

ACT 186

H.B. NO. 1633

A Bill for an Act Relating to the Manufacturing and Distribution of Commercial Feeds in the State of Hawaii.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 144, Hawaii Revised Statutes, is amended to read:

**“CHAPTER 144  
FEEDING STUFFS**

**Sec. 144-1 Short title.** This chapter may be cited as the “Hawaii Feed Law of 1979.”

**Sec. 144-2 Administration.** This chapter shall be administered by the department of agriculture, hereinafter referred to as the “department”.

**Sec. 144-3 Definitions.** When used in this chapter:

(1) The term “person” includes individual, partnership, corporation, and association.

- (2) The term “distribute” means to offer for sale, sell, barter, or otherwise supply commercial feeds or custom-mixed feeds. The term “distributor” means any person who distributes.
- (3) The term “sell” or “sale” includes exchange.
- (4) The term “official name” of a feed ingredient means the name of a feed ingredient which is defined in the current official publication of the Association of American Feed Control Officials, Incorporated.
- (5) The term “commercial feed” means all materials which are designed for use as feed, or for mixing in feed, for animals other than dogs, cats, or other domestic pets, and which are distributed or imported except:
  - (A) Whole seeds unmixed or physically altered entire unmixed seeds, when no adulterated within the meaning of section 144-7, which are distributed for use as feed or for mixing in feed.
  - (B) Hay, straw, stover, silage, cobs, husks, and hulls (i) when unground or (ii) when unmixed with other materials.
  - (C) Wet garbage.
  - (D) Individual chemical compound when not mixed with other materials.
  - (E) Unmixed feeding cane molasses, unmixed pineapple pulp, unmixed pineapple hay, and unmixed sugarcane hay.
- (6) The term “feed ingredient” means each of the constituent materials making up a commercial feed.
- (7) The term “mineral feed” means a substance or mixture of substances designed or intended to supply primarily mineral elements or inorganic nutrients.
- (8) The term “drug” means any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals other than man and articles other than feed intended to affect the structure of any function of the animal body.
- (9) The term “manufacture” means to grind, mix, or blend, or further process a commercial feed for distribution.
- (10) The term “custom-mixed feed” means a special commercial mixture which is formulated by the manufacturer or processor in accordance with the specific instructions of the final purchaser and contains feed material or materials wholly or partly supplied by such manufacturer or processor.
- (11) The term “toll-milled feed” means a special feed which is processed by the processor (A) from materials entirely delivered by the owner thereof or his authorized agent, and (B) in accordance with the specific instructions of such owner, and which is not distributed.
- (12) The term “commercial mixed feed” means a commercial feed which is a mixture or blend of more than one feed ingredient.
- (13) The term “commercial simple feed” means a commercial feed that consists of only one feed ingredient.
- (14) The term “brand name” means any word, name, symbol, or device or any combination thereof identifying the commercial feed of a distributor and distinguishing it from that of others.
- (15) The term “product name” means the name of the commercial feed which identifies it as to kind, class, or specific use.

- (16) The term "label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed or imported, or on the invoice or delivery slip with which a commercial feed or custom-mixed feed is distributed or imported.
- (17) The term "ton" means a net weight of two thousand pounds avoirdupois.
- (18) The term "per cent" or "percentage" means percentage by weight.
- (19) The term "official sample" means any sample of feed taken by the board or its agent and designated as "official" by the board of agriculture.

**"Sec. 144-4 Registration.** (a) Each commercial feed shall be registered before being distributed in this State or imported; provided that custom-mixed feed and toll-milled feed are exempt from registration. The application for registration shall be submitted on forms furnished by the department of agriculture and, if the department so requests, shall also be accompanied by a label or other printed matter describing the product. All registration shall be effective for one year beginning January 1 and expiring December 31 of each year. A registration fee shall be paid to the department for each commercial feed registered. Each registration may be renewed for one year. Upon approval by the department a copy of the registration shall be furnished [to]† the applicant. The [application]†† shall include the information required by paragraphs (1), (2), (3), (4), (5), (6), and (7) of section 144-5(a).

(b) A distributor shall not be required to register any brand of commercial feed which is already registered under this chapter by another person.

(c) Changes in the guarantee of either chemical or ingredient composition of a registered commercial feed may be permitted; provided there is satisfactory evidence that the changes would not result in a lowering of the feeding value of the product for the purpose for which designed.

(d) The department is empowered to refuse registration of any application not in compliance with this chapter and to cancel any registration subsequently found not to be in compliance with this chapter; provided that no registration shall be refused or canceled until the registrant shall have been given an opportunity to be heard before the department and to amend his application in order to comply with the requirements of this chapter.

**Sec. 144-5 Labeling.** (a) Any commercial feed, other than custom-mixed or toll-milled feed, distributed in this State or imported shall be accompanied by a legible label bearing the following information:

- (1) The net weight.
- (2) The product name or brand name under which the commercial feed is distributed.
- (3) The guaranteed analysis stated in such terms as the department by rule determines is required to advise the user of the composition of the feed or to support claims made in the labeling. In all cases the substances or elements must be determinable by laboratory methods published by the Association of Official Analytical Chemists.

†Bracketed word substituted for "by".

††Bracketed word substituted for "applicant".

- (4) The common or official name of each ingredient used in the manufacture of the commercial feed, except as the department may, by rule, permit the use of a collective term for a group of ingredients all of which perform the same function.
  - (5) The name and principal address of the person responsible for distributing the commercial feed.
  - (6) Adequate directions for use for all commercial feeds containing drugs and for such other feeds as the department may require by rule as necessary for their safe and effective use.
  - (7) Such precautionary statements as the department by rule determines are necessary for the safe and effective use of the commercial feed.
- (b) When a commercial feed is distributed in this State in bags or other containers, the label shall be placed on or affixed to the container; when a commercial feed is distributed in bulk the label shall accompany delivery and be furnished to the purchaser at time of delivery.
- (c) A custom-mixed feed shall be labeled by numbered invoice. The invoice, which is to accompany delivery and be supplied to the purchaser at the time of delivery, shall bear the following information:
- (1) Name and address of the mixer.
  - (2) Name and address of the purchaser.
  - (3) Date of sale.
  - (4) Product name and brand name, if any, of each registered commercial feed used in the mixture and the name and number of pounds of each other feed ingredient added.
  - (5) The term "custom-mixed feed."
  - (6) Adequate directions for use for all custom-mixed feeds containing drugs and for such other feeds as the department may require by rule as necessary for their safe and effective use.
  - (7) Such precautionary statements as the department by rule determines are necessary for the safe and effective use of the custom-mixed feed.
- (d) A toll-milled feed shall be labeled with the term, "toll-milled feed" and the name and address of the owner thereof.
- (e) If a commercial, custom-mixed, or toll-milled feed contains (1) a nonnutritive substance which is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease or which is intended to affect the structure of any function of the animal body or (2) a food additive, the department may require the label of the commercial or toll-milled feed, or the invoice of the custom-mixed feed to show the amount present, directions for use, and/or warnings against misuse of the feed.
- (f) Whenever a manufacturer, processor, mixer, or distributor of feed makes a claim or guarantee relative to the content of the feed on or with the package containing the same, which claim or guarantee is in addition to those required by law, he shall be responsible for maintaining the claim or guarantee, and may be required to submit information and records pertinent to the claim or guarantee.

**Sec. 144-6 Inspection fees.** (a) There shall be paid to the department of agriculture for all commercial feeds distributed or imported for use or sale in this State an inspection fee; provided that custom-mixed feeds are exempted if the inspection

fee is paid on the commercial feeds which they contain; and provided further that sales of commercial feeds to manufacturers or exchanges between them are exempted if the commercial feeds so sold or exchanged are used solely in the manufacture of feeds which are registered; and provided further that a distributor shall pay an annual registration fee for each brand of commercial feed distributed in individual packages of ten pounds or less, and the distributor of the brand shall not be required to pay the inspection fee on the packages of the brand so registered; and provided further that toll-milled feeds are exempted. All fees collected shall be deposited with the state director of finance to the credit of the general fund.

(b) Every person, except as hereinafter provided, who distributes or imports for use or sale commercial or custom-mixed feed in this State shall:

(1) File, not later than the last day of January, last day of April, last day of July, and last day of October of each year, quarterly statements, setting forth the number of net tons of commercial or custom-mixed feeds distributed or imported in this State during the preceding calendar quarter; and upon filing the statements shall pay the inspection fee. Inspection fees which are due and owing and have not been remitted to the department within thirty days following the due date shall have a penalty fee of five per cent added to the amount due when payment is finally made. The assessment of this penalty fee shall not prevent the department from taking other action as provided in this chapter. When more than one person is involved in the distribution or importation of a commercial feed, the person who imports or distributes to the consumer is responsible for reporting the tonnage and paying the inspection fee unless the report and payment have been made by a prior distributor, seller, or exporter of the feed. If the inspection fee has been paid on a commercial simple feed which is subsequently converted into a mixed feed for distribution, the person responsible for the mixing shall be required to pay an additional inspection fee per ton on the amount of simple feed that has been so converted.

(2) Keep such records as may be necessary or required by the department to indicate accurately the tonnage of commercial or custom-mixed feed distributed in this State, and the department shall have the right to examine the records to verify statements of tonnage. Failure to make accurate statement of tonnage or to pay the inspection fee or to comply as provided herein shall constitute sufficient cause for the cancellation of all registrations on file for the distributor.

(c) The department may require the filing of further reports with respect to importation of commercial or custom-mixed feeds by carriers, seller's agents, and named consignees.

**Sec. 144-7 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 section if the quantity of such substance in such commercial feed does not ordinarily render it injurious to health;
- (2) If it bears or contains any added poisonous, added deleterious, or added

nonnutritive substance which is unsafe within the meaning of section 406 of the Federal Food, Drug, and Cosmetic Act (other than one which is (A) a pesticide chemical in or on a raw agricultural commodity; or (B) a food additive);

- (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;
- (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;
- (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;
- (6) If any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor;
- (7) If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling;
- (8) If it contains a drug and the methods used in or the facilities or controls used for its manufacture, processing, or packaging do not conform to current good manufacturing practice regulations promulgated by the department to assure that the drug meets the requirement of this chapter as to safety and has the identity and strength and meets the quality and purity characteristics which it purports or is represented to possess. In promulgating such regulations, the department shall adopt the current good manufacturing practice regulations for medicated feed premixes and for medicated feeds established under authority of the Federal Food, Drug, and Cosmetic Act, unless it determines that they are not appropriate to the conditions which exist in this State; or
- (9) If it contains viable weed seeds in amounts exceeding the limits which the department shall establish by rule and regulation.

**Sec. 144-8 Misbranding.** No person shall distribute or import misbranded feed. A commercial, toll-milled, or custom-mixed feed shall be deemed to be misbranded:

- (1) If its labeling is false or misleading in any particular.
- (2) If it is distributed under the name of another feed.

- (3) If it is not labeled as required in section 144-5 and in rules prescribed under this chapter.
- (4) If it purports to be or is represented as a commercial feed, or if it purports to contain or is represented as containing a feed ingredient, unless such commercial feed or feed ingredient conforms to the definition of identity, if any, prescribed by rules of the department of agriculture. In the adoption of such rules the department shall give due regard to commonly accepted definitions such as those issued by the Association of Feed Control Officials.
- (5) If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

**Sec. 144-9 Prohibited acts.** The following acts and the causing thereof within this State by any person are prohibited:

- (1) The manufacture or distribution of any commercial feed that is adulterated or misbranded.
- (2) The adulteration or misbranding of any commercial feed.
- (3) The removal or disposal of a commercial feed in violation of an order under section 144-12.
- (4) The failure or refusal to register in accordance with section 144-4.
- (5) The violation of section 144-13(f).
- (6) Failure to pay inspection fees and file reports as required by section 144-6.
- (7) The refusal to permit entry upon any public or private premises including any vehicle of transport during business hours in order that the department of agriculture or its authorized agents can have access to any feed and to records relating to the feed.
- (8) The distribution of any toll-milled feed.
- (9) The redistribution of any custom-mixed feed.
- (10) The distribution within the State or importation into the State of commercial feeds, other than custom-mixed feed, which have not been registered in the manner provided in this chapter.
- (11) The distribution within this State or importation into the State of commercial or custom-mixed feeds which have not been labeled in the manner provided in this chapter.
- (12) The storage or transportation of toll-milled feeds which have not been labeled in the manner provided in this chapter.

**Sec. 144-10 Inspection, sampling, analysis.** (a) For the purpose of enforcement of this chapter, and in order to determine whether its provisions have been complied with, including whether or not any operation may be subject to such provisions, officers or employees duly designated by the department, upon presenting appropriate credentials, are authorized:

- (1) To enter, during normal business hours, any factory, warehouse, or establishment within the State in which commercial feeds are manufactured,

processed, packed, or held for distribution, or to enter any vehicle being used to transport or hold such feeds; and

- (2) To inspect at reasonable times and within reasonable limits and in a reasonable manner, such factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling therein. The inspection may include the verification of only such records, and production and control procedures as may be necessary to determine compliance with the good manufacturing practice rules established under section 144-7(d).

(b) If the officer or employee making such inspection of a factory, warehouse, or other establishment has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises he shall give to the owner, operator, or agent in charge a receipt describing the samples obtained.

(c) If the owner of any factory, warehouse, or establishment described in subsection (a), or his agent, refuses to admit the officer or his agent to inspect in accordance with subsection (a), the department may obtain from any state court a warrant directing such owner or his agent to submit the premises described in such warrant to inspection.

(d) For the enforcement of this chapter, the department or its duly designated agent may enter upon any public or private premises, including any vehicle of transport during regular business hours to have access to, and to obtain samples, and to examine records relating to distribution of commercial feeds.

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

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

(g) The department, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided by the official sample as defined in section 144-3(19) and obtained and analyzed as provided for in subsections (b), (d), and (e) of this section.

**Sec. 144-11 Rules and regulations.** (a) The department may adopt such rules and regulations for commercial feeds as are specifically authorized in this chapter and such other reasonable rules and regulations as may be necessary for the efficient enforcement of this chapter. In the interest of uniformity the department shall by rule adopt, unless it determines that they are inconsistent with the provisions of this chapter or are not appropriate to conditions which exist in this State, the following:

- (1) The official definitions of feed ingredients and official feed terms adopted by the Association of American Feed Control Officials and published in the official publication of that organization; and
- (2) Any regulation promulgated pursuant to the authority of the Federal Food, Drug, and Cosmetic Act, provided that the department shall have the authority under this chapter independently to adopt such regulations.



- (b) The department shall enforce this chapter and, subject to chapter 91, may adopt rules and regulations with respect to:
- (1) Providing for registration and inspection fees;
  - (2) Providing for penalties for deficiencies of official samples;
  - (3) Determining responsibilities and procedures for payment of registration, inspection, and penalty fees;
  - (4) Such other matters as may be necessary in order to secure the efficient administration of this chapter.

**Sec. 144-12 Detained commercial feeds.** (a) "Withdrawal from distribution" orders. When the department of agriculture or its authorized agent has reasonable cause to believe any lot of feed is being distributed in violation of this chapter or of any of the prescribed regulations under this chapter, it may issue and enforce a written or printed "withdrawal from distribution" order, warning the distributor not to dispose of the lot of feed in any manner until written permission is given by the department or the circuit court. The department shall release the lot of feed so withdrawn when the chapter and regulations have been complied with. If compliance is not obtained within thirty days, the department may begin, or upon request of the distributor or owner shall begin, proceedings for condemnation.

(b) "Condemnation and confiscation". Any lot of feed not in compliance with the chapter and regulations shall be subject to seizure on complaint of the department to a court of competent jurisdiction in the area in which the feed is located. In the event the court finds the feed to be in violation of this chapter and orders the condemnation of the feed, it shall be disposed of in any manner consistent with the quality of the feed and the laws of the State; provided that in no instance shall the disposition of the feed be ordered by the court without first giving the claimant an opportunity to apply to the court for release of the feed or for permission to process or relabel the feed to bring it into compliance with this chapter.

**Sec. 144-13 Penalties.** (a) Any person convicted of violating any of the provisions of this chapter or the rules and regulations issued thereunder or who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent the department of agriculture or its duly authorized agent in performance of his duty in connection with this chapter, shall be adjudged guilty of a misdemeanor and shall be fined not less than \$50 or more than \$100 for the first violation, and not less than \$100 or more than \$500 for a subsequent violation. In all prosecutions under this chapter involving the composition of a lot of feed, a certified copy of the official analysis signed by the chemist shall be accepted as prima facie evidence of the composition.

(b) Nothing in this chapter shall be construed as requiring the department or its representative to report for prosecution or for the institution of seizure proceedings as a result of minor violations of the chapter when he believes that the public interest will be best served by a suitable notice of warning in writing.

(c) Each county attorney or prosecuting attorney to whom any violation is reported shall cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the department reports a violation for prosecution, an opportunity shall be given the distributor or owner to present his view to the department.

(d) The department may apply for and the court may grant a temporary or

permanent injunction restraining any person from violating or continuing to violate this chapter or any rule or regulation promulgated under the chapter notwithstanding the existence of other remedies at law. The injunction is to be issued without bond.

(e) Any person adversely affected by an act, order, or ruling made pursuant to this chapter may within forty-five days thereafter bring action in the circuit court for new trial of the issues bearing upon the act, order, or ruling, and upon trial the court may issue and enforce such orders, judgments, or decrees as the court may deem proper, just, and equitable.

(f) Any person who uses to his advantage, or reveals to other than departmental officers or to the courts when relevant in any judicial proceeding, any information acquired under the authority of this chapter, concerning any method, records, formulations, or processes which as a trade secret is entitled to protection, is guilty of a misdemeanor and shall on conviction thereof be fined not less than \$100 or imprisoned for not less than thirty days, or both; provided that this prohibition shall not be deemed as prohibiting the department, or its duly authorized agent, from exchanging information of a regulatory nature with duly appointed officials of the United States government, or of other states, who are similarly prohibited by law from revealing this information.

**Sec. 144-14 Cooperation with other entities.** The department may cooperate with and enter into agreements with governmental agencies of this State, other states, agencies of the federal government, and private associations to carry out the purpose and provisions of this chapter.

**Sec. 144-15 Publications.** The department of agriculture shall publish at least annually in such forms as it may deem proper, information concerning the distribution of feeds, together with such data on their production and use as it may consider advisable, and a report of the results of the analyses of official samples of feeds distributed within the State as compared with the analyses guaranteed in the registration and on the label; provided that the information concerning production and use of feeds shall not disclose the operations of any person.”

SECTION 2. If any clause, sentence, paragraph, or part of this Act shall for any reason be judged invalid by any court of competent jurisdiction, such judgment shall not affect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

SECTION 3. All laws and parts of laws in conflict with or inconsistent with the provisions of this Act are repealed.

SECTION 4. Statutory material to be repealed is bracketed. New material is underscored.\*

SECTION 5. This Act shall take effect upon its approval.

(Approved June 5, 1979.)

\*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.