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SENATE BILL 91

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Michael Padilla

AN ACT

RELATING TO AGRICULTURE; ENACTING THE NEW MEXICO COMMERCIAL
FEED ACT; PROVIDING POWERS AND DUTIES; REQUIRING LABELING OF
ALL COMMERCIAL FEED; REQUIRING REGISTRATION; PROVIDING FOR
INSPECTIONS, SAMPLING AND ANALYSIS; PROHIBITING THE
DISTRIBUTION OF ADULTERATED OR MISBRANDED COMMERCIAL FEED;
PRESCRIBING FEES; PRESCRIBING PENALTIES; REPEALING THE
COMMERCIAL FEED LAW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. SHORT TITLE.--This act may be cited as the
"New Mexico Commercial Feed Act".

SECTION 2. DEFINITIONS.--As used in the New Mexico
Commercial Feed Act:

A. "board" means the board of regents of New Mexico
state university;

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1 B. "brand name" means any word, name, symbol or
2 device, or any combination of words, names, symbols or devices,
3 that identifies a commercial feed and distinguishes it from
4 that of other commercial feeds;

5 C. "commercial feed" means one or more feed
6 ingredients that are not otherwise exempt from the provisions
7 of the New Mexico Commercial Feed Act that are manufactured
8 into an animal feed or used as a feed ingredient in the
9 manufacture of another commercial feed;

10 D. "contract feeder" means a person who is an
11 independent contractor and who feeds commercial feed to animals
12 pursuant to a contract whereby the commercial feed is supplied,
13 furnished or otherwise provided to the person and whereby the
14 person's remuneration is determined all or in part by feed
15 consumption, mortality, profits or amount or quality of
16 product;

17 E. "customer-formula feed" means a commercial feed
18 that consists of a mixture of feed ingredients, each batch of
19 which is manufactured according to the specific instructions of
20 the final purchaser;

21 F. "department" means the New Mexico department of
22 agriculture;

23 G. "distribute" means to offer for sale, exchange
24 or barter or to sell, exchange or barter commercial feed;

25 H. "distributor" means a person who distributes

1 commercial feed;

2 I. "drug" means an article intended for use in the
3 diagnosis, cure, mitigation, treatment or prevention of disease
4 in animals other than humans and an article other than
5 commercial feed intended to affect the structure or any
6 function of the animal body;

7 J. "feed ingredient" means any of the constituent
8 materials that make up a commercial feed;

9 K. "label" means a display of written, printed or
10 graphic matter upon or affixed to the container in which a
11 commercial feed is distributed or on the invoice or delivery
12 slip with which a commercial feed is distributed;

13 L. "labeling" means all labels and other written,
14 printed or graphic matter on a commercial feed or any of its
15 containers or wrappers accompanying that commercial feed;

16 M. "manufacture" means to grind, mix or blend or
17 further process a commercial feed for distribution;

18 N. "mineral feed" means a commercial feed intended
19 to supply primarily mineral elements or inorganic nutrients;

20 O. "official sample" means a sample of commercial
21 feed taken by the department;

22 P. "pet food" means commercial feed prepared and
23 distributed for consumption by dogs or cats;

24 Q. "product name" means the name of a commercial
25 feed that identifies it as to kind, class or specific use and

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1 distinguishes it from all other products bearing the same brand
2 name;

3 R. "quantity statement" means the net weight, net
4 volume or count of commercial feed;

5 S. "registrant" means the person who registers
6 commercial feed with the department;

7 T. "specialty pet food" means commercial feed
8 prepared and distributed for consumption by domesticated
9 animals other than dogs and cats that are normally maintained
10 in a cage or tank, including gerbils, hamsters, canaries,
11 psittacine birds, mynahs, finches, tropical fish, goldfish,
12 snakes and turtles; and

13 U. "ton" means a net weight of two thousand pounds
14 avoirdupois.

15 SECTION 3. BOARD AND DEPARTMENT POWERS AND DUTIES.--

16 A. The New Mexico Commercial Feed Act shall be
17 administered by the department under the direction of the
18 board. The board shall adopt and promulgate rules to carry out
19 the provisions of that act.

20 B. In promulgating rules as appropriate to the
21 conditions that exist in New Mexico, the board shall consider
22 current good manufacturing practices and definitions of feed
23 ingredients and commercial feed terms recognized by the
24 commercial feed industry and the federal government.

25 SECTION 4. APPLICABILITY.--The New Mexico Commercial Feed

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1 Act applies to mineral feed, pet food and specialty pet food
2 as well as other commercial feed. That act applies to contract
3 feeders as well as distributors.

4 SECTION 5. EXEMPTIONS.--The following are exempt from the
5 provisions of the New Mexico Commercial Feed Act:

6 A. commodities such as hay, straw, stover, silage,
7 cobs, husks, hulls and individual chemical compounds or
8 substances that are not intermixed with other materials for
9 animal feed and are not adulterated as provided in Section 8 of
10 the New Mexico Commercial Feed Act; and

11 B. unmixed whole seeds and physically altered
12 entire unmixed seeds, when they are not chemically changed and
13 are not adulterated as provided in Section 8 of the New Mexico
14 Commercial Feed Act.

15 SECTION 6. PROHIBITED ACTS.--A person shall not:

16 A. manufacture or distribute commercial feed that
17 is adulterated or misbranded;

18 B. adulterate or misbrand commercial feed;

19 C. distribute otherwise exempt agricultural
20 commodities or products that are adulterated as provided in
21 Section 8 of the New Mexico Commercial Feed Act;

22 D. fail to register commercial feed in accordance
23 with the New Mexico Commercial Feed Act;

24 E. fail to pay inspection fees and file reports as
25 required by the New Mexico Commercial Feed Act;

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1 F. sell, distribute or dispose of commercial feed
2 in violation of a withdrawal from distribution order issued by
3 the department or otherwise violate a withdrawal from
4 distribution order;

5 G. impede, hinder or otherwise prevent or attempt
6 to prevent an agent of the department from performing the
7 agent's duty in accordance with the New Mexico Commercial Feed
8 Act; or

9 H. reuse bags and totes for commercial feed unless
10 they are cleaned as prescribed by the board.

11 **SECTION 7. MISBRANDING.**--A commercial feed shall be
12 deemed to be misbranded if:

13 A. its labeling is false or misleading in any
14 particular;

15 B. it is distributed under the name of another
16 commercial feed;

17 C. it is not labeled as required in Section 9 of
18 the New Mexico Commercial Feed Act;

19 D. it purports to be a commercial feed or it
20 purports to contain a feed ingredient and the commercial feed
21 or feed ingredient does not conform to the definition of the
22 commercial feed or feed ingredient, if any, prescribed by board
23 rule; or

24 E. any word, statement or other information that is
25 required by the New Mexico Commercial Feed Act or rules adopted

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1 in accordance with that act to appear on the label or labeling
2 is not prominently placed on the label with such
3 conspicuousness, as compared with other words, statements,
4 designs or devices in the labeling, and in such terms as to
5 render it likely to be read and understood by the ordinary
6 person under customary conditions of purchase and use.

7 **SECTION 8. ADULTERATION.**--A commercial feed is
8 adulterated if:

9 A. it bears or contains any poisonous or
10 deleterious substance that may render it injurious to health;
11 provided, however, that if the poisonous or deleterious
12 substance is not an added substance, the commercial feed shall
13 not be considered adulterated pursuant to this subsection if
14 the quantity of the poisonous or deleterious substance in the
15 commercial feed does not ordinarily render it injurious to
16 health;

17 B. it bears or contains any added poisonous,
18 deleterious or nonnutritive substance that is unsafe as
19 prescribed by the board;

20 C. it is or it bears or contains any food additive
21 that is unsafe as prescribed by board rule;

22 D. it is a raw agricultural commodity and it bears
23 or contains a pesticide chemical that is unsafe as provided in
24 board rule; provided that where a pesticide chemical has been
25 used in or on a raw agricultural commodity in conformity with

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1 an exemption granted or a tolerance prescribed by the board and
2 such raw agricultural commodity has been subjected to
3 processing such as canning, cooking, freezing, dehydrating or
4 milling, the residue of the pesticide chemical remaining in or
5 on such processed commercial feed shall not be deemed unsafe if
6 the residue in or on the raw agricultural commodity has been
7 removed to the extent possible in good manufacturing practice
8 and the concentration of the residue in the processed feed is
9 not greater than the tolerance prescribed for the raw
10 agricultural commodity unless the feeding of such processed
11 feed will result or is likely to result in a pesticide residue
12 in the edible product of the animal that is unsafe as
13 prescribed by the board;

14 E. it is or it bears or contains any color additive
15 that is unsafe as prescribed by the board;

16 F. it is or it bears or contains any new animal
17 drug that is unsafe as prescribed by the board;

18 G. it consists, in whole or in part, of any filthy,
19 putrid or decomposed substance or it is otherwise unfit for
20 animal feed;

21 H. it has been prepared, packed or held under
22 unsanitary conditions under which it may have become
23 contaminated with filth or been rendered injurious to animal
24 health;

25 I. it is, in whole or in part, the product of a

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1 diseased animal or of an animal that has died otherwise than by
2 slaughter that is unsafe as prescribed by the board;

3 J. its container is composed, in whole or in part,
4 of any poisonous or deleterious substance that may render the
5 contents injurious to animal health;

6 K. it has been intentionally subjected to radiation
7 except as prescribed by the board;

8 L. any valuable constituent has been, in whole or
9 in part, omitted or abstracted from the commercial feed or any
10 less valuable substance substituted for the valuable
11 constituent;

12 M. its composition or quality falls below or
13 differs from that it is purported or is represented to possess
14 by its labeling;

15 N. it contains a drug and the methods used in or
16 the facilities or controls used for the drug's manufacture,
17 processing or packaging do not conform to current good
18 manufacturing practice rules promulgated by the board to assure
19 that the drug meets the requirement of the New Mexico
20 Commercial Feed Act as to safety and has the identity and
21 strength and meets the quality and purity characteristics that
22 it purports or is represented to possess; or

23 O. it contains viable weed seeds in amounts that
24 exceed the limits established by the board.

25 SECTION 9. LABELING.--

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1 A. Commercial feed, except customer-formula feed,
2 shall be accompanied by a label bearing the following
3 information:

4 (1) the quantity statement;

5 (2) the product name and the brand name, if
6 any, under which the commercial feed is distributed;

7 (3) the guaranteed analysis, expressed on an
8 "as is" basis, stated in such terms as the board determines is
9 required to advise the user of the composition of the feed or
10 to support claims made in the labeling; provided that in all
11 cases the substances or elements shall be determinable by
12 laboratory methods approved by the board;

13 (4) the common or usual name of each
14 ingredient used in the manufacture of the commercial feed;
15 provided that the board may allow the use of a collective term
16 for a group of ingredients that perform a similar function, or
17 it may exempt such commercial feeds or any group of commercial
18 feed from the requirement of an ingredient statement if the
19 board finds that such statement is not required in the interest
20 of consumers;

21 (5) the name and principal mailing address of
22 the manufacturer or distributor;

23 (6) adequate directions for the use for
24 commercial feed that contains drugs and for such other
25 commercial feed that the board requires as necessary for safe

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1 and effective use; and

2 (7) such precautionary statements as the board
3 determines are necessary for the safe and effective use of the
4 commercial feed.

5 B. Customer-formula feed shall be accompanied by a
6 label, invoice, delivery slip or other shipping document that
7 bears the following information:

8 (1) the name and address of the manufacturer;

9 (2) the name and address of the purchaser;

10 (3) the date of delivery;

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

14 (5) adequate directions for use for
15 customer-formula feed that contains drugs and for such other
16 customer-formula feed that the board requires as necessary for
17 safe and effective use;

18 (6) precautionary statements as required by
19 the board; and

20 (7) if the customer-formula feed contains
21 drugs:

22 (a) the purpose of the drugs; and

23 (b) the established name of each active
24 drug ingredient and the level of each drug used in the final
25 mixture expressed in accordance with board rules.

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1 SECTION 10. REGISTRATION OF COMMERCIAL FEED.--

2 A. All commercial feed, except customer-formula
3 feed, shall be registered with the department before being
4 distributed in New Mexico. The application for registration
5 shall be submitted on forms furnished by the department and
6 accompanied by a label or other printed matter describing the
7 commercial feed and by a registration fee of two dollars
8 (\$2.00). A copy of the approved registration shall be provided
9 to the registrant. A commercial feed registration expires
10 annually on December 31.

11 B. A distributor is not required to register a
12 brand of commercial feed that is already registered by another
13 person pursuant to the New Mexico Commercial Feed Act.

14 C. The department may refuse registration if the
15 application does not comply with the provisions of the New
16 Mexico Commercial Feed Act and may cancel a registration that
17 is subsequently found not to be in compliance with the
18 provisions of that act; provided, however, that a registration
19 shall not be refused or canceled until the applicant or
20 registrant has been given an opportunity to be heard before the
21 board and to amend the application or to cure the problem in
22 registration to comply with the requirements of the New Mexico
23 Commercial Feed Act.

24 SECTION 11. INSPECTION, SAMPLING AND ANALYSIS.--

25 A. Except as provided in Subsection E of this

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1 section, to enforce the provisions of the New Mexico Commercial
2 Feed Act, an employee or agent of the department may enter upon
3 the premises and inspect any factory, warehouse or other
4 establishment in New Mexico in which commercial feeds are
5 manufactured, processed, packed or held for distribution or
6 enter any vehicle being used to transport or hold commercial
7 feed. The employee or agent may inspect all pertinent
8 equipment, finished and unfinished materials, containers and
9 labeling in the establishment. Entry and inspection shall be
10 during normal business hours and after written notice to the
11 owner, operator or agent in charge. The employee or agent
12 shall present appropriate credentials to the owner, operator or
13 agent in charge of the factory, warehouse or other
14 establishment. Inspections shall be within reasonable limits
15 and in a reasonable manner and may include the verification of
16 only such records and production and control procedures as may
17 be necessary to determine compliance with the provisions of the
18 New Mexico Commercial Feed Act and rules promulgated in
19 accordance with that act. A separate notice shall be given for
20 each inspection, but a notice shall not be required for each
21 entry made during the period covered by the inspection. Each
22 inspection shall be commenced and completed with reasonable
23 promptness. Upon completion of the inspection, the person in
24 charge of the facility or vehicle shall be so notified.

25 B. Before leaving the premises, the employee or

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1 agent of the department who is making the inspection shall give
2 to the owner, operator or agent in charge a receipt for any
3 official samples obtained during the inspection.

4 C. If the owner of a factory, warehouse or other
5 establishment, or the owner's agent, refuses to admit the
6 employee or agent of the department to inspect in accordance
7 with Subsection A of this section, the department may ask the
8 district court for a warrant directing such owner or the
9 owner's agent to submit the premises described in the warrant
10 to inspection.

11 D. An employee or agent of the department may enter
12 upon any public or private premises, including any vehicle of
13 transport, during regular business hours to have access to and
14 to obtain official samples and to examine records relating to
15 distribution of commercial feeds.

16 E. When an employee or agent of the department has
17 reasonable cause to believe that any lot of commercial feed is
18 being distributed in violation of any of the provisions of the
19 New Mexico Commercial Feed Act or rules promulgated in
20 accordance with that act, the employee or agent may issue a
21 withdrawal from distribution order as provided in Section 13 of
22 the New Mexico Commercial Feed Act.

23 F. Official sampling and analysis shall be
24 conducted in accordance with methods approved by the board.

25 G. The results of all analyses of official samples

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1 shall be forwarded by the department to the person named on the
2 label and to the purchaser. When the inspection and analysis
3 of an official sample indicates a commercial feed has been
4 adulterated or misbranded, the owner or operator may request a
5 portion of the official sample, and the department shall comply
6 with the request within thirty days following receipt of the
7 analysis.

8 H. In determining for administrative purposes
9 whether a commercial feed is deficient in any component, the
10 department shall be guided by the official sample obtained and
11 analyzed as provided in this section.

12 SECTION 12. INSPECTION FEES--REPORTS--CANCELLATION OF
13 REGISTRATIONS.--

14 A. An inspection fee shall be paid to the board for
15 all commercial feeds distributed in New Mexico. The fee shall
16 not exceed fifteen cents (\$.15) per ton, or, for each brand of
17 commercial feed distributed in individual packages of ten
18 pounds or less, a distributor shall pay an annual inspection
19 fee not to exceed twenty-five dollars (\$25.00) and shall not
20 pay the tonnage fee on such packages of the brand so
21 registered.

22 B. Fees collected shall not exceed the costs of
23 inspection, sampling and analysis and other expenses necessary
24 for the administration of the New Mexico Commercial Feed Act.
25 Fees collected shall constitute a fund for the payment of the

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1 costs of inspection, sampling and analysis and other expenses
2 necessary for the administration of that act.

3 C. Except as otherwise provided in this section, a
4 person who distributes commercial feed in New Mexico shall:

5 (1) file, not later than the last day of
6 January, April, July and October of each year, a quarterly
7 statement setting forth the number of net tons of commercial
8 feeds distributed in New Mexico during the preceding calendar
9 quarter and, upon filing the statement, shall pay the
10 inspection fee. When more than one person is involved in the
11 distribution of commercial feed, the person who distributes to
12 the consumer is responsible for reporting the tonnage and
13 paying the inspection fee unless the report and payment have
14 been made by a prior distributor of the feed; and

15 (2) keep such records as may be necessary or
16 required by the board to indicate accurately the tonnage of
17 commercial feeds distributed in New Mexico, and the board may
18 examine those records to verify statements of tonnage. If a
19 quarterly report is not filed or if the inspection fee is not
20 paid within the thirty-day period after the end of a quarter, a
21 penalty of twenty percent, or a sum of ten dollars (\$10.00),
22 whichever is greater, will be due in addition to the inspection
23 fees, and the inspection fees and the penalty shall constitute
24 a debt for which suit may be brought by the board.

25 D. Failure to make an accurate statement of tonnage

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1 or to pay the inspection fee or comply with the provisions of
2 the New Mexico Commercial Feed Act shall constitute sufficient
3 cause for the cancellation of all registrations on file for the
4 distributor.

5 SECTION 13. DETAINED COMMERCIAL FEED.--

6 A. When an employee or agent of the department has
7 reasonable cause to believe that any lot of commercial feed is
8 being distributed in violation of any of the provisions of the
9 New Mexico Commercial Feed Act or rules promulgated in
10 accordance with that act, it may issue and enforce a written
11 "withdrawal from distribution" order, warning the distributor
12 not to dispose of the lot of commercial feed in any manner
13 until written permission is given by the department or the
14 district court.

15 B. The department shall release for distribution
16 the lot of commercial feed that was withdrawn from distribution
17 when the provisions of the New Mexico Commercial Feed Act have
18 been complied with. If the department and the distributor
19 agree that the lot of commercial feed is adulterated or
20 otherwise cannot comply with that act within thirty days, the
21 department shall release the lot of commercial feed for
22 disposal in a manner approved by the department.

23 C. If the distributor has not complied with the
24 provisions of the New Mexico Commercial Feed Act or rules
25 promulgated in accordance with that act within thirty days or

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1 if the department has reasonable grounds to believe that the
2 lot of commercial feed will be distributed in violation of the
3 withdrawal from distribution order, the department shall begin
4 condemnation and seizure proceedings against the lot of
5 commercial feed. The department may file a complaint for
6 seizure in the district court in the judicial district in which
7 the commercial feed is located.

8 D. If, after hearing, the court finds that the
9 commercial feed violates the provisions of the New Mexico
10 Commercial Feed Act or rules promulgated in accordance with
11 that act and orders the commercial feed to be condemned, the
12 department shall ensure that it is disposed of in an
13 appropriate manner. The court may allow the distributor to
14 process or re-label the commercial feed to bring it into
15 compliance with the New Mexico Commercial Feed Act.

16 SECTION 14. INJUNCTIONS--APPEALS OF DECISIONS OF THE
17 DEPARTMENT.--

18 A. The department may apply to the district court
19 for a temporary or permanent injunction restraining any person
20 from violating or continuing to violate any of the provisions
21 of the New Mexico Commercial Feed Act or the rules promulgated
22 in accordance with that act.

23 B. A person adversely affected by an act, order or
24 ruling made pursuant to the provisions of the New Mexico
25 Commercial Feed Act may appeal the decision as provided in

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1 Section 39-3-1.1 NMSA 1978.

2 SECTION 15. PENALTIES.--A person convicted of violating
3 Section 6 of the New Mexico Commercial Feed Act is guilty of a
4 misdemeanor and shall be fined in an amount not more than one
5 hundred dollars (\$100) for the first violation and not more
6 than one thousand dollars (\$1,000) for a second or subsequent
7 violation.

8 SECTION 16. COOPERATION WITH OTHER ENTITIES.--The
9 department may cooperate with and enter into agreements with
10 governmental agencies of New Mexico, other states and the
11 federal government and private associations to carry out the
12 purpose and provisions of the New Mexico Commercial Feed Act.

13 SECTION 17. ANNUAL REPORTS.--The department shall publish
14 an annual report on the manufacture and distribution of
15 commercial feeds in New Mexico, together with such data on
16 their production and use as the department determines, and a
17 report of the results of the analyses of official samples of
18 commercial feeds sold in New Mexico as compared with the
19 analyses guaranteed in the registration and on the label;
20 provided that the information concerning production and use of
21 commercial feed shall not disclose the operations of any
22 person.

23 SECTION 18. REPEAL.--Sections 76-19-1 through 76-19-14
24 NMSA 1978 (being Laws 1961, Chapter 151, Sections 1 through 5,
25 Laws 1973, Chapter 102, Section 6, Laws 1961, Chapter 151,

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1 Sections 7 through 12, Laws 1973, Chapter 102, Section 13 and
2 Laws 1961, Chapter 151, Section 13, as amended) are repealed.

3 SECTION 19. SEVERABILITY.--If any part or application of
4 the New Mexico Commercial Feed Act is held invalid, the
5 remainder or its application to other situations or persons
6 shall not be affected.

7 SECTION 20. EFFECTIVE DATE.--The effective date of the
8 provisions of this act is July 1, 2013.

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