

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997
4

As Engrossed: H2/13/97 S3/4/97

A Bill

ACT 726 OF 1997
HOUSE BILL 1594

5 By: Representatives Rodgers, Jeffress, Capps, Baker, Magnus, Beatty, Ammons, Johnson, Farris, Teague, Thomas, Davis, Wren,
6 George, Choate, Young, Milum, Bond, Vess, Pappas, Fletcher, Wagner, Newman, Miller, Bennett, Wilkins, Cook, Hausam, Goodwin,
7 Whorton, Maddox, Wallis, McGinnis, Joe Hudson, Wooldridge, Laverty, Luker, Allison, Malone, Trammell, Broadway, French,
8 McGehee, Wilson, and Dianne Hudson
9 By: Senators Hopkins and Mahony

10

11

For An Act To Be Entitled

12 "AN ACT TO REGULATE THE MANUFACTURE AND DISTRIBUTION OF
13 COMMERCIAL FEEDS IN THE STATE OF ARKANSAS; AND FOR OTHER
14 PURPOSES."

15

16

Subtitle

17 "TO REGULATE THE MANUFACTURE AND
18 DISTRIBUTION OF COMMERCIAL FEEDS IN THE
19 STATE OF ARKANSAS."

20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

22

23 SECTION 1. Title.

24 This act shall be known as the "Arkansas Feed Law of 1997".

25

26 SECTION 2. Enforcing Agency.

27 This act shall be administered by the State Plant Board.

28

29 SECTION 3. Definitions of Words and Terms.

30 When used in this act:

31 (a) "Board" means the State Plant Board.

32 (b) "Brand name" means any word, name, symbol, device, or any
33 combination thereof, identifying the commercial feed of a distributor or
34 registrant and distinguishing it from that of others.

35 (c) "Commercial feed" means all materials or combination of materials
36 which are distributed for use as feed or for mixing in feed, unless such

1 materials are specifically exempted. Unmixed whole seeds, when such whole
2 seeds are not adulterated, are exempt. The board by rule may exempt from this
3 definition, or from specific provisions of this act, commodities such as hay,
4 straw, stover, silage, cobs, husks, hulls, and individual chemical compounds
5 or substances when such commodities, compounds or substances are not
6 intermixed with other materials, and are not adulterated. Feed supplied to
7 contract feeders and feed ingredients supplied to integrated operators are not
8 commercial feed and are therefore exempt if granted an exemption license in
9 accordance with Section 4 of this act. Furthermore, exchanges of feed or feed
10 ingredients between or among integrated operators, who have been granted an
11 exemption license as provided in Section 4 of this act, are not commercial
12 feed and are therefore not subject to the provisions of this act. The board
13 by rule may exempt from this definition, or from certain provisions of this
14 act certain pet food or specialty pet food.

15 (d) "Contract feeder" means a person, who as an independent contractor,
16 feeds animals pursuant to a contract whereby such feed is supplied, furnished,
17 or otherwise provided such person and whereby such persons remuneration is
18 determined all or in part by feed consumption, mortality, profits, or amount
19 or quality of product.

20 (e) "Customer-formula feed" means commercial feed which consists of a
21 mixture of commercial feeds and/or feed ingredients each batch of which is
22 manufactured according to the specific instructions of the final purchaser.

23 (f) "Distribute" means to offer for sale, sell, exchange, or barter,
24 commercial feed.

25 (g) "Distributor" means any person who distributes.

26 (h) "Drug" means any article intended for use in the diagnosis, cure,
27 mitigation, treatment, or prevention of disease in animals other than man and
28 articles other than feed intended to affect the structure of any function of
29 the animal body.

30 (i) "Feed ingredient" means each of the constituent materials making up
31 a commercial feed.

32 (j) "Integrated operator" means a person who contracts with a contract
33 feeder to supply feed and pays that person based on all or in part by feed
34 consumption, mortality, profits, or amount or quality of product produced.

35 (k) "Label" means a display of written, printed, or graphic matter upon
36 or affixed to the container in which a commercial feed is distributed, or on

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

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

5 (m) "Manufacture" means to grind, mix or blend, or further process a
6 commercial feed for distribution.

7 (n) "Mineral feed" means a commercial feed intended to supply primarily
8 mineral elements or inorganic nutrients.

9 (o) "Official sample" means a sample of feed taken by the board or its
10 agent in accordance with the provisions of Sections 11(c), (e), or (f) of this
11 act.

12 (p) "Percent" or "percentages" means percentages by weights.

13 (q) "Person" includes individual, partnership, corporation, and
14 association.

15 (r) "Pet" means any domesticated animal normally maintained in or near
16 the households of the owners thereof.

17 (s) "Pet food" means any commercial feed prepared and distributed for
18 consumption by pets.

19 (t) "Product name" means the name of the commercial feed which
20 identifies it as to kind, class, or specific use.

21 (u) "Quantity statement" means the net weight (mass), net volume
22 (liquid or dry) or count.

23 (v) "Specialty pet" means any domesticated animal pet normally
24 maintained in a cage or tank, such as, but not limited to, gerbils, hamsters,
25 canaries, psittacines, birds, mynahs, finches, tropical fish, goldfish, snakes
26 and turtles.

27 (w) "Specialty pet food" means any commercial feed prepared and
28 distributed for consumption by specialty pets.

29 (x) "Ton" means a net weight of two thousand pounds (2,000#)
30 avoirdupois.

31

32 SECTION 4. Registration and Licensing.

33 (a) Any person:

34 (1) Who manufactures a commercial feed within this state; or

35 (2) Who distributes a commercial feed in or into the state; or

36 (3) Whose name appears on the label of a commercial feed as

1 guarantor, shall obtain a license for each facility which distributes in or
2 into the state authorizing him to manufacture or distribute commercial feed
3 before he engages in such activity. Any person who makes only retail sales of
4 commercial feed which bears labeling or other approved indication that the
5 commercial feed is from a licensed manufacturer, guarantor, or distributor who
6 has assumed full responsibility for the tonnage inspection fee due under this
7 act is not required to obtain a license.

8 (b) Any person who is required to obtain a license shall submit an
9 application on a form provided or approved by the board accompanied by a
10 license fee of ten dollars (\$10.00) paid to the board for each facility. The
11 board shall remit such license fees to the State Treasurer for deposit into
12 the State Treasury to the credit of the State Plant Board Fund for the sole
13 use of the board. Each license shall expire on the last day of December of
14 the year for which it is issued; provided that any license shall be valid
15 through ninety (90) days of the next ensuing year or until the issuance of the
16 renewal license, whichever event first occurs, if the holder thereof has filed
17 a renewal application with the board on or before December 31st of the year
18 for which the current license was issued. Any new applicant who fails to
19 obtain a license within fifteen (15) working days after notification of the
20 requirement to obtain a license, or any licensee who fails to comply with
21 license renewal requirements, shall pay a thirty dollars (\$30.00) late fee in
22 addition to the license fee.

23 (c) The form and content of the commercial feed license application
24 shall be established by rules adopted by the board.

25 (d) The board may, at any time, request from a license applicant or
26 licensee copies of labels and labeling in order to determine compliance with
27 the provisions of this act.

28 (e) The board is empowered to refuse to issue a license to any person
29 not in compliance with the provisions of this act. The board may suspend or
30 revoke any license issued to any person found not in compliance with any
31 provision of this act. The board may place conditions that limit production
32 or distribution of a particular commercial feed on the license of any person
33 found not to be in compliance with this act. No license shall be conditioned,
34 suspended, refused or revoked unless the applicant or licensee shall first be
35 given an opportunity to be heard before the board in order to comply with the
36 requirements of this act.

1 (f) In order to be exempt from the provisions of this act, integrated
2 operators, as defined in Section 3, shall submit an application for exemption
3 on a form provided or approved by the board accompanied by an application fee
4 of ten dollars (\$10.00) for each facility. The board shall remit such
5 application fees to the State Treasurer for deposit into the State Treasury to
6 the credit of the State Plant Board Fund to be used solely by the board.

7 (g) A grower's production of unmanipulated poultry litter is exempt
8 from the provisions of this act.

9
10 SECTION 5. Labeling.

11 A commercial feed shall be labeled as follows:

12 (a) In the case of a commercial feed, except a customer-formula feed,
13 it shall be accompanied by a label bearing the following information:

14 (1) The quantity statement (may be stated in metric units in
15 addition to the required avoirdupois).

16 (2) The product name and brand name, if any, under which the
17 commercial feed is distributed.

18 (3) The guaranteed analysis stated in such terms as the board by
19 regulation determines is required to advise the user of the composition of the
20 feed or to support claims made in the labeling. In all cases the substances
21 or elements must be determinable by laboratory methods such as the methods
22 published by the Association of Analytical Chemists International.

23 (4) The common or usual name of each ingredient used in the
24 manufacture of the commercial feed, provided that the board by regulation may
25 permit the use of a collective term for a group of ingredients which perform a
26 similar function, or the board may exempt such commercial feeds, or any group
27 thereof, from this requirement of an ingredient statement if the board finds
28 that such statement is not required in the interest of consumers.

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

31 (6) Adequate directions for use for all commercial feeds
32 containing drugs and for such other feeds as the board may require by
33 regulation as necessary for their safe and effective use.

34 (7) Such precautionary statements as the board by regulation
35 determines are necessary for the safe and effective use of the commercial
36 feed.

- 1 (8) If a drug containing product is used:
2 (A) The purpose of the medication (claim statement), and
3 (B) The established name of each active drug ingredient and
4 the level of each drug used in the final mixture expressed as defined by rule.
5 (b) In the case of a customer-formula feed, it shall be accompanied by
6 a label, invoice, delivery slip or other shipping document, bearing the
7 following information:
8 (1) Name and address of the manufacturer;
9 (2) Name and address of the purchaser;
10 (3) Date of delivery;
11 (4) The product name and net weight (may be stated in metric
12 units in addition to the required avoirdupois) of each commercial feed and
13 each other ingredient used in the mixture;
14 (5) Adequate directions for use and precautionary statements for
15 all customer-formula feeds containing drugs and for such other feeds as the
16 board may require by regulation as necessary for their safe and effective use.
17 (6) If a drug containing product is used:
18 (A) The purpose of the medication (claim statement); and
19 (B) The established name of each active drug ingredient and
20 the level of each drug used in the final mixture expressed as defined by rule.

21
22 SECTION 6. Misbranding.

23 A commercial feed shall be deemed to be misbranded if:

- 24 (a) its labeling is false or misleading in any particular;
25 (b) it is distributed under the name of another commercial feed;
26 (c) it is not labeled as required in Section 5 of this act;
27 (d) it purports to be or is represented as a commercial feed, or if it
28 purports to contain or is represented as containing a commercial feed
29 ingredient, unless such commercial feed or feed ingredient conforms to the
30 definition, if any, prescribed by regulation by the board;
31 (e) any word, statement, or other information required by or under
32 authority of this act to appear on the label or labeling is not prominently
33 placed thereon with such conspicuousness (as compared with other words,
34 statements, designs, or devices in the labeling) and in such terms as to
35 render it likely to be read and understood by the ordinary individual under
36 customary conditions of purchase and use.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

SECTION 7. Adulteration.

A commercial feed shall be deemed to be adulterated:

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

(2) If it bears or contains any added poisonous, added deleterious, or added non-nutritive substance which is unsafe within the meaning of Section 406 of the Federal Food, Drug, and Cosmetic Act (other than one which is (i) a pesticide chemical in or on a raw agricultural commodity: or (ii) a food additive); or

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

(4) If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of Section 408 (a) of the Federal Food, Drug, and Cosmetic Act; provided, that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under Section 408 of the Federal Food, Drug, and Cosmetic Act and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed feed shall not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed

feed is not greater than the tolerance prescribed for the raw agricultural commodity unless the feeding of such processed feed will result or is likely to result in a pesticide residue in the edible product of the animal, which is unsafe within the meaning of Section 408 (a) of the Federal Food, Drug, and Cosmetic Act; or

(5) If it is, or it bears or contains any color additive which is unsafe within the meaning of Section 706 of the Federal Food, Drug and Cosmetic Act; or

1 (6) If it is, or it bears or contains any new animal drug which is
2 unsafe within the meaning of Section 512 of the Federal Food, Drug, & Cosmetic
3 Act; or

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

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

9 (9) It is, in whole or in part, the product of a diseased animal or of
10 an animal which has died otherwise than by slaughter which is unsafe within
11 the meaning of Section 402(a)(1) or (2) of the Federal Food, Drug, and
12 Cosmetic Act; or

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

16 (11) If it has been intentionally subjected to radiation, unless the
17 use of the radiation was in conformity with the regulation or exemption in
18 effect pursuant to Section 409 of the Federal Food, Drug, and Cosmetic Act; or

19 (12) If any valuable constituent has been in whole or in part omitted
20 or abstracted therefrom or any less valuable substance substituted therefor;
21 or

22 (13) If its composition or quality falls below or differs from that
23 which it is purported or is represented to possess by its labeling; or

24 (14) If it contains viable weed seeds in amounts exceeding the limits
25 which the board shall establish by rule; or

26 (15) If it contains a drug and the methods used in or the facilities or
27 controls used for its manufacture, processing, or packaging do not conform to
28 current good manufacturing practice regulations promulgated by the board to
29 assure that the drug meets the requirement of this act as to safety and has
30 the identity and strength and meets the quality and purity characteristics
31 which it purports or is represented to possess. In promulgating such
32 regulations, the board shall adopt the current good manufacturing practice
33 (CGMP) regulations for Type A Medicated Articles and Type B and Type C
34 Medicated Feeds established under authority of the Federal Food, Drug, and
35 Cosmetic Act, unless the board determines the current good manufacturing
36 regulations are not appropriate to the conditions which exist in this state.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

SECTION 8. Prohibited acts.

The following acts and the causing thereof within the state are hereby prohibited:

(a) The manufacture or distribution of any commercial feed that is adulterated or misbranded.

(b) The adulteration or misbranding of any commercial feed.

(c) The distribution of agricultural commodities such as whole seed, hay, straw, stover, silage, cobs, husks, and hulls, which are adulterated within the meaning of Section 7 of this act.

(d) The removal or disposal of a commercial feed in violation of any order under Section 12 of this act.

(e) The failure or refusal to register in accordance with Section 4 of this act.

(f) The violation of Section 13(f) of this act.

(g) Failure to pay inspection fees and file reports as required by Section 9 of this act.

SECTION 9. Inspection Fees and Reports.

(a) An inspection fee at the rate of thirty cents (\$.30) per ton shall be paid on commercial feeds distributed in this state by the person whose name appears on the label as the manufacturer, guarantor or distributor, except that a person other than the manufacturer, guarantor or distributor may assume liability for the inspection fee, subject to the following:

(1) No fee shall be paid on a commercial feed if the payment has been made by a previous distributor.

(2) No fee shall be paid on customer-formula feeds if the inspection fee is paid on the commercial feeds which are used as ingredients therein.

(3) No fee shall be paid on commercial feeds which are used as ingredients for the manufacture of commercial feeds. If the fee has already been paid, credit shall be given for such payment.

(4) On commercial feed distributed in quantities of twenty-five (25) tons or less, a minimum fee of ten dollars (\$10.00) per quarterly report shall be paid. A tonnage report and minimum fee is due for each reporting

1 period, even though no distribution of commercial feeds occurred in the state
2 during that period.

3 (b) Each person who is liable for the payment of such fee shall:

4 (1) File, not later than the last day in January, April, July,
5 and October of each year, quarterly statement, setting forth the number of net
6 tons of commercial feeds distributed in this state during the preceding three
7 (3) months; and upon filing such statement shall pay the inspection fee at the
8 rate stated in paragraph (a) of this section. Inspection fees which are due
9 and owing and have not been remitted to the board within fifteen (15) days
10 following the date due shall have a penalty fee of fifteen percent (15%) or
11 twenty-five dollars (\$25.00), whichever is the higher, added to the amount due
12 when payment is finally made. The assessment of this penalty fee shall not
13 prevent the board from taking other actions as provided in this act.

14 (2) Keep such records as may be necessary or required by the
15 board to indicate accurately the tonnage of commercial feed distributed in
16 this state, and the board shall have the right to examine such records to
17 verify statements of tonnage. Failure to make an accurate statement of
18 tonnage or to pay the inspection fee or comply as provided herein shall
19 constitute sufficient cause for the cancellation of the license of a
20 distributor. However, no license shall be canceled or revoked before the
21 distributor has been given an opportunity to be heard before the board and to
22 pay the fees owed under this section.

23 (c) Fees collected shall constitute a fund for the payment of the costs
24 of inspection, sampling, and analysis, and other expenses necessary for
25 administration of this act and shall be deposited into the State Treasury to
26 the credit of the State Plant Board Fund.

27

28 SECTION 10. Regulations.

29 (a) The board is authorized to promulgate such reasonable regulations
30 as may be necessary for the efficient enforcement of this act. In the
31 interest of uniformity the board shall by regulation adopt, unless the board
32 determines that they are inconsistent with the provisions of this act or are
33 not appropriate to conditions which exist in this state, the following:

34 (1) The Official Definitions of Feed Ingredients and Official
35 Feed Terms adopted by the Association of American Feed Control Officials and
36 published in the official publication of that organization; and

1 (2) Any regulation promulgated pursuant to the authority of the
2 Federal Food, Drug, and Cosmetic Act, provided, that the board would have the
3 authority under this act to promulgate such regulations.

4 (b) Before the issuance, amendment, or repeal of any regulation
5 authorized by this act, the board shall publish the proposed regulation,
6 amendment, or notice to repeal an existing regulation in a manner reasonably
7 calculated to give interested parties, including all current registrants,
8 adequate notice and shall afford all interested persons an opportunity to
9 present their views thereon, orally or in writing, within a reasonable period
10 of time. After consideration of all views presented by interested persons,
11 the board shall take appropriate action to issue the proposed regulation or to
12 amend or repeal an existing regulation. The provisions of this paragraph not
13 withstanding, if the board, pursuant to the authority of this act, adopts the
14 Official Definitions of Feed Ingredients or Official Feed Terms as adopted by
15 the Association of American Feed Control Officials, or regulations promulgated
16 pursuant to the authority of the Federal Food, Drug, and Cosmetic Act, any
17 amendment or modification adopted by said Association or by the U. S.
18 Secretary of Health and Human Services in the case of regulations promulgated
19 pursuant to the Federal Food, Drug and Cosmetic Act, shall be adopted
20 automatically under this act without regard to the publication of the notice
21 required by this paragraph (b), unless the board by order specifically
22 determines that said amendment of modification shall not be adopted.

23

24 SECTION 11. Inspection, Sampling, and Analysis.

25 (a) For the purpose of enforcement of this act, and in order to
26 determine whether its provisions have been complied with, including whether or
27 not any operations may be subject to such provisions, officers or employees
28 designated by the board, upon presenting appropriate credentials, and notice
29 to the owner, operator, or agent in charge, are authorized:

30 (1) to enter, during normal business hours, any factory,
31 warehouse, or establishment within the state in which commercial feeds are
32 manufactured, processed, packed, or held for distribution, or to enter any
33 vehicle being used to transport or hold such feeds; and

34 (2) to inspect at reasonable times and within reasonable limits
35 and in a reasonable manner, such factory, warehouse, establishment or vehicle
36 and all pertinent equipment, finished and unfinished materials, containers,

1 and labeling herein. The inspection may include the verification of only such
2 records, and production and control procedures as may be necessary to
3 determine compliance with the Good Manufacturing Practice Regulations
4 established under Section 7(15) of this act.

5 (b) Notice shall be given for each such inspection, but a notice shall
6 not be required for each entry made during the period covered by the
7 inspection. Each such inspection shall be commenced and completed with
8 reasonable promptness. Upon completion of the inspection the person in charge
9 of the facility or vehicle shall be so notified.

10 (c) If the owner of any factory, warehouse, or establishment described
11 in paragraph (a), or his agent refuses to admit the board or its agent to
12 inspect in accordance with paragraphs (a) and (b), the board is authorized to
13 obtain from any state court a warrant directing such owner or his agent to
14 submit premises described in such warrant to inspection.

15 (d) For the enforcement of this act, the board or its designated agent
16 is authorized to enter upon any public or private premises including any
17 vehicle of transport during regular business hours to have access to, and to
18 obtain samples, and to examine records relating to distribution of commercial
19 feeds.

20 (e) Sampling and analysis shall be conducted in accordance with methods
21 published by the Association of Analytical Chemists International, or in
22 accordance with other generally recognized methods.

23 (f) The results of all analyses of official samples shall be forwarded
24 by the board to the person named on the label and to the purchaser. When the
25 inspection and analysis of an official sample indicates a commercial feed has
26 been adulterated or misbranded and upon request within thirty (30) days
27 following the receipt of the analysis the board shall furnish to the
28 registrant or licensee a portion of the sample concerned.

29 (g) The board, in determining for administrative purposes whether a
30 commercial feed is deficient in any component, shall be guided by the official
31 sample as defined in paragraph (o) of Section 3 and obtained and analyzed as
32 provided for in paragraphs (d) and (e) of Section 11 of this act.

33

34 SECTION 12. Detained Commercial Feeds.

35 (a) Withdrawal from distribution orders. When the board or its
36 authorized agent has reasonable cause to believe any lot of commercial feed is

1 being distributed in violation of any of the provisions of this act or any of
2 the prescribed regulations under this act, the board may issue and enforce a
3 written or printed "withdrawal from distribution" order, warning the
4 distributor not to dispose of the lot of commercial feed in any manner until
5 written permission is given by the board or the court. The board shall
6 release the lot of commercial feed so withdrawn when said provisions and
7 regulations have been complied with. If compliance is not obtained the board
8 may begin, or upon request of the distributor or registrant, shall begin
9 proceedings for condemnation. A withdrawal from distribution order issued
10 under this section expires thirty (30) days after the day it was first issued
11 unless condemnation proceedings have begun in a court of competent
12 jurisdiction.

13 (b) Condemnation and Confiscation. Any lot of commercial feed not in
14 compliance with said provisions and regulations shall be subject to seizure on
15 complaint of the board to a court of competent jurisdiction in the area in
16 which the commercial feed is located. In the event the court finds the
17 commercial feed to be in violation of this act and orders the condemnation of
18 the commercial feed, it shall be disposed of in any manner consistent with the
19 quality of the commercial feed and the laws of the state. However, in no
20 instance shall the disposition of the commercial feed be ordered by the court
21 without first giving the claimant an opportunity to apply to the court for
22 release of the commercial feed or for permission to process or re-label the
23 commercial feed to bring it into compliance with this act. If the court
24 orders the sale of the feed, the proceeds from the sale shall be remitted to
25 the State Treasurer to be credited to the General Revenue Fund.

26

27 SECTION 13. Penalties.

28 (a) Any person convicted of violating any of the provisions of this act
29 or who shall impede, hinder, or otherwise prevent, or attempt to prevent, the
30 board or its authorized agent in performance of his duty in connection with
31 the provisions of this act, shall be adjudged guilty of a misdemeanor
32 punishable by a fine of not more than fifty dollars (\$50.00) for the first
33 violation, and not more than two hundred dollars (\$200) for each subsequent
34 violation and the proceeds from such fines shall be remitted into the State
35 Treasury to the credit of the General Revenue Fund.

36 (b) Nothing in this act shall be construed as requiring the board or

1 its representative to:

2 (1) report for prosecution;

3 (2) institute seizure proceedings; or

4 (3) issue a withdrawal from distribution order, as a result of
5 minor violations of the act, or when the board believes the public interest
6 will best be served by suitable notice of warning in writing.

7 (c) In all prosecutions for violations of this act, the certificate of
8 the analyst, or other officer making the analysis or examination, when sworn
9 to or subscribed by the analyst or officer, shall be prima facie evidence of
10 the facts therein certified.

11 (d) The board is authorized to apply for and the court to grant a
12 temporary or permanent injunction restraining any person from violating or
13 continuing to violate any of the provisions of this act or any regulation
14 promulgated under the act notwithstanding the existence of other remedies at
15 law. The injunction shall be issued without bond.

16 (e) Any person adversely affected by an act, order, or ruling of the
17 board made pursuant to the provisions of this act may within forty-five (45)
18 days thereafter bring action in the Pulaski County Chancery Court for judicial
19 review of such actions. The form of the proceeding may be any which may be
20 provided by statutes of this state to review decisions of administrative
21 agencies, or in the absence or inadequacy thereof, any applicable form of
22 legal action, including actions for declaratory judgements or writ or
23 prohibitory or mandatory injunctions.

24 (f) Any person who uses to his own advantage, or reveals to other than
25 the board or officers of the board or other officers of state agencies, or to
26 the courts when relevant in any judicial proceeding, any information acquired
27 under the authority of this act, concerning any method, records, formulations,
28 or processes which as a trade secret is entitled to protection, is guilty of a
29 Class C misdemeanor; provided, that this prohibition shall not be deemed as
30 prohibiting the board or its authorized agent, from exchanging information of
31 a regulatory nature with authorized officials of the United States Government,
32 or of other states, who are similarly prohibited by law from revealing this
33 information.

34

35 SECTION 14. Cooperation with Other Entities.

36 The board may cooperate with and enter into agreements with governmental

1 agencies of this state, other states, agencies of the United States
2 Government, and private associations in order to carry out the purpose and
3 provisions of this act.

4
5 SECTION 15. All provisions of this act of a general and permanent
6 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
7 Code Revision Commission shall incorporate the same in the Code.

8
9 SECTION 16. If any provision of this act or the application thereof to
10 any person or circumstance is held invalid, such invalidity shall not affect
11 other provisions or applications of the act which can be given effect without
12 the invalid provision or application, and to this end the provisions of this
13 act are declared to be severable.

14
15 SECTION 17. All laws and parts of laws in conflict with this act are
16 hereby repealed.

17
18 SECTION 18. The following sections of the Arkansas Code are repealed:
19 2-37-101 through 114.

20 ~~_____ § 2-37-101. Concentrated commercial feedstuffs defined.~~

21 ~~_____ The term "concentrated commercial feedstuffs" shall be held to include~~
22 ~~dehydrated foods for dogs and cats and all feeds used for livestock and~~
23 ~~poultry except whole hays, straws, and corn stover when they are not mixed~~
24 ~~with other materials. It shall not apply to the unmixed whole seeds or grains~~
25 ~~of cereals when they are not mixed with other materials.~~

26 ~~_____ § 2-37-102. Exemptions.~~

27 ~~_____ (a) There shall be exempt from the application of this chapter any and~~
28 ~~all concentrated commercial feedstuffs and the ingredients to be used in~~
29 ~~compounding them which are manufactured or mixed and used for feeding to~~
30 ~~poultry or animals owned by the manufacturer or mixer. Also exempt are any and~~
31 ~~all concentrated commercial feedstuffs and the ingredients to be used in~~
32 ~~compounding them which are distributed by a manufacturer or mixer under a~~
33 ~~written contractual agreement to a feeder for the specific purpose of feeding~~
34 ~~poultry or animals under a joint venture or mutual undertaking between the~~
35 ~~feeder and manufacturer or mixer.~~

36 ~~_____ (b)(1) Any manufacturer or mixer who shall desire to be exempt from the~~

1 applicability of this chapter as provided in this section shall obtain an
2 exemption permit by application to the State Plant Board upon forms prescribed
3 by the board and shall furnish any information relating to the qualification
4 for exemption as provided by this section as shall be required by the board.

5 _____ (2) Each application shall be accompanied by a fee of five
6 dollars (\$5.00).

7 _____ (3) Exemption permits shall expire each June 30.

8

9 _____ ~~§ 2-37-103. Penalty.~~

10 _____ (a) Any manufacturer, importer, jobber, agent, or dealer shall be
11 guilty of violating this chapter if he:

12 _____ (1) Fails to comply with the requirements of the provisions of
13 this chapter or of the rules and regulations made under it;

14 _____ (2) Impedes, obstructs, hinders, or otherwise prevents any
15 chemist, inspector, or other authorized agent in the performance of his duty
16 in connection with the provisions of this chapter; or

17 _____ (3) Violates the provisions of a written notice given by an
18 inspector or authorized agent of the board under the provisions of this
19 chapter.

20 _____ (b)(1) Any manufacturer, jobber, importer, agent, or dealer violating
21 any of the provisions of this chapter or the regulations adopted by the State
22 Plant Board shall, upon conviction, be fined not exceeding fifty dollars
23 (\$50.00) for the first offense nor more than two hundred dollars (\$200) for
24 each subsequent offense.

25 _____ (2) The proceeds from these fines shall be remitted to the State
26 Treasury to the credit of the General Revenue Fund Account of the State
27 Apportionment Fund.

28

29 _____ ~~§ 2-37-104. Prosecution.~~

30 Whenever the State Plant Board or its duly authorized representatives become
31 cognizant of any violation of the provisions of this chapter, they shall
32 immediately notify, in writing, the manufacturer, importer, jobber, or dealer,
33 if known. After thirty (30) days, the board shall notify the prosecuting
34 attorney of the district where the violation occurred. The prosecuting
35 attorney shall cause proceedings to be commenced against any person violating
36 this chapter, and the violator shall be prosecuted in the manner required by

1 ~~law.~~

2

3 ~~_____ § 2-37-105. Rules and regulations.~~

4 ~~_____ (a) The State Plant Board shall from time to time prescribe and publish~~
5 ~~rules and regulations for carrying out the provisions of this chapter.~~

6 ~~_____ (b) The board is authorized to prescribe rules and regulations~~
7 ~~governing the sale of any and all concentrated commercial feedstuffs defined~~
8 ~~in § 2-37-101.~~

9

10 ~~_____ § 2-37-106. Labeling requirements generally.~~

11 ~~_____ (a) Every lot or parcel of concentrated commercial feedstuff sold or~~
12 ~~offered for sale in this state shall have affixed thereto or printed in a~~
13 ~~conspicuous place on the outside thereof a legible and plainly printed~~
14 ~~statement, in the English language, clearly and truly certifying:~~

15 ~~_____ (1) The net weight thereof, provided that all concentrated~~
16 ~~commercial feedstuffs if packaged shall be in standard weight packages of five~~
17 ~~(5), ten (10), twenty-five (25), fifty (50), seventy-five (75), eighty (80),~~
18 ~~and one hundred (100) pounds;~~

19 ~~_____ (2) The name, brand, or trademark under which the article is sold;~~

20 ~~_____ (3) The name and address of the manufacturer, jobber, or importer;~~

21 ~~_____ (4) The names of each and all ingredients of which the article is~~
22 ~~composed;~~

23 ~~_____ (5) A statement of the maximum percentage it contains of crude fiber~~
24 ~~and the minimum percentage of crude fat;~~

25 ~~_____ (6) The minimum percentage of crude protein, allowing one percent~~
26 ~~(1%) of nitrogen to equal six and one quarter percent (6.25%) of protein; and~~

27 ~~_____ (7) Such other statements as the State Plant Board in its~~
28 ~~regulations may require.~~

29 ~~_____ (b) All constituents shall be determined by the methods in use at the~~
30 ~~time by the American Analytical Chemists Association.~~

31

32 ~~_____ § 2-37-107. Guaranteed analysis for bulk poultry feed.~~

33 ~~_____ For each load of commercial bulk poultry feed delivered to any person~~
34 ~~where a contract or understanding, written or verbal, exists whereby that~~
35 ~~person's remuneration is determined, all or in part, by feed consumption, the~~
36 ~~supplier of the feed shall have delivered to that person receiving the feed a~~

1 ~~guaranteed feed analysis tag showing the protein, fat, and fiber content in~~
2 ~~percentages, and the feed must meet the standards set forth by the Federal~~
3 ~~Food and Drug Administration on drugs.~~

4
5 ~~_____ § 2-37-108. Registration of statement - Exceptions.~~

6 ~~_____ (a) Every manufacturer, jobber, importer, agent, or seller, before~~
7 ~~selling or offering for sale in this state any concentrated commercial~~
8 ~~feedstuff shall, for each and every feedstuff bearing a distinguishing name or~~
9 ~~trademark, file for registration with the State Plant Board a copy of the~~
10 ~~statement required in § 2-37-106.~~

11 ~~_____ (b) When a manufacturer, importer, or jobber of any concentrated~~
12 ~~commercial feedstuffs shall have filed a statement, as required by subsection~~
13 ~~(a) of this section, no agent or seller of the manufacturer, importer, or~~
14 ~~jobber shall be required to file another statement.~~

15
16 ~~_____ § 2-37-109. Sampling, analysis, and publication.~~

17 ~~_____ (a)(1) The State Plant Board, together with its deputies, agents, and~~
18 ~~assistants, shall have free access to all places of business, mills,~~
19 ~~buildings, vehicles, cars, vessels, and packages of whatsoever kind used in~~
20 ~~the manufacture, importation, or sale of any concentrated commercial~~
21 ~~feedstuff. The board shall also have power and authority to open any package~~
22 ~~containing, or supposed to contain, any concentrated commercial feedstuff upon~~
23 ~~tender and full payment of the selling price of the samples taken therefrom in~~
24 ~~the manner prescribed.~~

25 ~~_____ (2) The samples, not less than one pound (1 lb.) in weight, shall be~~
26 ~~taken from not less than ten (10) bags or packages, or if there are fewer than~~
27 ~~ten (10) bags or packages, then the samples shall be taken from every package.~~

28 ~~_____ (b)(1) The board is authorized to publish from time to time in reports~~
29 ~~or bulletins the results of the analysis of these samples, together with such~~
30 ~~additional information as circumstances advise.~~

31 ~~_____ (2)(A) If these samples, as analyzed by the board, differ from the~~
32 ~~statement prescribed in § 2-37-106, then, at least thirty (30) days before~~
33 ~~publishing the results of the analysis, the board shall give written notice of~~
34 ~~the results to the manufacturer, importer, agent, or jobber of the feedstuff~~
35 ~~if the name and address of the manufacturer, jobber, or importer is known.~~

36 ~~_____ (B) If the analysis of any sample does not differ~~

1 ~~substantially from the statements prescribed in [§] 2-37-106 appearing upon the~~
2 ~~goods, the manufacturer shall be considered as having complied with the~~
3 ~~requirements of this chapter.~~

4
5 ~~———— [§] 2-37-110. Certificate of analyst as evidence.~~

6 ~~In all prosecutions in the courts of this state arising under this chapter and~~
7 ~~the rules and regulations made in accordance with it, the certificate of the~~
8 ~~analyst or other officer making the analysis or examination, when duly sworn~~
9 ~~to or subscribed by the analyst or officer, shall be prima facie evidence of~~
10 ~~the acts therein certified.~~

11

12 ~~———— [§] 2-37-111. Power to refuse or cancel registration.——~~

13 ~~———— (a) The State Plant Board or its duly authorized agent shall have the~~
14 ~~power to refuse the registration of any concentrated commercial feedstuff~~
15 ~~under a name which would be misleading as to the materials of which it is~~
16 ~~composed, when the names of each and all ingredients of which it is composed~~
17 ~~are not stated, if there is reason to believe that it does not comply with all~~
18 ~~the provisions of this chapter, or if it does not comply with the regulations~~
19 ~~of the board.~~

20 ~~———— (b) Should any concentrated commercial feedstuffs be registered and it~~
21 ~~is afterwards discovered that they are in violation of any of the provisions~~
22 ~~of this chapter, the board or its duly authorized agent shall have the power~~
23 ~~to cancel that registration.~~

24

25 ~~———— [§] 2-37-112. Sale of unregistered, adulterated, or misbranded feedstuffs.~~

26 ~~———— (a)(1) Any manufacturer, importer, jobber, agent, or dealer who shall~~
27 ~~do any of the following shall be guilty of a violation of this chapter:~~

28 ~~———— (A) Sell or offer for sale or distribution in this state~~
29 ~~any concentrated commercial feedstuffs, as defined in [§] 2-37-101, registration~~
30 ~~of which has not been approved by the State Plant Board or registration of~~
31 ~~which has been cancelled;~~

32 ~~———— (B) Sell or offer for sale or distribution any concentrated~~
33 ~~commercial feedstuff which contains substantially a smaller percentage of~~
34 ~~crude protein or crude fat or a larger percentage of crude fiber than~~
35 ~~certified to be contained;~~

36 ~~———— (C) Adulterate any concentrated commercial feedstuffs with~~

1 ~~foreign, mineral, or other substances of little or no feeding value or with~~
2 ~~substances injurious to the health of domestic animals;~~

3 ~~_____ (D) Sell or offer for sale any concentrated commercial~~
4 ~~feedstuffs so mixed or adulterated;~~

5 ~~_____ (E) Misrepresent feeds either by statements on the label or~~
6 ~~in the registration. _____ (2) The lot of feedstuffs in question shall~~

7 ~~be seized and condemned, sold, or destroyed by the board or its duly~~
8 ~~authorized representative, and the proceeds from the sale shall be remitted to~~

9 ~~the Treasurer of State to be credited to the General Revenue Fund Account of~~
10 ~~the State Apportionment Fund.~~

11 ~~_____ (b)(1) These seizures and sale shall be made by the board or under the~~
12 ~~direction of an officer of its appointment.~~

13 ~~_____ (2)(A) The sale shall be made at the courthouse door in the county~~
14 ~~in which the seizure is made.~~

15 ~~_____ (B) Whenever for sufficient reasons appearing to the board~~
16 ~~or its representative another place of sale is more convenient and more~~

17 ~~desirable, such place of sale may be selected.~~

18 ~~_____ (3)(A) The sale shall be advertised for thirty (30) days in a~~
19 ~~newspaper published in the county in which the seizure is made, or if no~~

20 ~~newspaper is published in such county, then it shall be advertised in a~~
21 ~~newspaper published in the nearest county having a newspaper.~~

22 ~~_____ (B) The advertisement shall state the brand and name of the~~
23 ~~goods, the quantity, and why seized and offered for sale and must show the~~

24 ~~time and the place of sale.~~

25 ~~_____ (c) The board, however, may in its discretion release the feedstuffs~~
26 ~~withdrawn when the requirements of the provisions of this chapter have been~~

27 ~~complied with, upon payment of all the costs or expenses incurred in any~~
28 ~~proceeding connected with seizure and withdrawal.~~

29

30 ~~_____ ^A 2-37-113. Suspension of sales.~~

31 ~~_____ (a) If, at any time, the State Plant Board or its duly authorized~~
32 ~~representatives shall have reason to believe that any feedstuff sold or~~

33 ~~offered for sale in this state does not comply with the requirements of this~~
34 ~~chapter as to the ingredients or substances of it, or otherwise, it shall be~~

35 ~~their duty, by written order, to suspend the sale of it until they shall be~~
36 ~~satisfied by an analysis, or otherwise, that the feedstuff is made up or~~

1 ~~compounded as required by this chapter and is otherwise in compliance with~~
2 ~~this chapter.~~

3 ~~—— (b) If they shall find that it does not comply with this chapter, then~~
4 ~~they are authorized to proceed as provided in ~~§ 2-37-112.~~~~

5
6 ~~—— ~~§ 2-37-114. Quarterly tonnage reports and inspection fees.~~~~

7 ~~—— (a)(1) Every manufacturer, jobber, importer, agent, or seller of any~~
8 ~~concentrated feedstuffs, as defined in ~~§ 2-37-101,~~ shall forward to the State~~
9 ~~Plant Board quarterly a report on such form and in such number of copies as~~
10 ~~prescribed by the board.~~

11 ~~—— (2) The report shall include a sworn statement by the manufacturer,~~
12 ~~jobber, importer, agent, or seller of the total tonnage of any and all~~
13 ~~concentrated commercial feedstuffs, as defined in ~~§ 2-37-101,~~ which the~~
14 ~~manufacturer, jobber, importer, agent, or seller has transported, or caused to~~
15 ~~be transported in or into this state for sale or consumption during the~~
16 ~~preceding quarter, or, a report of all concentrated commercial feedstuffs, as~~
17 ~~defined in ~~§ 2-37-101,~~ which have been manufactured, mixed, made, or~~
18 ~~compounded in this state for sale or consumption in this state during the~~
19 ~~preceding quarter.~~

20 ~~—— (b)(1) Each quarterly report as required in this section shall be~~
21 ~~accompanied by a payment equal to thirty cents (30) per ton of the total~~
22 ~~tonnage as shown thereon as an inspection fee, which shall be in lieu of all~~
23 ~~other inspection fees imposed in respect to it.~~

24 ~~—— (2) On concentrated feedstuffs distributed in quantities of~~
25 ~~twenty-five (25) tons or less, there shall be paid a minimum inspection fee of~~
26 ~~five dollars (\$5.00).~~

27 ~~—— (3) The quarterly tonnage report and minimum five dollar (\$5.00)~~
28 ~~inspection fee is due even though there are no sales.~~

29 ~~—— (c)(1) The board or its duly authorized agents shall have the right to~~
30 ~~inspect and audit, during normal business hours, the books and records of any~~
31 ~~manufacturer, jobber, importer, agent, or seller of any concentrated~~
32 ~~commercial feedstuffs sold or offered for sale in this state to determine the~~
33 ~~correctness of the quarterly reports provided in this section.~~

34 ~~—— (2) Refusal to allow this inspection and audit shall be deemed a~~
35 ~~violation of this chapter, and the violator shall be subject to the penalties~~
36 ~~provided in this section.~~

1 ~~—— (d)(1) Tonnage reports and fees must be sent not later than thirty (30)~~
2 ~~days after the end of each quarter.~~

3 ~~—— (2) For a late report or for failure to report the entire amount~~
4 ~~sold, the fee on the unreported or late-reported amount may be doubled, and~~
5 ~~failure to pay the doubled fee will be grounds for cancellation of~~
6 ~~registrations.~~

7 ~~—— (e)(1) The board will record the amount so received quarterly and shall~~
8 ~~remit to the Treasurer of State all the moneys collected as inspection fees~~
9 ~~under this section.~~

10 ~~—— (2) The Treasurer of State shall place these amounts in the Plant~~
11 ~~Board Fund for appropriation by the General Assembly to the board only.~~

12 ~~—— (f)(1) Whenever any concentrated commercial feedstuffs, as defined in ^A~~
13 ~~2-37-101, are kept for sale in bulk, stored in bins, or otherwise, the~~
14 ~~manufacturer, dealer, jobber, or importer keeping it for sale shall keep on~~
15 ~~hand cards or labels of proper size, upon which the statements required by ^A~~
16 ~~2-37-106 are plainly printed.~~

17 ~~—— (2) If the feedstuff is sold at retail in bulk or if it is put up in~~
18 ~~packages belonging to the purchaser, the manufacturer, dealer, jobber, or~~
19 ~~importer shall furnish the purchaser with one (1) of these cards or labels,~~
20 ~~upon which is printed the statement or statements prescribed in this section.~~

21 ~~—— (g) The inspection fee of thirty cents (30) per ton shall not apply to~~
22 ~~whole seeds and grains when not mixed with other whole seeds or materials.~~

23 ~~—— (h) Nothing in this chapter shall be construed to restrict or prohibit~~
24 ~~the sale of concentrated commercial feedstuffs in bulk to each other by~~
25 ~~importers, manufacturers, and manipulators.~~

26

27 */s/Rep. Rodgers et al*

28

29 APPROVED: 3-20-97

30

31

32

33

34