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Sixty-sixth
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT

ENGROSSED HOUSE BILL NO. 1134

Introduced by

Representatives Pollert, Boe, D. Johnson, Trottier

Senators Erbele, Klein, Wanzek

A BILL for an Act to create and enact two new sections to chapter 4.1-41 of the North Dakota Century Code, relating to commercial feed and prohibited acts; to amend and reenact sections 4.1-41-01, 4.1-41-02, 4.1-41-04, 4.1-41-05, 4.1-41-06, 4.1-41-07, 4.1-41-09, 4.1-41-10, 4.1-41-11, 4.1-41-13, 4.1-41-16, and 4.1-41-18 of the North Dakota Century Code, relating to commercial feed; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4.1-41-01 of the North Dakota Century Code is amended and reenacted as follows:

4.1-41-01. Definitions.

In this chapter, unless the context otherwise requires:

1. "Brand name" means any word, name, symbol, or device, used singly or in combination, that identifies commercial feed and distinguishes it from that of all others.
2. "Commercial feed" means any materials, used singly or in combination, which are distributed, or are intended to be distributed, for use as feed or for mixing in feed, except:
   a. Unmixed whole seeds and unmixed physically altered seeds, provided the seeds are not chemically changed or adulterated;
   b. Commodities such as hay, straw, stover, silage, cobs, husks, and hulls, provided the commodities are:
      (1) Not intermixed or mixed with other materials;
      (2) Not adulterated; and
      (3) Specifically exempted by the ~~agriculture~~ commissioner;
   c. Individual chemical compounds or substances, provided the chemical compounds or substances are:

(1) Not intermixed or mixed with other materials;

(2) Not adulterated; and

(3) Specifically exempted by the ~~agriculture~~ commissioner; and

d. Unprocessed grain screenings or unprocessed mixed grain screenings, provided:

(1) The distributor does not make oral or written reference to the nutritional value of the screenings;

(2) The screenings are not adulterated; and

(3) The screenings are specifically exempted by the ~~agriculture~~ commissioner.

3. "Commissioner" means the agriculture commissioner or the commissioner's designee.

4. "Contract feeder" means an independent contractor that feeds commercial feed to animals pursuant to a contract under which the commercial feed is supplied, furnished, or otherwise provided to the independent contractor and the independent contractor's remuneration is determined in whole or in part by feed consumption, mortality, profits, or the amount or quality of the product.

~~4.~~5. "Customer-formula feed" means a commercial feed that is manufactured according to the specific instructions of the final purchaser.

~~5.~~6. "Distribute" means to:

a. Offer for sale, sell, exchange, or barter commercial feed or customer-formula feed; or

b. Supply, furnish, or otherwise provide commercial feed or customer-formula feed to a contract feeder.

~~6.~~7. "Drug" means any article:

a. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in an animal other than a human; and

b. Other than feed, intended to affect the structure or function of an animal's body.

~~7.~~8. "Feed ingredient" means each of the constituent materials making up a commercial feed.

~~8.~~9. "Guarantor" means the person whose name and principal mailing address appear on a feed label and who is responsible for guaranteeing the information contained on the label.

10. "Label" means any written, printed, or ~~stamped~~graphic information on or attached to a commercial feed or customer-formula feed container or its wrapper ~~and~~, or the written information accompanying the distribution of ~~a~~ commercial feed or customer-formula feed, including the invoice or delivery slip.

~~9.~~11. "Labeling" means the written information accompanying the distribution of commercial feed or customer-formula feed, including promotional materials distributed to market the feed.

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

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

~~10.~~14. "Official sample" means any feed taken by the ~~agriculture~~ commissioner in accordance with section 4.1-41-13.

~~11.~~15. "Percent" or "percentage" means a rate determined by weight.

16. "Pet food" means any commercial feed prepared and distributed for consumption by dogs or cats.

~~12.~~17. "Product name" means a term that identifies a commercial feed as to its kind, class, or specific use and which distinguishes that feed from all other products bearing the same brand name.

~~13.~~18. "Quantity statement" means the net weight, mass, volume, or count of the feed.

19. "Specialty pet food" means a commercial feed prepared and distributed for consumption by ~~canaries, finches, gerbils, goldfish, hamsters, mynahs, psittacine birds, snakes, turtles, and any other~~ domesticated ~~animal~~animals, not including dogs or cats, normally maintained in a cage or a tank.

20. "Ton" means a net weight of two thousand pounds avoirdupois [907.18 kilograms].

SECTION 2. AMENDMENT. Section 4.1-41-02 of the North Dakota Century Code is amended and reenacted as follows:

4.1-41-02. Manufacturer's license - Retailer's license.

1. a. A person shall obtain a commercial feed manufacturer's license for each facility at which the person manufactures commercial feed if the person distributes the feed within this state.

b. A person shall obtain a commercial feed manufacturer's license if the person's name appears on the label of a commercial feed as a guarantor.

c. This subsection does not apply to a person that manufactures or guarantees pet food or specialty pet food.

2. A person shall obtain a commercial feed retailer's license for each facility at which the person sells commercial feed other than pet food or specialty pet food. This subsection does not apply to a person licensed as a commercial feed manufacturer.

~~3.~~ ~~In order to~~To obtain an initial license required by this section, a person shall submit an application form at the time and in the manner required by the ~~agriculture~~ commissioner and:

a. If the person is applying for a manufacturer's license, a fee in the amount of one hundred twenty dollars for a manufacturer's license; or

b. If the person is applying for a retailer's license, a fee in the amount of sixty dollars.

~~4.~~3. To renew a license required by this section, a person shall submit an application form at the time and in the manner required by the commissioner and:

a. If the person is applying for a manufacturer's license renewal, a fee in the amount of one hundred dollars; or

b. If the person is applying for a retailer's license renewal, a fee in the amount of fifty dollars.

~~5.~~4. A license issued under this section is valid during the period beginning on January first of an even-numbered year and ending on December thirty-first of the ensuing odd-numbered year.

5. A license issued under this section is not transferable.

6. If a person fails to renew a license within thirty-one days of its expiration, that person must apply for an initial license.

SECTION 3. AMENDMENT. Section 4.1-41-04 of the North Dakota Century Code is amended and reenacted as follows:

4.1-41-04. License - Registration - Hearing.

~~1. a.~~ ~~The agriculture~~ After providing an affected person with an opportunity for an informal hearing, the commissioner may ~~refuse~~:

1. Refuse to issue a license to an applicant that is not in compliance with this chapter.

~~b. The commissioner may revoke;~~

2. Revoke an existing license if the licensee is not in compliance with this chapter.

~~c. The commissioner may refuse;~~ or

3. Refuse to register any feed and ~~may~~ cancel the registration of any feed if the registrant is not in compliance with this chapter.

~~2. Before the commissioner may act under this section, the commissioner shall provide the affected person with an opportunity for an informal hearing.~~

SECTION 4. AMENDMENT. Section 4.1-41-05 of the North Dakota Century Code is amended and reenacted as follows:

4.1-41-05. Pet food - Specialty pet food - Registration - Exemption - Penalty.

1. Before being distributed in this state, each pet food product and each specialty pet food product must be registered with the ~~agriculture~~ commissioner. This requirement does not apply to a distributor, provided the pet food or specialty pet food is registered by another person.
2. To register pet food and specialty pet food, a person shall submit:
   a. An application form at the time and in the manner required by the ~~agriculture~~ commissioner; and
   b. A fee in the amount of one hundred twenty dollars per product.
3. To renew a registration required by this section, a person shall submit:
   a. An application form at the time and in the manner required by the commissioner; and
   b. A fee in the amount of one hundred dollars per product.
4. A registration issued under this section is valid during the period beginning on January first of an even-numbered year and ending on December thirty-first of the ensuing odd-numbered year.
5. If a person fails to renew a registration within thirty-one days of its expiration, that person must apply for an initial registration.
6. Upon approving an application for an initial registration or a renewed registration, the commissioner shall furnish a certificate of registration to the applicant. A certificate of registration is not transferable.

7. Any person violating this section is subject to a penalty of twenty-five dollars for each product that must be registered.

8. A person is exempt from this section if the person:

   a. Produces pet food in a noncommercial kitchen;

   b. Sells the pet food directly to the end consumer at a community event or farmer's market; and

   c. Does not use meat, poultry, fish, or their byproducts as an ingredient in the product.

SECTION 5. AMENDMENT. Section 4.1-41-06 of the North Dakota Century Code is amended and reenacted as follows:

4.1-41-06. Commercial feed - Label - Content.

Except as provided in section 4.1-41-07, any commercial feed that is distributed in this state must be labeled. The label must include:

1. The product's name, including any brand name under which the product is distributed;
2. The product's weight, volume, or quantity, as appropriate;
3. A guaranteed analysis expressed on an "as is" basis as determined by the commissioner to adequately advise the consumer of the composition and contents of the commercial feed or to support claims made in the labeling. The composition and contents of the commercial feed must be determinable by laboratory tests, such as the methods published by the association of official analytical chemists international;
4. Unless waived by the ~~agriculture~~ commissioner in the interest of consumers, the commonly accepted name of each ingredient or, if permitted by the commissioner, a collective term for a group of ingredients that perform a similar function;
5. The name and principal mailing address of the manufacturer or the distributor;
6. Directions for the safe and effective use of ~~any~~all commercial feed containing drugs and those determined by the commissioner as being necessary; and
7. Any precautionary statements recommended by the commissioner to ensure the safe and effective use of the feed.

SECTION 6. AMENDMENT. Section 4.1-41-07 of the North Dakota Century Code is amended and reenacted as follows:

4.1-41-07. Customer-formula feed - Label - Content.

Any customer-formula feed that is distributed in this state must be labeled.

1. The label must include:
   a. The name and address of the manufacturer;
   b. The name and address of the purchaser;
   c. The date of delivery;
   d. The product's name;
   e. The ~~weight, volume, or~~ quantity~~, as appropriate,~~ statement of each ingredient, including commercial feed; ~~and~~
   f. Directions for the safe and effective use of all customer-formula feed containing drugs and those determined by the commissioner as being necessary; and
   g. Any precautionary statement recommended by the ~~agriculture~~ commissioner to ensure the safe and effective use of the feed.
2. If the feed contains drugs, the label must also include:
   a. The purpose of each drug;
   b. The weight, volume, or quantity, as appropriate, of each drug; and
   c. The name of each active ingredient.

SECTION 7. AMENDMENT. Section 4.1-41-09 of the North Dakota Century Code is amended and reenacted as follows:

4.1-41-09. Inspection fee - Responsibility for payment - Report - Penalty.

1. The person responsible for payment of the inspection fee is:
   a. The manufacturer listed on the label;
   b. The guarantor listed on the label; or
   c. The distributor listed on the label.
2. Before the close of business on each February fifteenth, the person responsible for the payment of the inspection fee shall provide to the ~~agriculture~~ commissioner:
   a. A ~~sworn statement~~tonnage report indicating the number of net tons [kilograms] of commercial feed, by class, which the person distributed in this state during the immediately preceding calendar year; and
   b. The inspection fees due in accordance with this chapter.

3. If the person responsible for the payment of the inspection fee fails to submit the assessments as required by this section, the commissioner may impose a penalty equal to ten percent of the amount due, plus interest at the rate of six percent per annum from the due date. If imposed, a penalty under this section may not be less than ten dollars nor more than two hundred fifty dollars.

SECTION 8. AMENDMENT. Section 4.1-41-10 of the North Dakota Century Code is amended and reenacted as follows:

4.1-41-10. Inspection fee - Records.

1. The person responsible for payment of the inspection fee shall maintain, for a period of three years, records of all transactions necessary to verify the statement of tonnage required by section 4.1-41-09.
2. The person shall make the records required by this section available to the ~~agriculture~~ commissioner for examination upon request.
3. If the commissioner determines the records required by this section were not maintained accurately, the commissioner may cancel all licenses on file for the distributor.

SECTION 9. AMENDMENT. Section 4.1-41-11 of the North Dakota Century Code is amended and reenacted as follows:

4.1-41-11. Adulteration.

1. A person may not distribute any commercial feed that is adulterated.

~~1.~~ Commercial feed is adulterated if it ~~contains~~:

a. Contains any poisonous or harmful substance that may render the feed injurious to health. However, if the substance naturally occurs in the feed and is not an added substance, the commercial feed may be considered adulterated under this ~~subsection~~subdivision only if the substance is present in sufficient quantity to render it injurious to health.

~~2.~~ b. ~~Commercial feed is adulterated if it contains~~Contains any added substance that is poisonous, harmful, or nonnutritive, and unsafe within the meaning of section 406 of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 346]. This ~~subsection~~subdivision does not apply to any pesticide in or on a raw agricultural commodity or to a food additive.

~~3.~~ c. ~~Commercial feed is adulterated if it contains~~Contains any food additive that is unsafe within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 348].

~~4.~~ d. ~~a. Commercial feed is adulterated if it is~~Is a raw agricultural commodity and it contains a pesticide that is unsafe within the meaning of section 408a of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 346a].

~~b.~~ (1) However, if a pesticide 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, as amended [21 U.S.C. 346a] and if the raw agricultural commodity has been subjected to a process such as canning, cooking, dehydration, freezing, or milling, any pesticide residue remaining in or on the processed feed may be deemed safe, provided:

~~(1)~~ (a) The residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice; and

~~(2)~~ (b) The concentration of the residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity.

~~c.~~ (2) The exception set forth in ~~subdivision b~~paragraph 1 does not apply if the consumption of the processed feed may result in the edible product of the animal evidencing a pesticide residue that is unsafe within the meaning of section 408a of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 346a].

~~5.~~ e. ~~Commercial feed is adulterated if it contains~~Contains any color additive that is unsafe within the meaning of section 721 of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 379e].

~~6.~~ f. ~~Commercial feed is adulterated if it contains~~Contains any new animal drug that is unsafe within the meaning of section 512 of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 360b].

~~7.~~2. In addition to the ~~foregoing subsections~~provisions of subsection 1, commercial feed is adulterated if:

a. Any valuable constituent has been omitted, in whole or in part, thereby providing a lower nutritive value in the finished product;

b. The composition or quality of the feed falls below or differs from that which is stated on its label;

c. The feed contains added hulls, screenings, straw, cobs, or other high fiber material, unless each material is stated on the label;

d. The feed contains viable weed seeds in amounts exceeding ~~the limits the commissioner establishes by rule~~four and one half viable restricted seeds per pound avoirdupois [453.59 grams];

e. The feed contains a drug and the methods used in or the facilities or controls used for its manufacturing, processing, or packaging do not conform to current good manufacturing practice rules adopted by the commissioner to ensure the drug meets the identity, strength, quality, purity, and safety requirements of this chapter;

f. The feed consists in whole or in part of any filthy, putrid, or decomposed substance, or if the feed is otherwise unfit for its intended use;

g. The feed has been prepared, packed, or held under unsanitary conditions that may have caused it to become contaminated with filth or rendered injurious to health;

h. The feed consists in whole or in part of the product of a diseased animal or of an animal that has died otherwise than by slaughter which is unsafe within the meaning of section 402(a)(1) or (2) of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 342];

i. The feed's container is composed, in whole or in part, of any poisonous or harmful substance that may render the contents injurious to health;

j. The feed has been packaged in bags or totes that previously contained pesticide products, treated seeds, or other hazardous materials; or

k. The feed has been intentionally subjected to radiation, unless the use of the radiation was in conformity with the regulation or exemption in effect pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 348].

SECTION 10. AMENDMENT. Section 4.1-41-13 of the North Dakota Century Code is amended and reenacted as follows:

4.1-41-13. Inspection, sampling, analysis.

1.~~a.~~ For purposes of enforcing this chapter, designated officers and employees of the ~~agriculture~~ commissioner may enter and inspect~~, during normal business hours,~~ any factory, warehouse, ~~or~~ establishment ~~in this state~~, or vehicle in which commercial feeds are manufactured, processed, packed, ~~or~~ held for distribution, or transported, provided the individuals first present their credentials and written notice to the owner ~~or~~, manager, or driver.

~~b. For purposes of enforcing this chapter, designated officers and employees of the commissioner may enter and inspect any vehicle being used to transport or hold commercial feed, provided the individuals first present their credentials and written notice to the owner, manager, or driver.~~

2. Any inspection authorized under this section must take place at reasonable times, within reasonable limits, and in a reasonable manner. The inspection may include the verification of records and production and control procedures, as necessary to determine compliance with this chapter and rules implemented under this chapter.

3. A separate notice must be given for each authorized inspection. However, a separate notice is not required for each entry made during the period covered by the inspection. Each inspection must be commenced and completed with reasonable promptness. Upon completion of the inspection, the individual in charge of the facility or the individual in charge of the vehicle must be notified.

4. If the officer or employee making an 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, the officer or employee shall give to the owner or manager a receipt describing the samples obtained.

5. If an officer or employee of the commissioner is denied entry as authorized by this section, the commissioner may obtain a warrant directing the owner or manager to submit the premises described in the warrant to inspection.

6. Any officer or employee of the commissioner authorized to enter any structure or vehicle in accordance with this section, may obtain samples and examine records relating to distribution of commercial feeds.
7. Sampling and analysis under this section must be conducted in accordance with generally recognized methods ~~and any analysis of the samples taken must be conducted in accordance with generally recognized laboratory methods~~, such as methods published by the association of official analytical chemists international.
8. The commissioner shall forward the results of any sample analysis to the person named on the label and to the purchaser.
9. If an analysis indicates that a commercial feed has been adulterated or misbranded, within thirty days following receipt of the analysis, the person named on the label may request that the commissioner provide a portion of the sample.
10. In determining for administrative purposes whether a commercial feed is deficient in any component, the commissioner must be guided by the official sample.

SECTION 11. A new section to chapter 4.1-41 of the North Dakota Century Code is created and enacted as follows:

Prohibited Acts

Committing the following acts and causing the following acts are prohibited:

1. The manufacture or distribution of commercial feed that is adulterated or misbranded;
2. The adulteration or misbranding of 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 section 4.1-41-11;
4. The removal or disposal of commercial feed in violation of an order under section 4.1-41-14;
5. The failure or refusal to register in accordance with section 4.1-41-03 or section 4.1-41-05;
6. The failure or refusal to register in accordance with section 4.1-41-02; and
7. The failure to pay inspection fees or file reports as required by section 4.1-41.

SECTION 12. AMENDMENT. Section 4.1-41-16 of the North Dakota Century Code is amended and reenacted as follows:

4.1-41-16. Publications.

1. The ~~agriculture~~ commissioner may publish information regarding commercial feeds, including their production, sales, and use, and publish a comparison of the analyses of official samples of commercial feeds sold in this state with the analyses guaranteed in their registration and on their label.
2. Information regarding the production and use of commercial feeds may not disclose the operations of any person.

SECTION 13. AMENDMENT. Section 4.1-41-18 of the North Dakota Century Code is amended and reenacted as follows:

4.1-41-18. Certificates - Fees.

The ~~agriculture~~ commissioner may:

1. Implement a program to inspect, audit, and certify commercial feed manufacturing and distribution facilities, at the request of an owner;
2. Issue commercial feed export certificates; and
3. Establish a schedule of fees for the services provided under this section.

SECTION 14. A new section to chapter 4.1-41 of the North Dakota Century Code is created and enacted as follows:

Administration - Rulemaking authority.

The commissioner shall administer this chapter. The commissioner may adopt rules under chapter 28-32 to implement this chapter.