

HOUSE BILL No. 4812

July 12, 2017, Introduced by Reps. Victory, Pagel, LaSata, Hoadley, VanSingel, Brann, Whiteford, VanderWall and Barrett and referred to the Committee on Agriculture.

A bill to amend 1975 PA 120, entitled
"Feed law,"
by amending sections 3, 4, 5, 6, 13, and 14 (MCL 287.523, 287.524, 287.525, 287.526, 287.533, and 287.534), as amended by 2015 PA 83.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. As used in this act:

2 (a) "AAFCO official publication" means the document entitled
3 "2015 Official Publication", as published by the Association of
4 American Feed Control Officials.

5 (b) "Animal" means any vertebrate animal, other than ~~humans,~~
6 **HUMAN BEINGS**, including mammals, birds, fish, reptiles, and
7 amphibians, and any domesticated insect.

8 (c) "Animal feed" means edible material that is consumed by an
9 animal and contributes energy, nutrients, or both, to the animal's
10 diet.

1 (d) "Brand" means a word, name, symbol, or device, or a
2 combination of any of these that identifies the commercial feed of
3 a manufacturer or distributor and distinguishes it from that of
4 other manufacturers or distributors.

5 (e) "Bulk" or "in bulk" means feed that is not divided into
6 parts or packaged in separate units or any lot that is not in a
7 closed container at the time it passes to the possession of the
8 purchaser and includes that feed at any stage of distribution.

9 (f) "Cease order" means a cease order issued by the director
10 pursuant to section 15.

11 (g) "Commercial feed" means all materials or combination of
12 materials, including feed ingredients, that are distributed or
13 intended for distribution for use as animal feed or for mixing in
14 animal feed. Commercial feed does not include any of the following:

15 (i) Unmixed whole seeds or physically altered entire unmixed
16 seeds, ~~as defined by United States grain standards, 7 USC chapter~~
17 ~~3,~~ if both of the following conditions are met:

18 (A) The seeds are not chemically changed.

19 (B) The seeds are not adulterated within the meaning of
20 section 8.

21 (ii) Commodities, including, but not limited to, hay, straw,
22 stover, silage, cobs, and husks, that have undergone normal
23 harvesting practices, that are not intermixed with other materials
24 or chemically changed, and that are not adulterated within the
25 meaning of section 8.

26 (iii) Individual chemical compounds that are not intermixed
27 with other materials and are not adulterated within the meaning of

1 section 8.

2 (iv) Feed provided to contract feeders that is manufactured by
3 integrated operators that is not adulterated within the meaning of
4 section 8.

5 (v) Unmixed meat, poultry, fish, and other portions of animal
6 carcasses to be commercially sold in their raw or natural state
7 without further processing or packaging, except freezing or
8 denaturing, if both of the following conditions are met:

9 (A) The products are not adulterated within the meaning of
10 section 8.

11 (B) The products are not intended as commercial feed or for
12 use as a feed ingredient.

13 (vi) Feeder mice, other live feeder animals, and crickets that
14 are not adulterated within the meaning of section 8.

15 (h) "Commission" means the commission of agriculture and rural
16 development.

17 (i) "Contract feeder" means a person that is an independent
18 contractor that feeds animals pursuant to a contract if the feed is
19 supplied, furnished, or otherwise provided to the person.

20 (j) "Customer-formula feed" means commercial feed that
21 consists of a mixture of commercial feeds or feed ingredients, each
22 batch of which is manufactured according to the specific
23 instructions of the final purchaser or purchaser's agent.

24 (k) "Department" means the department of agriculture and rural
25 development.

26 (l) "Director" means the director of the department or the
27 director's authorized representative.

1 (m) "Distribute" means either of the following:

2 (i) To offer for sale, hold for sale, sell, exchange, or
3 barter commercial feed.

4 (ii) To supply, furnish, or otherwise provide commercial feed
5 to a contract feeder or integrated operator.

6 (n) "Distributor" means a person that distributes.

7 (o) "Drug" means either of the following:

8 (i) Any article intended for use in the diagnosis, cure,
9 mitigation, treatment, or prevention of disease in animals.

10 (ii) Any article other than feed intended to affect the
11 structure or a function of the animal body.

12 (p) "Embargo order" means an embargo order issued by the
13 director pursuant to section 15.

14 (q) "Feed ingredient" means each of the constituent materials
15 making up a commercial feed.

16 (r) "Food additive" means that term as ~~it is~~ defined in 21 USC
17 321(s).

18 (s) "Fund" means the feed control fund created in section 17.

19 (t) "Guarantor" means a person that agrees to be responsible
20 for labeling, information, guarantees, and claims.

21 (u) "Integrated operator" means a person located within this
22 state that manufactures animal feed for other integrated operators
23 if there is a minimum of 5% ownership by all persons involved in
24 each aspect of the operation that supply or share feed and
25 ingredients.

26 (v) "Label" means a display of written, printed, or graphic
27 matter upon or affixed to the container in which a commercial feed

1 is distributed or on the invoice or delivery slip with which a
2 commercial feed is distributed.

3 (w) "Labeling" means all labels and other written, printed,
4 electronic, or graphic matter, and includes advertising.

5 (x) "License" means a commercial feed license issued under
6 this act.

7 (y) "Licensee" means a person that has been issued a license.

8 (z) "Local unit of government" means a county, township, city,
9 or village.

10 (aa) "Manufacture" means to prepare, grind, mix, package,
11 repackage, or relabel commercial feed for distribution.

12 (bb) "Manufacturer" means a person that manufactures.

13 (cc) "Noncommercial feed" means all materials or combination
14 of materials, not distributed or intended for distribution, that
15 are for manufacturing and use as feed or for mixing in feed. A
16 person manufacturing noncommercial feed is not subject to licensing
17 or tonnage fees under this act.

18 (dd) "Official sample" means a sample of feed taken by the
19 director in accordance with section 7.

20 (ee) "Percent" or "percentage" means the percentage by weight.

21 (ff) "Person" means an individual, partnership, corporation,
22 association, governmental entity, or other legal entity.

23 (gg) "Pet food" means any commercial feed prepared and
24 distributed for consumption by dogs or cats.

25 (hh) "Product name" means the name of the commercial feed that
26 identifies it as to kind, class, or specific use and distinguishes
27 it from all other products bearing the same brand name.

1 (ii) "Quantity statement" means a writing containing the net
2 weight of a solid or net weight or net volume of a liquid.

3 (jj) "Rule" means a rule promulgated pursuant to the
4 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
5 24.328.

6 (kk) "Seizure order" means a seizure order issued by the
7 director pursuant to section 15.

8 (ll) "Sell" or "sale" means the exchange of ownership.

9 (mm) "Specialty pet" means any noncanine or nonfeline
10 domesticated animal kept as a pet and normally confined to and
11 maintained in a cage or tank within the owner's domicile,
12 including, but not limited to, gerbils, hamsters, canaries,
13 psittacine birds, mynahs, finches, tropical fish, goldfish, snakes,
14 and turtles.

15 (nn) "Ton" means a net weight of 2,000 pounds avoirdupois.

16 Sec. 4. (1) Except as provided in subsection (2), the
17 following persons shall obtain a license under this act:

18 (a) A manufacturer of commercial feed for each facility in
19 this state used to manufacture commercial feed.

20 (b) A person, other than a manufacturer, that distributes
21 commercial feed within this state or that serves as guarantor of
22 commercial feed distributed within this state.

23 (2) The following persons are not required to obtain a
24 license:

25 (a) A person that makes only retail sales of commercial feed
26 that contains labeling or another approved indication that the
27 commercial feed is from a licensed manufacturer, distributor, or

1 guarantor that has assumed full responsibility for the inspection
2 fee due under section 6.

3 (b) An on-farm mixer-feeder, if the person is not distributing
4 feed commercially.

5 (c) An integrated operator that does not distribute feed
6 commercially.

7 (D) A PERSON THAT MANUFACTURES OR DISTRIBUTES FOOD THAT WAS
8 ORIGINALLY INTENDED FOR HUMAN CONSUMPTION OR OTHER PROCESSED BY-
9 PRODUCT THAT IS INTENDED FOR USE AS ANIMAL FEED, IS NOT EXEMPT
10 UNDER SECTION 3(G), AND IS NOT ADULTERATED AS DEFINED IN SECTION 8,
11 AND THAT PERSON DISTRIBUTES THE FOOD OR OTHER PROCESSED BY-PRODUCT
12 ONLY TO A PERSON HOLDING A COMMERCIAL FEED LICENSE. THE PERSON
13 HOLDING A COMMERCIAL FEED LICENSE IS RESPONSIBLE FOR ENSURING THE
14 ANIMAL FEED COMPLIES WITH THE REQUIREMENTS OF THIS ACT, INCLUDING
15 LABELING UNDER SECTION 5 AND THE INSPECTION FEE UNDER SECTION 6.

16 (3) A person that wishes to obtain a license shall submit an
17 application to the department on a form provided by or approved by
18 the director and accompanied by a license fee payable to this state
19 in the following amount:

20 (a) For a manufacturer, \$100.00 for each manufacturing
21 facility, except that the fee for a manufacturer that manufactures
22 commercial feed in containers of 5 pounds or less is \$25.00 for
23 each manufacturing facility.

24 (b) For a distributor or guarantor whose name appears on the
25 label, \$100.00, except that the fee for a distributor or guarantor
26 of commercial feed that is distributed in containers of 5 pounds or
27 less is \$25.00.

1 (4) A new applicant that fails to obtain a license within 30
2 calendar days after notification of the requirement to obtain a
3 license, or any licensee that fails to comply with license renewal
4 requirements by June 30, shall pay a \$50.00 late fee in addition to
5 the license fee.

6 (5) License fees and late fees collected under this section
7 ~~shall~~**MUST** be forwarded to the state treasurer for deposit into the
8 fund.

9 (6) The director shall issue an initial or renewal license not
10 later than 90 days after the applicant submits a complete
11 application accompanied by the appropriate license fee. If the
12 application is incomplete, the department shall notify the
13 applicant within 60 days after the department receives the
14 application.

15 (7) After approval by the director, a license ~~shall~~**MUST** be
16 furnished to the applicant. The license ~~shall~~**MUST** be displayed
17 prominently at each manufacturing facility used to manufacture
18 commercial feed and ~~shall~~**MUST** be available at the principal
19 business office or the registered office of each distributor or
20 guarantor.

21 (8) A license expires on June 30. A license is not
22 transferable from 1 person to another, from 1 owner to another, or
23 from 1 location to another.

24 (9) To determine compliance with this act and rules
25 promulgated under this act, the director may require a current
26 licensee or an applicant for a new license to submit labels or
27 labeling being used or intended for use with a commercial feed.

1 (10) The director may do 1 or more of the following:

2 (a) Place conditions that limit the manufacture or
3 distribution of a particular commercial feed on the license of any
4 person found not in compliance with this act or the rules
5 promulgated under this act.

6 (b) Refuse to license an applicant, or revoke or suspend the
7 license of any person not in compliance with this act or the rules
8 promulgated under this act.

9 (11) A license ~~shall~~**MUST** not be refused, conditioned,
10 revoked, or suspended until the licensee or applicant for a license
11 is given the opportunity for a hearing pursuant to the
12 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
13 24.328.

14 (12) After a hearing is conducted pursuant to the
15 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
16 24.328, under subsection (11), the department may revoke or refuse
17 to issue or renew a license if any of the following occurred within
18 the 3 years preceding the date of the license application:

19 (a) A previous license issued under this act to a person with
20 an ownership or management interest in the new operation was
21 revoked due to the adulteration of commercial feed under section 8
22 or a violation of section 9.

23 (b) The applicant, a manager employed by the applicant, or any
24 other individual with management responsibilities for the feed
25 manufacturing operation of the applicant was convicted of any
26 felony involving fraud, conversion, or embezzlement.

27 (c) The applicant's license under the federal food, drug, and

1 cosmetic act, **21 USC 301 TO 399H**, registration under ~~the~~
2 ~~bioterrorism act, 21 USC 350d~~, or commercial feed license in
3 another state was revoked or canceled because of a violation of the
4 respective act.

5 (13) Each distributor and guarantor holding a license that
6 operates from a business location outside this state shall do
7 either of the following:

8 (a) Continuously maintain in this state a registered office
9 and a resident agent, which agent may be an individual resident in
10 this state whose business office or residence is identical with the
11 registered office, a domestic corporation or limited liability
12 company, or a foreign corporation or limited liability company
13 authorized to transact business in this state and having a business
14 office identical with the registered office. The licensee shall
15 file with the department the name, address, and telephone number of
16 the resident agent and shall maintain and make available records
17 required by this act.

18 (b) Maintain and make available to the department records
19 required by this act and pay all costs incurred by the department
20 in auditing the records if they are held at an out-of-state
21 location.

22 (14) A license issued ~~prior to the effective date of the~~
23 ~~amendatory act that added this subsection~~ **BEFORE OCTOBER 1, 2015**,
24 remains in effect until July 1, 2016, subject to revocation or
25 suspension as otherwise provided in this act. Beginning July 1,
26 2016, all persons required to obtain a license under this section
27 shall obtain a license as provided in this section.

1 Sec. 5. (1) Commercial feed ~~shall~~**MUST** be labeled as follows:

2 (a) Each container of commercial feed, except a customer-
3 formula feed, ~~shall~~**MUST** be accompanied by a label with the
4 following information in legibly printed form:

5 (i) The quantity statement of the contents.

6 (ii) The product name and brand name, if any.

7 (iii) The guaranteed analysis stated in those terms as the
8 director by rule determines is required to advise the user of the
9 composition of the feed or to support claims made in the labeling.
10 The substances or elements must be determinable by laboratory
11 methods such as the methods published by AOAC International.

12 (iv) The common or usual name of each ingredient used in the
13 manufacture of the commercial feed. However, the director may do
14 either or both of the following:

15 (A) By rule, permit the use of a collective term for a group
16 of ingredients that perform a similar function.

17 (B) Exempt commercial feeds, or any group of commercial feeds,
18 from the requirement of this subparagraph if the director finds
19 that the information required is not in the interest of purchasers.

20 (v) The name and principal mailing address of the manufacturer
21 or the person responsible for distributing the commercial feed.

22 (vi) Directions for use for all commercial feeds containing
23 drugs and for other feeds the director by rule requires as
24 necessary for their safe and effective use.

25 (vii) Precautionary statements that the director determines by
26 rule are necessary for the safe and effective use of the commercial
27 feed.

1 (viii) If a drug product is used, both of the following:

2 (A) The purpose of the medication.

3 (B) The established name of each active drug ingredient and
4 the level of each drug used in the final mixture expressed in
5 accordance with rules prescribed as necessary by the director.

6 (ix) The date of manufacture, processing, packing, or
7 repacking, or a code that permits the determination of the date or
8 enables the segregation of specific lots of feed if the director
9 finds segregation is necessary for the enforcement of this act. Tag
10 perforations, notches, and other similar markings ~~shall~~**ARE** not be
11 ~~recognized as~~ suitable codes for the purpose of identifying
12 specific lots of feed unless they can be translated into an
13 alphanumeric code without the use of special tools.

14 (2) A commercial feed, except a customer-formula feed,
15 distributed in bulk, ~~shall~~**MUST** be accompanied by a label in
16 accordance with subsection (1), and the label ~~shall~~**MUST** be
17 presented to the purchaser or the purchaser's agent or affixed to
18 the purchaser's storage container at the time of delivery of the
19 commercial feed.

20 (3) Bulk commercial feed held for further manufacturing or
21 distribution ~~shall~~**MUST** be labeled in such a manner that its
22 identity and traceability are maintained at all times.

23 (4) A customer-formula feed ~~shall~~**MUST** be accompanied by a
24 label, invoice, delivery slip, or other shipping document that
25 contains the following information:

26 (a) The name and address of the manufacturer.

27 (b) The name and address of the purchaser.

1 (c) The date of delivery.

2 (d) The product name.

3 (e) A quantity statement of the lot or lots delivered.

4 (f) If a drug product is used, both of the following:

5 (i) The purpose of the medication.

6 (ii) The established name of each active ingredient and the
7 level of each drug used in the final mixture expressed in
8 accordance with rules promulgated, as necessary, by the director.

9 (5) The following information related to a customer-formula
10 feed ~~shall~~ **MUST** be sent to the purchaser upon delivery, or within 1
11 business day, by electronic means, such as electronic mail or
12 facsimile:

13 (a) The **PRODUCT NAME AND** quantity statement for each
14 commercial feed and each other ingredient used in the mixture.

15 (b) Adequate directions for use for all commercial feeds
16 containing drugs and for other feeds as necessary for their safe
17 and effective use if required by rule.

18 (c) Precautionary statements as necessary for the safe and
19 effective use of the commercial feed if required by rule.

20 Sec. 6. (1) An inspection fee of \$0.30 per ton ~~shall~~ **MUST** be
21 paid on commercial feed distributed in this state by the person
22 whose name appears on the label as the manufacturer, guarantor, or
23 distributor, except that a person other than the manufacturer,
24 guarantor, or distributor may assume responsibility for the
25 inspection fee, subject to the following:

26 (a) ~~A fee shall not be paid on a~~ **IF MORE THAN 1 PERSON IS**
27 **INVOLVED IN THE DISTRIBUTION OF** commercial feed, ~~if the payment has~~

1 ~~been made by a previous distributor.~~ **THE LAST PERSON THAT IS**
2 **REQUIRED TO BE LICENSED AND THAT DISTRIBUTES TO A NONLICENSEE IS**
3 **RESPONSIBLE FOR REPORTING THE TONNAGE DISTRIBUTED AND PAYING THE**
4 **INSPECTION FEE.**

5 (b) A fee ~~shall~~ **WILL** not be paid on customer-formula feed if
6 the inspection fee is paid on the commercial feeds that are used as
7 ingredients within the customer-formula feed.

8 (c) The minimum inspection fee is \$50.00 per July 1 to June 30
9 annual period.

10 (d) The inspection fee is \$0.15 per ton on feed ingredients
11 that are by-products of manufacturing processes and have a moisture
12 content equal to or greater than 60%.

13 (2) Each person liable for paying the inspection fee under
14 subsection (1) shall do both of the following:

15 (a) File annually, by the last day of July, a statement,
16 stating the number of tons of commercial feed distributed in this
17 state during the preceding July 1 to June 30 period. The inspection
18 fee and tonnage ~~shall~~ **MUST** be reported on forms furnished or
19 approved by the director. Payments due of less than \$5.00 are
20 waived, and refunds of less than \$5.00 will not be processed unless
21 requested in writing. For any report not filed with the department
22 by the due date, a penalty of \$50.00 or 10% of the amount due,
23 whichever is greater, ~~shall~~ **WILL** be assessed. The assessment of
24 this penalty fee does not prevent the department from taking other
25 actions as provided in this act.

26 (b) Maintain records for 2 years to accurately indicate the
27 commercial feed tonnage distributed in this state. The director may

1 examine the records to verify statements of tonnage.

2 (3) Failure to make an accurate statement of tonnage, pay the
3 inspection fee, or comply with this section constitutes sufficient
4 cause for suspending a distributor license.

5 (4) Unless disclosure is required for the enforcement of this
6 act, the information furnished under this section is private or
7 nonpublic, is exempt from disclosure under the freedom of
8 information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not
9 be disclosed by an employee of the department in any manner that
10 divulges the business operations of a licensee required by this
11 section to make a report.

12 Sec. 13. A person manufacturing or distributing commercial
13 feed shall comply with all of the following:

14 ~~—— (a) The "AAFCO Model Good Manufacturing Practice Regulations~~
15 ~~for Feed and Feed Ingredients" as published within the AAFCO~~
16 ~~official publication, which is hereby incorporated by reference.~~
17 ~~These regulations apply in determining whether a commercial feed~~
18 ~~meets either of the following:~~

19 ~~—— (i) Is adulterated within the meaning of section 8.~~

20 ~~—— (ii) Has been produced, prepared, packed, or held under~~
21 ~~unsanitary conditions through which it may have become contaminated~~
22 ~~with filth or rendered unwholesome or unsafe to animal or public~~
23 ~~health.~~

24 (A) ~~(b)~~ The requirements in 21 CFR 558.6 for a veterinary feed
25 directive drug as defined in 21 CFR 558.3.

26 (B) ~~(c)~~ The requirements in 21 CFR 589.1 to 589.2001 for
27 prohibited mammalian protein.

1 (C) ~~(d)~~—The following requirements of manufacturing or
2 distributing commercial feeds containing drugs:

3 (i) The regulation prescribing good manufacturing practices
4 for type B and type C medicated feeds in 21 CFR 225.1 to 225.202.

5 (ii) The regulations prescribing good manufacturing practices
6 for type A medicated articles in 21 CFR 226.1 to 226.115.

7 **(D) THE REQUIREMENTS IN 21 CFR PART 507 FOR GOOD MANUFACTURING**
8 **PRACTICES AND PREVENTIVE CONTROLS FOR ANIMAL FOOD.**

9 Sec. 14. A person shall not do or shall not cause any of the
10 following:

11 (a) Manufacture or distribute any commercial feed that is
12 adulterated or misbranded.

13 (b) Adulterate or misbrand any commercial feed.

14 (c) Distribute agricultural commodities such as whole grain,
15 whole seed, hay, straw, stover, silage, cobs, and husks, that are
16 adulterated within the meaning of section 8. Upon prior approval by
17 the director, commodities described in this subdivision may be
18 distributed if reworked to acceptable levels for safe use to be fed
19 to animals.

20 (d) Remove or dispose of, without authorization from the
21 director, commercial feed subject to a seizure order.

22 (e) Fail or refuse to obtain a license required under section
23 4.

24 (f) Fail to make records available, furnish reports, permit
25 the examination of records, or pay an inspection fee as required
26 under section 6.

27 (g) Refuse, or cause another person to refuse, to permit

1 entry, inspection, sampling, or examination and copying of
2 production and distribution records and production and control
3 procedures authorized under section 7.

4 (h) Provide false information in a matter pertaining to this
5 act or resist, impede, or hinder the director or authorized
6 representatives in the discharge of their duties.

7 (i) Violate section 16(8).

8 (j) Violate a rule promulgated under section 11.

9 (k) Reuse bags, totes, or other containers for ~~commercial~~
10 ~~feeds,~~ **ANIMAL FEED**, including customer-formula feeds, unless the
11 container **HAS ALWAYS BEEN USED AND RESTRICTED TO USE WITHIN A**
12 **COMMERCIAL LICENSED FACILITY, OR** is in, on, or upon a portable
13 device and can be filled without entering the manufacturing
14 facility. Containers that have been used to directly feed
15 livestock, such as tubs, troughs, licks, or other containers, ~~shall~~
16 **MUST** not be refilled with feed.

17 Enacting section 1. This amendatory act does not take effect
18 unless Senate Bill No. _____ or House Bill No. 4811 (request no.
19 02472'17) of the 99th Legislature is enacted into law.