amended to read as follows:

Section 8-41.7 A commercial feed shall be deemed to be adulterated:

1. 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 when utilized according to label and/or labeling directions, 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 (i) a pesticide chemical in or on a raw agricultural commodity; or (ii) 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, or
 - e. if it is, or it bears or contains, any color additive which is unsafe within the meaning of Section 706 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 Board 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 Board 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~~ the Board determines that they are not appropriate to the conditions which exist in this state; ~~and or~~

5. If it contains viable weed seeds in amounts exceeding the limits which the Board shall establish by authority of Section 8-28 of ~~Title 2 of the Oklahoma Statutes~~ this title.

SECTION 5. AMENDATORY 2 O.S. 1991, Section 8-41.8, is amended to read as follows:

Section 8-41.8 The following acts and the causing thereof within the State of Oklahoma are hereby prohibited:

1. The manufacture or distribution of any commercial feed that is adulterated or misbranded;
2. The adulteration or misbranding of any commercial feed;
3. The distribution of agricultural commodities such as whole seed, hay, straw, stover, silage, cobs, husks, and hulls, which are adulterated within the meaning of paragraph 1 of Section ~~7~~ 8-41.7 of this ~~act~~ title;
4. The removal or disposal of a commercial feed in violation of an order under Section ~~12~~ 8-41.12 of this ~~act~~ title;
5. The failure or refusal to ~~register~~ obtain a commercial feed license in accordance with Section ~~4~~ 8-41.4 of this ~~act~~ title;
6. The violation of subsection F of Section ~~13~~ 8-41.13 of this ~~act~~ title; and
7. Failure to pay inspection fees and file reports as required by Section ~~9~~ 8-41.9 of this ~~act~~ title.

SECTION 6. AMENDATORY 2 O.S. 1991, Section 8-41.9, is amended to read as follows:

Section 8-41.9 A. An inspection fee at the rate of fifteen cents (\$0.15) per ton shall be paid on commercial feeds and/or feed ingredients distributed in this state by the person whose name appears on the label as the manufacturer, guarantor or distributor, except that a person other than the manufacturer, guarantor or distributor may assume liability for the inspection fee, subject to the following:

1. No fee shall be paid on a commercial feed if the payment has been made by a previous distributor;
2. The minimum inspection fee shall be ~~Five Dollars (\$5.00) per quarter~~ Ten Dollars (\$10.00) semi-annually; and
3. No fee shall be paid on ~~customer-formula~~ commercial feeds or feed ingredients used in customer-formula feeds if the inspection fee ~~is~~ has been previously paid on the commercial feeds which are used as those ingredients therein; and
4. No fee shall be paid on customer-formula feed ingredients that have been furnished by the final purchaser on which a processing fee has been paid.

B. Each person who is liable for the payment of such fee shall:

1. File, not later than the last day of January, ~~April~~, and July, ~~and October~~ of each year, a ~~quarterly~~ semi-annual statement, setting forth the number of net tons of commercial feeds distributed in this state during the preceding ~~calendar quarter~~ semi-annual period; and upon filing such statement shall pay the inspection fee at the rate stated in subsection A of this section. Inspection fees which are due and have not been remitted to the State Board of Agriculture within fifteen (15) days following the date due shall have a penalty fee of ten percent (10%) ~~(minimum Five Dollars (\$5.00))~~ Fifty Dollars (\$50.00) minimum added to the amount due when

payment is finally made. The assessment of this penalty fee shall not prevent the Board from taking other actions as provided in this act; and

2. Keep such records as may be necessary or required by the Board to indicate accurately the tonnage of commercial feed distributed in this state, and the Board shall have the right to examine such records to verify statements of tonnage. Failure to make an accurate statement of tonnage ~~or, failure~~ to pay the inspection fee, or falsifying information or failure to comply as provided herein shall constitute sufficient cause for the cancellation of ~~all registrations on file for the distributor~~ the commercial feed license.

C. Fees collected shall constitute a fund for the payment of the costs of inspection, sampling, and analysis, and other expenses necessary for the administration of this act.

D. If the State Board of Agriculture finds any deficient inspection fees due, as a result of an audit of the records of any person subject to the provisions of the Oklahoma Commercial Feed Law, the Board shall assess a penalty fee of ten percent (10%) maximum not to exceed Two Thousand Dollars (\$2,000.00) of amount due, or One Hundred Dollars (\$100.00), whichever is greater. The audit penalty shall be added to the deficient inspection fees due and payment made within thirty (30) days.

SECTION 7. AMENDATORY 2 O.S. 1991, Section 8-41.11, is amended to read as follows:

Section 8-41.11 A. For the purpose of enforcement of this act, 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 State Board of Agriculture, upon presenting appropriate credentials to the owner, operator, or agent in charge are authorized:

1. 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

2. To inspect 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 paragraph 4 of Section ~~7~~ 8-41.7 of this ~~act~~ title.

B. If the owner of any factory, warehouse, or establishment described in subsection A of this section, or ~~his~~ such owner's agent, refuses to admit the Board or ~~his~~ the agent to inspect in accordance with subsection A of this section the Board is authorized to obtain from any state court a warrant directing such owner or ~~his~~ the agent to submit the premises described in such warrant to inspection.

C. For the enforcement of this act, the Board or its 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 fees.

D. Sampling and analysis shall be conducted in accordance with methods published by the Association of Official Analytical Chemists International, or in accordance with other generally recognized methods.

E. The results of all analyses of official samples shall upon request be forwarded by the Board to the person named on the label ~~and~~ or 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 thirty (30) days following receipt of the analysis ~~of~~ the Board shall furnish to the ~~registrants~~ licensees a portion of the sample concerned.

F. The Board, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided by the official sample as defined in paragraph 16 of Section ~~3~~ 8-41.3 of this ~~act~~ title and obtained and analyzed as provided for in subsections C and D of this section.

SECTION 8. AMENDATORY 2 O.S. 1991, Section 8-41.12, is amended to read as follows:

Section 8-41.12 A. "Stop Sale" orders: When the State Board of Agriculture or its 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 any of the prescribed regulations under this act, it may issue and enforce a written or printed "Stop Sale" order, warning the distributor not to dispose of the lot of commercial feed in any manner until written permission is given by the Board or the court. The Board 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 (30) days, the Board may begin, or upon request of the distributor or ~~registrant~~ licensee shall begin, proceedings for condemnation.

B. "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 Board to a court of competent jurisdiction in the area in which ~~said~~ the 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~~ the 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~~ the commercial feed be ordered by the court without first giving the claimant an opportunity to apply to the court for release of ~~said~~ the commercial feed or for permission to process or relabel ~~said~~ the commercial feed to bring it into compliance with this act.

SECTION 9. AMENDATORY 2 O.S. 1991, Section 8-41.15, is amended to read as follows:

Section 8-41.15 The State Board of Agriculture ~~shall~~ may publish at least annually, in such forms as it may deem proper, information concerning the sales of commercial feeds, together with such data on their production and use as it 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, that the information concerning production and use of commercial feed shall not disclose the operations of any person.

SECTION 10. This act shall become effective July 1, 1995.

SECTION 11. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 26th day of April, 1995.

President of the Senate

Passed the House of Representatives the 3rd day of April, 1995.

Speaker of the House of
Representatives