**A** **BILL**

TO AMEND CHAPTER 27, TITLE 46 OF THE 1976 CODE, RELATING TO THE SOUTH CAROLINA COMMERCIAL FEED ACT, TO PROVIDE THAT CERTAIN SALES ARE UNLAWFUL, TO PROVIDE THAT THE COMMISSIONER OF AGRICULTURE IS AUTHORIZED TO PROMULGATE CERTAIN REGULATIONS, TO PROVIDE THAT THE COMMISSIONER MAY INSPECT, AUDIT, OR CERTIFY COMMERCIAL FEED MANUFACTURER OR DISTRIBUTOR FACILITIES AND ISSUE CERTIFICATES, TO PROVIDE FOR LICENSING AND REGISTRATION, TO PROVIDE FOR THE LABELING OF COMMERCIAL FEEDS, TO PROVIDE THE CONDITIONS FOR A COMMERCIAL FEED TO BE DEEMED MISBRANDED, TO PROVIDE THE CONDITIONS FOR A COMMERCIAL FEED TO BE DEEMED ADULTERATED, TO PROVIDE THAT THE COMMISSIONER MAY INSPECT, TAKE SAMPLES, AND PERFORM ANALYSES, TO PROVIDE FOR THE PUBLICATION OF CERTAIN INFORMATION, TO PROVIDE THAT THE COMMISSIONER MAY APPOINT ANALYSTS, CHEMISTS, AND INSPECTORS, TO PROVIDE FOR A CERTIFICATE OF ANALYSIS AS PRIMA FACIE EVIDENCE, TO PROHIBIT CERTAIN ACTS, TO PROVIDE THAT THE COMMISSIONER MAY SUSPEND SALES OF FEED AND SEEK ENFORCEMENT REMEDIES, TO PROVIDE HOW SALES ARE MADE, TO PROVIDE THAT THE COMMISSIONER SHALL NOTIFY DEALERS AND SOLICITORS OF VIOLATIONS, TO PROVIDE FOR PENALTIES, TO PROVIDE FOR FINES PAID TO THE DEPARTMENT OF AGRICULTURE, AND TO DEFINE NECESSARY TERMS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 27, Title 46 of the 1976 Code is amended to read:

“CHAPTER 27

South Carolina Commercial Feed Act

ARTICLE 1

General Provisions

Section 46‑27‑10. This chapter shall be known and cited as the ‘South Carolina Commercial Feed Act.’

Section 46‑27‑20. For the purposes of this chapter:

(1) ‘Brand name’ means any word, name, symbol, device, or any combination thereof identifying the commercial feed of a distributor or registrant and distinguishing it from that of others.

(2) ~~The term ‘commercial~~ ‘Commercial feed’ means all materials or a combination of materials that are distributed or intended for distribution for use as feed or for mixing in feed, unless the materials are specifically exempted. If unmixed whole seeds and physically altered entire unmixed seeds, as identified in the United States grain standards, are not chemically changed, are not for use as feed or labeled as feed, or are not adulterated pursuant to Section 46‑27‑330, then they are exempt. The commissioner may by regulation exempt certain commodities from this definition, or from specific provisions of this chapter, including hay, ~~except (a) whole hays,~~ straw, stover, silage, cobs, husks, ~~cottonseed~~ hulls, ~~corn stover~~ and ~~ground corn cob and shuck; (b) raw and unprocessed fresh or frozen fish, beef, horse meat, poultry and by‑products of these items, together with and including limestone and granite or similar substance, when they are not mixed~~ individual chemical compounds or substances if the commodities, compounds, or substances are not inter‑mixed with other materials, are not for use as a feed or labeled as a feed, and are not adulterated within the meaning of Section 46‑27‑330~~; (c) unmixed whole seeds or grains of cereals when not mixed with other materials and when not in such damaged condition as to be unfit for feed purposes as determined by inspection~~.

(3) ‘Commissioner’ means the Commissioner of Agriculture.

(4) ‘Contract feeder’ means a person who is an independent contractor; who feeds commercial feed to animals pursuant to a contract whereby the commercial feed is supplied, furnished, or otherwise provided to the person; and whose remuneration is determined all or in part by feed consumption, mortality, profits, or the amount or quality of the product.

(5) ‘Customer‑formula feed’ means commercial feed that consists of a mixture of commercial feeds or feed ingredients, each batch of which is manufactured according to the specific instructions of the final purchaser.

(6) ‘Department’ means the Department of Agriculture.

(7) ‘Distribute’ means:

(a) to offer for sale, sell, exchange, or barter commercial feed to a contract feeder; or

(b) to supply, furnish, or otherwise provide commercial feed to a contract feeder.

(8) ‘Distributor’ means any person who distributes.

(9) ‘Drug’ means:

(a) any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals other than humans; and

(b) articles other than commercial feed intended to affect the structure or any function of an animal body.

(10) ‘Feed ingredient’ means one of the constituent materials making up a commercial feed.

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

(12) ‘Labeling’ means all labels and other written, printed, or graphic matter:

(a) upon commercial feed or any of its containers or wrappers;

(b) accompanying commercial feed; or

(c) supporting commercial feed.

(13) ‘Manufacture’ means to grind, mix, blend, process, package, or label a commercial feed for distribution.

(14) ‘Mineral feed’ means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.

(15) ‘Official sample’ means a sample of commercial feed taken by the commissioner or his agent in accordance with the provisions of Section 46‑27‑410.

(16) ‘Percent’ or ‘percentages’ means percentages by weights.

(17) ‘Person’ includes an individual, partnership, corporation, and association.

~~(2)~~(18) ~~The term ‘pet’~~ ‘Pet’ means ~~any domesticated animal normally maintained in or near the household of the owner~~ a dog (Canis familiaris) or cat (Felis catus).

~~(3)~~(19) ~~The term ‘pet~~ ‘Pet food’ means any commercial feed prepared and distributed for consumption by pets.

(20) ‘Product name’ means the name of a commercial feed that identifies it as to kind, class, or specific use and distinguishes it from all other products bearing the same brand name.

(21) ‘Quantity statement’ means the net weight, or mass; liquid measure; or count.

(22) ‘Raw milk’ means any milk or milk product, exclusive of the United States Department of Agriculture licensed veterinary biologics, from any species other than humans, that has not been pasteurized in accordance with processes recognized by the United States Food and Drug Administration.

(23) ‘Specialty pet’ means any animal commonly maintained in a household, including, but not limited to, rodents, ornamental birds, ornamental fish, reptiles and amphibians, ferrets, hedgehogs, marsupials, and rabbits not raised for food or fur.

(24) ‘Specialty pet food’ means any commercial feed prepared and distributed for consumption by specialty pets.

Section 46‑27‑30. ~~Crushed or ground ear corn when sold by itself is a commercial feed and the sale thereof within this State shall be governed by the provisions of Articles 1 to 9 of this chapter and the regulations prescribed by the Commissioner of Agriculture.~~

~~Section 46‑27‑40.~~ It shall be unlawful for any manufacturer, importer, jobber, agent or dealer to:

(1) sell or offer or expose for sale or distribution in this State any commercial feed without complying with the requirements of ~~Articles 1 to 9 of~~ this chapter; or

(2) sell or offer or expose for sale or distribution any commercial feed which contains substantially a smaller percentage of ~~crude protein, crude fat or carbohydrates or a larger percentage of crude fiber than certified to be contained~~ guarantees than stated on the product label.

~~Section 46‑27‑50. It shall be unlawful for any person to offer for sale any seeds which have been treated with poisons if destined to be manufactured into commercial feeds.~~

~~Section 46‑27‑60. All commercial feeds shall be packed in standard weight bags or packages of twenty‑five, fifty, seventy‑five, one hundred, one hundred twenty‑five, one hundred fifty, one hundred seventy‑five or two hundred pounds. The Commissioner may prescribe other standard bag or package weights if they are in the consumer’s interest or if they are to promote uniformity or are consistent with good trade practices.~~

Section ~~46‑27‑70~~ 46-27-40. (A) The ~~Commissioner~~ commissioner is authorized ~~shall from time~~ to ~~time prescribe and publish~~ promulgate such regulations for commercial feeds, including pet and specialty pet foods, as are specifically authorized in this chapter and such other reasonable regulations as may be necessary for the efficient enforcement of this chapter. In the interest of uniformity, the commissioner may by regulation adopt the following, unless the commissioner determines that any of the following are inconsistent with ~~carrying out~~ the provisions of ~~Articles 1 to 9 of~~ this chapter or are not appropriate to conditions that exist in this State:

(1) the official definitions of feed ingredients and official feed terms adopted by the Association of American Feed Control Officials and published in the official publication of that organization; and

(2) any regulation promulgated pursuant to the authority of the federal Food, Drug, and Cosmetic Act, provided that the commissioner would have the authority under this chapter to promulgate such regulations.

(B)(1) Except as provided in item (2), the commissioner shall promulgate regulations, or amend or repeal existing regulations, authorized by this chapter, in accordance with the procedure and requirements contained in Article 1, Chapter 23, Title 1.

(2) The commissioner may adopt by reference the official definitions of feed ingredients and official feed terms as adopted by the Association of American Feed Control Officials and regulations promulgated pursuant to the authority of the federal Food, Drug, and Cosmetic Act.

(C) The commissioner may also adopt by reference the federal regulations contained in Title 21, Code of Federal Regulations, part 507.

Section ~~46‑27‑80~~ 46-27-50. To facilitate continued access to markets for commercial feed and feed ingredients, the ~~The Commissioner~~ commissioner may ~~prescribe regulations governing the grading of any and all commercial feeds~~:

(1) inspect, audit, or certify commercial feed manufacturer or distributor facilities at the request of the manufacturer or distributor to the extent authorized by this chapter, or on the basis of other records voluntarily supplied by the manufacturer or distributor;

(2) issue certificates pursuant to item (1), including, but not limited to, certificates of export from the State;

(3) promulgate, amend, or adopt regulations to inspect, audit, or certify and issue certificates pursuant to this section; and

(4) include a schedule of fees that addresses all activities required under this section. Such fees shall not duplicate those set forth in other sections of this chapter.

ARTICLE ~~3~~2

Licensing and Registration

Section 46‑27‑210. (A) ~~Each manufacturer, importer, jobber, agent or seller before selling or offering or exposing for sale in this State any commercial feed shall, for each and every feed bearing a distinct name or trademark, file for registration with the Commissioner a copy of the statement required in Section 46‑27‑310 and accompany the statement, on request, by a sealed container of at least one pound of the commercial feed. The sample shall correspond within reasonable limits to the feed which it represents in the percentages of crude protein, crude fat and crude fiber which it contains~~ Any person who manufactures commercial feed within the State, who distributes commercial feed in or into the State, or whose name appears on the label of a commercial feed as guarantor shall obtain a commercial feed license for each facility that distributes in or into the State authorizing him to manufacture or distribute commercial feed before he engages in such activity. Any person who makes only retail sales of commercial feed that bears labeling or other approved indication that the commercial feed is from a licensed manufacturer, guarantor, or distributor that has assumed full responsibility for the registration fees due under this chapter is not required to obtain a license.

(B) Any person who is required to obtain a license shall submit an application on a form provided or approved by the commissioner accompanied by a license fee of fifty-five dollars, paid to the commissioner, who shall deposit it into the Department of Agriculture fund, of which the State Treasurer is the custodian, for the express purpose of enforcement of this chapter. The license year shall be January first to December thirty-first. Each license shall expire on the thirty-first day of December of the year for which it was issued, provided that any license shall be valid through January first of the next ensuing year or until the issuance of the renewal license, whichever event first occurs, if the holder has filed a renewal application with the commissioner on or before December thirty-first of the year for which the current license was issued. Any new applicant who fails to obtain a license within thirty working days of notification of the requirement to obtain a license, or any licensee who fails to comply with license renewal requirements, shall pay a one hundred dollar late fee in addition to the license fee.

(C) At any time, the commissioner may request from a license applicant or licensee copies of labels and labeling in order to determine compliance with the provisions of this chapter.

(D) No person shall distribute in this State a commercial feed, except a customer‑formula feed, that has not been registered pursuant to the provisions of this section by the licensee whose name appears on the label. The application for registration shall be submitted in the manner prescribed by the commissioner. Upon approval by the commissioner, the registration shall be issued to the applicant. All registrations expire on the thirty-first day of December of each year.

(E) The commissioner is empowered to refuse registration of any commercial feed not in compliance with the provisions of this chapter and to cancel any registration subsequently found not to be in compliance with any provision of this chapter, provided that no registration shall be refused or canceled unless the registrant has been given an opportunity to be heard before the commissioner and to amend his application in order to comply with the requirements of this chapter.

~~Section 46‑27‑220. Whenever a manufacturer, importer or jobber of any commercial feed shall have filed a statement, as required by Section 46‑27‑210, no agent or seller of such manufacturer, importer or jobber shall be required to file such statement.~~

~~Section 46‑27‑230. The Commissioner may refuse the registration of any commercial feed under a name which would be misleading as to the materials of which it is composed or when the names of all ingredients of which it is composed are not stated. Should any commercial feed be registered and it is afterward discovered that it does not comply with the provisions of Articles 1 to 9 of this chapter, the Commissioner shall notify the registrant of the noncompliance. The notice shall apprise the registrant that he may request a hearing within thirty days of receipt of the notice. If such request for a hearing is made within the time allowed, the Commissioner shall schedule a hearing within thirty days after receipt of the request and shall allow the registrant to refute the allegations of noncompliance. If, after the hearing, the Commissioner is still convinced that the commercial feed does not comply with the provisions of Articles 1 to 9 of this chapter he may cancel such registration.~~

ARTICLE ~~5~~3

Labeling, Misbranding, and Adulteration

Section 46‑27‑310. (A) ~~Every lot or parcel of~~ A commercial feed, except customer‑formula feed, ~~sold or offered or exposed for sale within this State~~ shall ~~have affixed thereto or printed thereon in a conspicuous place on the outside a legible and plainly printed statement in the English language clearly and truly certifying~~ be accompanied by a label bearing the following information:

(1) ~~The weight of the package~~ the quantity statement;

(2) ~~The~~ the product name~~,~~ and the brand name, if any, ~~or trademark~~ under which the commercial feed ~~article~~ is ~~sold~~ distributed;

(3) ~~The name and address of the manufacturer, jobber or importer~~ the guaranteed analysis, expressed on an ‘as‑is’ basis, stated in such terms as the commissioner by regulation determines is required to advise the user of the composition of the commercial 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 Agricultural Chemists International or other generally recognized methods;

(4) ~~The~~ the common or usual name of each ~~and all ingredients~~ feed ingredient used in the manufacture of ~~which~~ the ~~article is composed;~~ commercial feed, provided, that the ~~Commissioner~~ commissioner by regulation may permit the use of a collective term for a group of ingredients which perform a similar function, or the commissioner ~~he~~ may exempt such commercial feeds, or any group thereof, from this requirement of an ingredient statement if the commissioner ~~he~~ finds that such statement is not required in the interest of consumers;

(5) ~~A statement of the minimum percentage of crude protein, the minimum percentage of crude fat and the maximum percentage of crude fiber~~ the name and principal mailing address of the manufacturer or the distributor of the commercial feed;

(6) adequate directions for use for all commercial feeds containing drugs and for other commercial feeds as necessary that the commissioner may require by regulation for their safe and effective use; and

(7) precautionary statements that the commissioner by regulation determines are necessary for the safe and effective use of the commercial feed.

(B) A customer‑formula feed shall be accompanied by a label, invoice, delivery slip, or other shipping document, bearing the following information:

(1) the name and address of the manufacturer;

(2) the name and address of the purchaser;

(3) the date of delivery;

(4) the product name and quantity statement of each commercial feed and each other feed ingredient used in the mixture;

(5) adequate directions for use for all customer‑formula feeds containing drugs and for other feeds as necessary that the commissioner may require by regulation for their safe and effective use;

(6) the directions for use and precautionary statements as required by regulations promulgated by the commissioner; and

(7) if a drug-containing product is used:

(a) the purpose of the medication, or claim statement; and

(b) 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 commissioner.

Section 46‑27‑320. ~~No tags, cards or descriptive matter shall be fastened by metal holders to bags containing~~ A commercial feed~~, including sacked cottonseed meal and hulls~~ shall be deemed to be misbranded if:

(1) its labeling is false or misleading in any particular;

(2) it is distributed under the name of another commercial feed;

(3) it is not labeled as required by Section 46‑27‑310 of this chapter or a regulation promulgated under this chapter;

(4) it purports to be or is represented as a commercial feed, or it purports to contain or is represented as containing a commercial feed ingredient, unless the commercial feed or feed ingredient conforms to the definition, if any, prescribed by regulation by the commissioner; or

(5) any word, statement, or other information required by or under the authority of this chapter to appear on the label or labeling is not prominently placed thereon with conspicuousness, as compared with other words, statements, designs, or devices in its 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.

Section 46‑27‑330. ~~Whenever any commercial feed is kept for sale in bulk, stored in bins or otherwise, the manufacturer, dealer, jobber or importer keeping it for sale shall keep cards of proper size upon which the statement required by Section 46‑27‑310 shall be plainly printed; and if the~~ A commercial feed ~~is sold at retail in bulk or if it is put up in packages belonging to the purchaser, the manufacturer, dealer, jobber or importer shall furnish the purchaser with one of the cards upon which is printed the statement required by Section 46‑27‑310~~ shall be deemed to be adulterated if:

(1)it bears or contains any poisonous or deleterious substance that may render it injurious to health. In case the substance is not an added substance, the commercial feed shall not be considered adulterated under this item if the quantity of the substance in the commercial feed does not ordinarily render it injurious to health;

(2)it bears or contains any added poisonous, added deleterious, or added non‑nutritive substance that is unsafe within the meaning of Section 406 of the federal Food, Drug, and Cosmetic Act, other than one that is:

(a) a pesticide chemical in or on a raw agricultural commodity; or

(b) a food additive;

(3)it is, bears, or contains any food additive that is unsafe within the meaning of Section 409 of the federal Food, Drug, and Cosmetic Act;

(4)it is a raw agricultural commodity and it bears or contains a pesticide chemical that is unsafe within the meaning of Section 408(a) of the federal Food, Drug, and Cosmetic Act, provided that for a pesticide chemical that 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 for which the raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of the pesticide chemical remaining in or on the processed feed shall not be deemed unsafe if the residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of the residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity unless the feeding of the processed feed will result or is likely to result in a pesticide residue in the edible product of the animal, that is unsafe within the meaning of Section 408(a) of the federal Food, Drug, and Cosmetic Act;

(5) it is, bears, or contains any color additive that is unsafe within the meaning of Section 721 of the federal Food, Drug, and Cosmetic Act;

(6) it is, bears, or contains any new drug that is unsafe within the meaning of Section 512 of the federal Food, Drug, and Cosmetic Act;

(7) it consists in whole or in part of any filthy, putrid, or decomposed substance, or is otherwise unfit for feed;

(8) it has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(9) it is, in whole or in part, the product of a diseased animal or of an animal that has died otherwise than by slaughter that is unsafe within the meaning of Section 402(a)(1) or (2) of the federal Food, Drug, and Cosmetic Act;

(10) its container is composed, in whole or in part, of any poisonous or deleterious substance that may render the contents injurious to health;

(11) it 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;

(12) any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefore;

(13) its composition or quality falls below or differs from what its labeling purports or represents it to possess;

(14) 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 requirements of this chapter as to safety and has the identity and strength and meets the quality and purity characteristics that it purports or is represented to possess. In promulgating regulations, the commissioner shall adopt the current good manufacturing practice regulations for Type A medicated articles and Type B and Type C medicated feeds established under authority of the federal Food, Drug, and Cosmetic Act, unless the commissioner determines that they are not appropriate to the conditions that exist in this State; or

(15) it contains viable weed seeds in amounts exceeding the limits that the commissioner shall establish by regulation.

~~Section 46‑27‑340. The percentages of crude protein, crude fat and crude fiber required to be stated under the provisions of Section 46‑27‑310 shall be determined by the methods in use at the time by the Association of Official Analytical Chemists of the United States.~~

ARTICLE ~~7~~4

Inspection, Samples, and Analyses

Section 46‑27‑410. (A) ~~The Commissioner, together with his deputies, agents and assistants shall have access to all places of business, mills and storage facilities used in the manufacture, importation or sale of any commercial feed and may open any package containing or supposed to contain any commercial feed during the normal operating hours of business and upon tender and payment of the selling price of samples, take therefrom, in the manner prescribed in this article, samples for analysis~~ For the purposes of enforcement of this chapter, 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, upon presenting appropriate credentials and a written notice 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, at reasonable times, within reasonable limits, and in a reasonable manner, factories, warehouses, establishments, or vehicles and all pertinent equipment, finished and unfinished materials, containers, and labeling. Inspection may include the verification of records, and production and control procedures related to the manufacture, distribution, storage, handling, use, or disposal of commercial feed as may be necessary to determine compliance with this chapter.

(B) A separate notice shall be given for each inspection, but a notice shall not be required for each entry made during the period covered by the inspection. Each inspection must begin and be completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle shall be so notified.

(C) If the commissioner or his agent making an inspection of a factory, warehouse, or other establishment has obtained a sample in the course of the inspection, then, upon completion of the inspection and prior to leaving the premises, the inspector or sampler must provide a receipt describing the samples obtained to the owner, operator, or agent in charge.

(D) If the owner of any factory, warehouse, or establishment described in subsection (A), or his agent, refuses to admit the commissioner, his officers, or his employees to inspect in accordance with subsections (A) and (B), then the commissioner is authorized to obtain from any court of competent jurisdiction a warrant directing the owner or his agent to submit the premises described in the warrant to inspection.

(E) For the enforcement of this chapter, 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, to obtain samples, and to examine and copy records relating to the distribution of commercial feeds.

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

(G) 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. If the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded, and upon request within thirty days following the receipt of the analysis, then the commissioner shall furnish to the registrant a portion of the sample concerned.

(H) 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 46‑27‑20(15), obtained and analyzed as provided for in this chapter.

(I) If the inspection and analysis of an official sample indicates that the commercial feed has been adulterated or misbranded, then the person whose name appears on the label of the indicated commercial feed as the guarantor shall be required to provide a manufacturer’s report of investigation to the department within thirty days following receipt of the official analysis.

Section 46‑27‑420. ~~The Commissioner shall annually cause to be analyzed at least one sample so taken of every commercial feed that is found, sold or offered or exposed for sale in this State under the provisions of Articles 1 to 9 of this chapter. The samples, not less than one pound in weight, shall be taken from not less than ten bags or packages, or if there be less than ten bags or packages, then from each bag or package, if it be in bag or package form, or if such commercial feed be in bulk, then from ten different places of the lot~~ The commissioner shall annually publish, in such form as the commissioner may deem proper, information concerning the sales of commercial feeds, together with such data on their production and use as the commissioner 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 the production and use of commercial feed shall not disclose the operations of any person or registrant.

~~Section 46‑27‑430. The Commissioner may publish from time to time in reports or bulletins the results of the analyses of such samples, together with such additional information as circumstances advise; provided, however, that if such a sample as analyzed by the Commissioner differs from the statement prescribed in Section 46‑27‑310, then at least thirty days before publishing the results of such analysis the Commissioner shall give written notice of such results to the manufacturer, importer, agent or jobber of such stock, if the name and address of such manufacturer, jobber or importer be known; provided, further, that if the analysis of any such sample does not differ substantially from the statement prescribed by Section 46‑27‑310, appearing upon the goods, the manufacturer may be considered as having complied with the requirements of Articles 1 to 9 of this chapter.~~

~~Section 46‑27‑440. Any manufacturer, importer, jobber or dealer who refuses to comply with the requirements of the provisions of Articles 1 to 9 of this chapter or any manufacturer, importer, jobber or person who shall impede, obstruct, hinder or otherwise prevent or attempt to prevent any chemist, inspector or other authorized agent in the performance of his duty in connection with the provisions of such articles shall be guilty of a violation of the provisions of such articles.~~

Section ~~46‑27‑450~~ 46-27-430. The ~~Commissioner shall~~ commissioner may appoint such analysts, chemists and inspectors as may be required to carry out the provisions of ~~Articles 1 to 9 of~~ this chapter.

Section ~~46‑27‑460~~ 46-27-440. In all prosecutions in the courts of this State arising under the provisions of ~~Articles 1 to 9 of~~ this chapter and the regulations made in accordance therewith, the certificate of the analyst or other officer making the analysis or examination when duly sworn to and subscribed by such analyst or officer shall be prima facie evidence of the facts therein certified.

ARTICLE 5

Prohibited Acts

Section 46-27-510. The following acts are prohibited within this State:

(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, that are adulterated within the meaning of Section 46‑27‑330;

(4) the removal or disposal of commercial feed in violation of an order issued by the commissioner or his agent for violations of this chapter;

(5) the failure or refusal to register or obtain a license in accordance with Section 46‑27‑210;

(6) re‑use of bags or totes used for commercial feeds, including customer‑formula feed, that have not been appropriately cleaned. A person that intends to re‑use bags or totes must document its cleanout procedures; and

(7) the distribution of raw milk for use as commercial feed for any species if the raw milk:

(a) has not been decharacterized using a sufficient quantity of food coloring as designated by the commissioner;

(b) has been decharacterized using food coloring unless the food coloring has been approved by the United States Food and Drug Administration or, in the case of raw milk labeled as organic, approved by the United States Department of Agriculture;

(c) has been decharacterized and the nutritive value of the milk has been adversely affected by the decharacterization;

(d) is packaged in containers that are or resemble those used for the packaging of milk for human consumption;

(e) is stored at retail with, or in the vicinity of, milk or milk products intended for human consumption; or

(f) does not comply with Section 46‑27‑330.

ARTICLE ~~9~~6

~~Enforcement~~ Detained Commercial Feeds and Penalties

Section 46‑27‑610. (A) ~~If at any time the Commissioner or his duly authorized representative shall have reason to believe that any commercial feed offered or exposed for sale in this State does not comply with the requirements of Articles 1 to 9 of this chapter, as to the ingredients or substances of such commercial feed, he shall by written order suspend the sale of it until he shall have satisfied himself that such commercial feed is made up or compounded as required by such articles. If he shall find that such commercial feed does not comply with such articles, then he is authorized to proceed with regard to it as provided in Sections 46‑27‑620 to 46‑27‑640~~ If the commissioner or his duly authorized agent has reasonable cause to believe that any lot of commercial feed is being distributed in violation of any of the provisions of this chapter or any of the prescribed regulations under this chapter, then the commissioner or his agent 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 a court of competent jurisdiction. The commissioner may release the lot of commercial feed so withdrawn if the provisions and regulations have been complied with upon payment of all the costs or expenses incurred in any proceeding connected with the seizure and withdrawal. If compliance is not obtained within thirty days, then the commissioner may begin, or upon request of the distributor or registrant shall begin, proceedings for condemnation.

(B) Any lot of commercial feed not in compliance with the provisions of this chapter and regulations promulgated pursuant to this chapter may be subject to seizure on complaint to a court of competent jurisdiction in the area in which the commercial feed is located. In the event the court finds the commercial feed to be in violation of this chapter and orders the condemnation of the commercial feed, it shall be disposed of or sold as described in Section 47‑27‑630, provided that in no instance shall the disposition of the commercial feed be ordered by the court without first giving the claimant an opportunity to apply to the court for release of the commercial feed or for permission to process or re‑label the commercial feed to bring it into compliance with this chapter.

Section 46‑27‑620. ~~If any manufacturer, importer, jobber, agent or dealer shall be guilty of a violation of Section 46‑27‑40, the lot of commercial feed in question shall be seized and condemned, sold or destroyed by the Commissioner, or his duly authorized representative, and the proceeds from such sales shall be covered into the State Treasury for the use of the Department of Agriculture.~~

~~Section 46‑27‑630.~~ Such seizure and sale shall be made by the ~~Commissioner~~ commissioner or under the direction of any officer of his appointment. The sale shall be made at the courthouse door of the county in which the seizure is made; provided that whenever, for sufficient reasons appearing to the ~~Commissioner~~ commissioner or his representative, another place of sale is more convenient and more desirable, such place of sale may be selected. The sale shall be advertised for thirty days in a newspaper published in the county in which the seizure is made or on an internet commerce website ~~if no newspaper is published in such county, then it shall be advertised in a newspaper published in the nearest county having a newspaper~~. The advertisement shall state the brand or name of the goods, the quantity, why seized and offered for sale and the time and place of sale.

~~Section 46‑27‑640. The Commissioner, however, may in his discretion release the commercial feeds so withdrawn when the requirements of the provisions of Articles 1 to 9 of this chapter have been complied with and upon payment of all the costs or expenses incurred in any proceeding connected with such seizure and withdrawal.~~

Section ~~46‑27‑650~~ 46-27-630. Whenever the ~~Commissioner~~ commissioner, or his duly authorized representative, becomes cognizant of any violation of the provisions of ~~Articles 1 to 9 of~~ this chapter, he shall immediately notify in writing the manufacturer, importer, jobber or dealer, if known~~, and after thirty days he shall notify the circuit solicitor who shall cause such person so violating any such provision to be prosecuted in the manner prescribed by law~~.

Section ~~46‑27‑660~~ 46-27-640. (A) Any ~~manufacturer, importer, jobber, agent or dealer who shall be~~ person convicted of violating any of the provisions of ~~Articles 1 to 9 of~~ this chapter or who impedes, hinders, otherwise prevents, or attempts to prevent ~~the regulations adopted by~~ the ~~Commissioner~~ commissioner or his duly authorized agent in performance of his duty in connection with the provisions of this chapter is guilty of a misdemeanor and shall be fined not exceeding two hundred fifty dollars for the first ~~offense~~ violation nor more than five hundred dollars for each subsequent offense, or both.

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

(C) It shall be the duty of each solicitor to whom any violation is reported to institute and prosecute appropriate proceedings without delay. Before the commissioner reports a violation for prosecution, an opportunity shall be given to the distributor to present his view to the commissioner.

(D) 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 chapter or any regulation promulgated under this chapter notwithstanding the existence of other remedies at law. Any injunction is to be issued without bond.

(E) Any person who violates any of the provisions of this chapter or an order, standard, stipulation, agreement, citation, or schedule of compliance of the commissioner or impedes, hinders, otherwise prevents, or attempts to prevent the performance of a duty by the commissioner in connection with this chapter may be subject to a civil penalty of up to fifty dollars per violation, per day, as determined by the commissioner.

(F) In any action to compel the performance of an order of the commissioner to enforce this chapter, a court must require a defendant adjudged responsible to perform the acts within the person’s power that are reasonably necessary to accomplish the purposes of the order.

(G) The civil penalties and payments provided for in this section may be recovered by a civil action brought by the commissioner in the name of the State.

~~Section 46‑27‑670. The proceeds from such fines shall be covered into the State Treasury for use of the Department of Agriculture.~~

~~Section 46‑27‑680. If the analysis of an official sample shows a deviation from permitted analytical variation established by the Commissioner, the registrant or other responsible person shall be penalized according to the following schedule:~~

~~Component Deviating Method of Penalty Assessment~~

~~Crude protein Two times the relative percentage1 of deviation from the guarantee multiplied by the retail value of the commercial feed.~~

~~Crude fat Ten percent of the retail value of the lot of commercial feed.~~

~~Crude fiber Ten percent of the retail value of commercial feed.~~

~~Penalties for multiple deficiencies within a sample shall be additive; provided, that in no case shall the penalty exceed the retail value of the product. The minimum penalty under any of the foregoing provisions shall be twenty‑five dollars or the retail value of the product, whichever is smaller, regardless of the value of the deficiency.~~

~~Within sixty days from the date of written notice by the Commissioner or his duly designated agent to the manufacturer, guarantor, dealer or agent, all penalties assessed and collected under this section shall be paid to the purchaser of the lot of commercial feed or pet food represented by the sample analyzed. When such penalties are paid, receipts shall be taken and promptly forwarded to the Commissioner. If the consumers cannot be found, the amount of the penalty assessed shall be paid to the Commissioner who shall deposit it in the Department of Agriculture fund, of which the State Treasurer is custodian, for the express purpose of enforcement of this article.~~

~~Section 46‑27‑690. The term ‘permitted analytical variation’, as stated in Section 46‑27‑680, means allowance for the inherent variability in sampling and laboratory analysis in guaranteed components. Manufacturing variations and their effect on the guaranteed components are not included in such values.~~

~~ARTICLE 11~~

~~Stock or Poultry Preparations~~

~~Section 46‑27‑810. This article is designed to fully cover all preparations commonly known as condimental, patented, proprietary or trademarked stock or poultry tonic, stock or poultry regulators, stock or poultry conditioners, stock or poultry remedies and all similar preparations used for tonic, regulative, remedial or conditional purposes, and to protect the public from deception and fraud in the sale of these specific products.~~

~~Section 46‑27‑820. Before any condimental, patented, proprietary or trademarked preparation called a ‘stock or poultry tonic’, ‘stock or poultry regulator’, ‘stock or poultry conditioner’, or ‘stock or poultry remedy’, or any similar preparation, regardless of how it may be called or the specific name or title under which it is sold, which is represented as containing tonic, remedial or other medicinal properties, is sold or offered or exposed for sale in the State, the manufacturer, importer, dealer, agent or person who causes it to be sold or offered or exposed for sale, by sample or otherwise, within this State, shall file with the Commissioner:~~

~~(1)~~ ~~A statement that he desires to offer such preparation for sale in this State;~~

~~(2)~~ ~~A certificate, the execution of which shall be sworn to before a notary public or other proper official for registration, stating~~

~~(a)~~ ~~the name of the manufacturer,~~

~~(b)~~ ~~the location of the principal office of the manufacturer,~~

~~(c)~~ ~~the name, brand or trademark under which the preparation will be sold;~~

~~(3)~~ ~~A guaranty that~~

~~(a)~~ ~~the preparation is not injurious to the health of domestic animals and does not conflict with the drug requirements of Articles 1 and 3 of Chapter 53 of Title 44,~~

~~(b)~~ ~~the name or trademark under which the article is sold will not mislead or deceive the purchaser in any way,~~

~~(c)~~ ~~any statement, design or device on the label or package regarding the substances contained therein shall be true and correct and any claim made for the feeding, condimental, tonic or medicinal value shall not be false or misleading in any particular;~~

~~(4)~~ ~~A labeled package of each brand of goods, showing the claims made for it.~~

~~Section 46‑27‑830. The labeling and claims filed pursuant to Section 46‑27‑820 shall not be changed during a fiscal year for which registration has been made without the consent of the Commissioner.~~

~~Section 46‑27‑840. For the expense incurred in registering, inspecting and analyzing the preparations referred to in Section 46‑27‑820, a registration fee of ten dollars for each separate brand or, in lieu thereof, a maximum fee of fifty dollars per annum covering all brands made by a single manufacturer shall be paid by the manufacturer or seller of such preparations to the Commissioner during the month of January in each year.~~

~~Section 46‑27‑850. Any person who shall offer or expose for sale any package, sample or quantity of any preparation referred to in Section 46‑27‑820 which has not been registered or which, though registered, is subsequently found by an analysis or examination made by or under the direction of the Commissioner to contain harmful or injurious substances or to be labeled with false or misleading statements regarding its contents or curative properties shall be guilty of a misdemeanor and upon conviction shall be fined fifty dollars for the first offense and one hundred dollars for each subsequent offense.~~

~~Section 46‑27‑860. Whenever the Commissioner becomes cognizant of any violation of any of the provisions of this article, he shall immediately notify in writing the manufacturer, importer, jobber or dealer, if known. Any party so notified shall be given an opportunity to be heard under such regulations as may be prescribed by the Commissioner. If it appears that any of the provisions of this article have been violated, the Commissioner shall certify the facts to the solicitor in the district in which the sample was obtained and furnish that officer with a copy of the result of the analysis or other examination of the article, duly authenticated by the analyst or other officer making such examination under the oath of such officer. In all prosecutions arising under this article the certificate of the analyst or other officer making the analysis or examination, when duly sworn to by such officer, shall be prima facie evidence of the facts therein certified.~~

~~Section 46‑27‑870. Every solicitor to whom the Commissioner shall report any violation of this article shall cause proceedings to be commenced and prosecuted without delay for the fines and penalties in such cases prescribed.~~

Section ~~46‑27‑880~~ 46-27-650. ~~All money, including fines~~ Fines received under the provisions of this article~~,~~ shall be paid to the department and allocated to the costs of the administration of this chapter ~~general fund of the State~~. Payment to the ~~general fund~~ department shall be made in conformance to procedures established by the State Fiscal Accountability Authority.”

SECTION 2. This act takes effect upon approval by the Governor.

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