

Act No. 93
Public Acts of 2018
Approved by the Governor
March 26, 2018
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**STATE OF MICHIGAN
99TH LEGISLATURE
REGULAR SESSION OF 2018**

Introduced by Reps. Victory, Pagel, LaSata, Hoadley, VanSingel, Brann, Whiteford, VanderWall and Barrett

ENROLLED HOUSE BILL No. 4812

AN ACT to amend 1975 PA 120, entitled “An act to license and regulate the manufacture and distribution of commercial feeds; to require fees; to prescribe penalties; and to repeal certain acts and parts of acts,” 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:

Sec. 3. As used in this act:

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

(b) “Animal” means any vertebrate animal, other than human beings, including mammals, birds, fish, reptiles, and amphibians, and any domesticated insect.

(c) “Animal feed” means edible material that is consumed by an animal and contributes energy, nutrients, or both, to the animal’s diet.

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

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

(f) “Cease order” means a cease order issued by the director pursuant to section 15.

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

(i) Unmixed whole seeds or physically altered entire unmixed seeds, if both of the following conditions are met:

(A) The seeds are not chemically changed.

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

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

- (iii) Individual chemical compounds that are not intermixed with other materials and are not adulterated within the meaning of section 8.
- (iv) Feed provided to contract feeders that is manufactured by integrated operators that is not adulterated within the meaning of section 8.
- (v) Unmixed meat, poultry, fish, and other portions of animal carcasses to be commercially sold in their raw or natural state without further processing or packaging, except freezing or denaturing, if both of the following conditions are met:
 - (A) The products are not adulterated within the meaning of section 8.
 - (B) The products are not intended as commercial feed or for use as a feed ingredient.
- (vi) Feeder mice, other live feeder animals, and crickets that are not adulterated within the meaning of section 8.
- (h) "Commission" means the commission of agriculture and rural development.
- (i) "Contract feeder" means a person that is an independent contractor that feeds animals pursuant to a contract if the feed is supplied, furnished, or otherwise provided to the person.
- (j) "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 or purchaser's agent.
- (k) "Department" means the department of agriculture and rural development.
- (l) "Director" means the director of the department or the director's authorized representative.
- (m) "Distribute" means either of the following:
 - (i) To offer for sale, hold for sale, sell, exchange, or barter commercial feed.
 - (ii) To supply, furnish, or otherwise provide commercial feed to a contract feeder or integrated operator.
- (n) "Distributor" means a person that distributes.
- (o) "Drug" means either of the following:
 - (i) Any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals.
 - (ii) Any article other than feed intended to affect the structure or a function of the animal body.
- (p) "Embargo order" means an embargo order issued by the director pursuant to section 15.
- (q) "Feed ingredient" means each of the constituent materials making up a commercial feed.
- (r) "Food additive" means that term as defined in 21 USC 321(s).
- (s) "Fund" means the feed control fund created in section 17.
- (t) "Guarantor" means a person that agrees to be responsible for labeling, information, guarantees, and claims.
- (u) "Integrated operator" means a person located within this state that manufactures animal feed for other integrated operators if there is a minimum of 5% ownership by all persons involved in each aspect of the operation that supply or share feed and ingredients.
- (v) "Label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed or on the invoice or delivery slip with which a commercial feed is distributed.
- (w) "Labeling" means all labels and other written, printed, electronic, or graphic matter, and includes advertising.
- (x) "License" means a commercial feed license issued under this act.
- (y) "Licensee" means a person that has been issued a license.
- (z) "Local unit of government" means a county, township, city, or village.
- (aa) "Manufacture" means to prepare, grind, mix, package, repack, or relabel commercial feed for distribution.
- (bb) "Manufacturer" means a person that manufactures.
- (cc) "Noncommercial feed" means all materials or combination of materials, not distributed or intended for distribution, that are for manufacturing and use as feed or for mixing in feed. A person manufacturing noncommercial feed is not subject to licensing or tonnage fees under this act.
- (dd) "Official sample" means a sample of feed taken by the director in accordance with section 7.
- (ee) "Percent" or "percentage" means the percentage by weight.
- (ff) "Person" means an individual, partnership, corporation, association, governmental entity, or other legal entity.
- (gg) "Pet food" means any commercial feed prepared and distributed for consumption by dogs or cats.
- (hh) "Product name" means the name of the commercial feed that identifies it as to kind, class, or specific use and distinguishes it from all other products bearing the same brand name.
- (ii) "Quantity statement" means a writing containing the net weight of a solid or net weight or net volume of a liquid.

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

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

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

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

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

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

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

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

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

(a) A person that makes only retail sales of commercial feed that contains labeling or another approved indication that the commercial feed is from a licensed manufacturer, distributor, or guarantor that has assumed full responsibility for the inspection fee due under section 6.

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

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

(d) A person that manufactures or distributes food that was originally intended for human consumption or other processed by-product that is intended for use as animal feed, is not exempt under section 3(g), and is not adulterated as defined in section 8, and that person distributes the food or other processed by-product only to a person holding a commercial feed license. The person holding a commercial feed license is responsible for ensuring the animal feed complies with the requirements of this act, including labeling under section 5 and the inspection fee under section 6.

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

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

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

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

(5) License fees and late fees collected under this section must be forwarded to the state treasurer for deposit into the fund.

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

(7) After approval by the director, a license must be furnished to the applicant. The license must be displayed prominently at each manufacturing facility used to manufacture commercial feed and must be available at the principal business office or the registered office of each distributor or guarantor.

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

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

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

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

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

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

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

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

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

(c) The applicant's license under the federal food, drug, and cosmetic act, 21 USC 301 to 399h, registration under 21 USC 350d, or commercial feed license in another state was revoked or canceled because of a violation of the respective act.

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

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

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

(14) A license issued before October 1, 2015, remains in effect until July 1, 2016, subject to revocation or suspension as otherwise provided in this act. Beginning July 1, 2016, all persons required to obtain a license under this section shall obtain a license as provided in this section.

Sec. 5. (1) Commercial feed must be labeled as follows:

(a) Each container of commercial feed, except a customer-formula feed, must be accompanied by a label with the following information in legibly printed form:

(i) The quantity statement of the contents.

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

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

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

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

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

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

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

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

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

(A) The purpose of the medication.

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

(ix) The date of manufacture, processing, packing, or repacking, or a code that permits the determination of the date or enables the segregation of specific lots of feed if the director finds segregation is necessary for the enforcement of this act. Tag perforations, notches, and other similar markings are not suitable codes for the purpose of identifying specific lots of feed unless they can be translated into an alphanumeric code without the use of special tools.

(2) A commercial feed, except a customer-formula feed, distributed in bulk, must be accompanied by a label in accordance with subsection (1), and the label must be presented to the purchaser or the purchaser's agent or affixed to the purchaser's storage container at the time of delivery of the commercial feed.

(3) Bulk commercial feed held for further manufacturing or distribution must be labeled in such a manner that its identity and traceability are maintained at all times.

(4) A customer-formula feed must be accompanied by a label, invoice, delivery slip, or other shipping document that contains the following information:

- (a) The name and address of the manufacturer.
- (b) The name and address of the purchaser.
- (c) The date of delivery.
- (d) The product name.
- (e) A quantity statement of the lot or lots delivered.
- (f) If a drug product is used, both of the following:
 - (i) The purpose of the medication.

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

(5) The following information related to a customer-formula feed must be sent to the purchaser upon delivery, or within 1 business day, by electronic means, such as electronic mail or facsimile:

- (a) The product name and quantity statement for each commercial feed and each other ingredient used in the mixture.
- (b) Adequate directions for use for all commercial feeds containing drugs and for other feeds as necessary for their safe and effective use if required by rule.
- (c) Precautionary statements as necessary for the safe and effective use of the commercial feed if required by rule.

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

(a) If more than 1 person is involved in the distribution of commercial feed, the last person that is required to be licensed and that distributes to a nonlicensee is responsible for reporting the tonnage distributed and paying the inspection fee.

(b) A fee will not be paid on customer-formula feed if the inspection fee is paid on the commercial feeds that are used as ingredients within the customer-formula feed.

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

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

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

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

(b) Maintain records for 2 years to accurately indicate the commercial feed tonnage distributed in this state. The director may examine the records to verify statements of tonnage.

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

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

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

- (a) The requirements in 21 CFR 558.6 for a veterinary feed directive drug as defined in 21 CFR 558.3.
- (b) The requirements in 21 CFR 589.1 to 589.2001 for prohibited mammalian protein.
- (c) The following requirements of manufacturing or distributing commercial feeds containing drugs:
 - (i) The regulation prescribing good manufacturing practices for type B and type C medicated feeds in 21 CFR 225.1 to 225.202.

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

(d) The requirements in 21 CFR part 507 for good manufacturing practices and preventive controls for animal food.

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

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

(b) Adulterate or misbrand any commercial feed.

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

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

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

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

(g) Refuse, or cause another person to refuse, to permit entry, inspection, sampling, or examination and copying of production and distribution records and production and control procedures authorized under section 7.

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

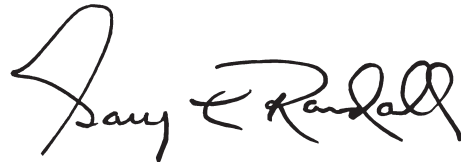
(i) Violate section 16(8).

(j) Violate a rule promulgated under section 11.

(k) Reuse bags, totes, or other containers for animal feed, including customer-formula feeds, unless the container has always been used and restricted to use within a commercial licensed facility, or is in, on, or upon a portable device and can be filled without entering the manufacturing facility. Containers that have been used to directly feed livestock, such as tubs, troughs, licks, or other containers, must not be refilled with feed.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 4811 of the 99th Legislature is enacted into law.

This act is ordered to take immediate effect.



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Clerk of the House of Representatives



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Secretary of the Senate

Approved

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Governor