

proceeding instituted thereunder, nor any rule, regulation or order promulgated thereunder, nor any administrative action taken thereunder; PROVIDED, That the department of revenue may conduct audits, make assessments, and grant refunds under RCW 82.45.100 and 82.45.150 with respect to any sale. Funds received by the county treasurer as payment of a tax liability incurred under a statute repealed by ~~((this 1980 act))~~ chapter 154, Laws of 1980 shall be paid and accounted for as provided in ~~((section 6 of this 1980 act))~~ RCW 82.45.180.

Passed the House February 12, 1982.

Passed the Senate March 11, 1982.

Approved by the Governor April 1, 1982.

Filed in Office of Secretary of State April 1, 1982.

CHAPTER 177

[Substitute House Bill No. 1131]

COMMERCIAL FEED

AN ACT Relating to commercial feed; amending section 2, chapter 31, Laws of 1965 ex. sess. as amended by section 3, chapter 257, Laws of 1975 1st ex. sess. and RCW 15.53.901; amending section 4, chapter 31, Laws of 1965 ex. sess. as amended by section 4, chapter 257, Laws of 1975 1st ex. sess. and RCW 15.53.9014; amending section 6, chapter 31, Laws of 1965 ex. sess. as last amended by section 17, chapter 297, Laws of 1981 and RCW 15.53.9018; amending section 7, chapter 31, Laws of 1965 ex. sess. as amended by section 2, chapter 154, Laws of 1979 and RCW 15.53.902; and amending section 16, chapter 31, Laws of 1965 ex. sess. as amended by section 7, chapter 257, Laws of 1975 1st ex. sess. and RCW 15.53.9038.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section 2, chapter 31, Laws of 1965 ex. sess. as amended by section 3, chapter 257, Laws of 1975 1st ex. sess. and RCW 15.53.901 are each amended to read as follows:

~~((For the purposes of this chapter:))~~ The definitions set forth in this section apply through this chapter.

(1) "Department" means the department of agriculture of the state of Washington or its duly authorized representative.

(2) "Person" means a natural person, individual, firm, partnership, corporation, company, society, or association.

(3) "Distribute" means to import, consign, manufacture, produce, compound, mix, or blend commercial feed, or to offer for sale, sell, barter, or otherwise supply commercial feed in this state.

(4) "Distributor" means any person who distributes.

(5) "Sell" or "sale" includes exchange.

(6) "Commercial feed" means all materials including customer-formula feed which are distributed for use as feed or for mixing in feed, for animals other than man ~~((except:~~

~~(a) Unmixed seed, whole or processed, made directly from the entire seed;~~

~~(b) Unground hay, straw, stover, silage, cobs, husks, and hulls when not mixed with other materials;~~

~~(c) Individual chemical compounds when not mixed with other materials; or~~

~~(d) Bona fide experimental feeds, on which accurate records and experimental programs are maintained)).~~

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

(8) "Customer-formula feed" means a mixture of commercial feed and/or materials each batch of which ((mixture)) is mixed according to the specific instructions of the final purchaser(;) or contract feeder.

(9) "Brand" means the term, design, trademark, or other specific designation under which an individual commercial feed is distributed in this state.

(10) "Product" means the name of the commercial feed that identifies it as to kind, class, or specific use.

(11) "Label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed, or on the invoice or delivery slip with which a commercial feed is distributed.

~~((+1))~~ (12) "Labeling" means all labels and other written, printed, or graphic matter upon a commercial feed or any of its containers or wrappers, or otherwise accompanying such commercial feed.

(13) "Ton" means a net weight of two thousand pounds avoirdupois.

~~((+2))~~ (14) "Percent" or "percentage" means percentage by weight.

~~((+3))~~ (15) "Official sample" means any sample of feed taken by the department, obtained and analyzed as provided in RCW 15.53.9024.

~~((+4))~~ (16) "Contract feeder" means an independent contractor, or any other person who feeds commercial feed to animals pursuant to an oral or written agreement whereby such commercial feed is supplied, furnished or otherwise provided to such person by any distributor and whereby such person's remuneration is determined all or in part by feed consumption, mortality, profits, or amount or quality of product: PROVIDED, That it shall not include a bona fide employee of a manufacturer or distributor of commercial feed.

~~((+5))~~ (17) "Retail" means to distribute to the ultimate consumer.

Sec. 2. Section 4, chapter 31, Laws of 1965 ex. sess. as amended by section 4, chapter 257, Laws of 1975 1st ex. sess. and RCW 15.53.9014 are each amended to read as follows:

(1) Each commercial feed shall be registered with the department and such registration shall be renewed annually before such commercial feed may be distributed in this state: PROVIDED, That sales of food processing

byproducts from fruit, vegetable, or potato processing plants, freezing or dehydrating facilities, or juice or jelly preserving plants; unmixed seed, whole or processed, made directly from the entire seed; unground hay, straw, stover, silage, cobs, husks, and hulls, when not mixed with other material; bona fide experimental feeds on which accurate records and experimental programs are maintained; and customer-formula feeds are exempt from such registration. The exemption for byproducts provided by this subsection does not apply to byproducts or products of sugar refineries or to materials used in the preparation of pet foods.

(a) ~~Beginning ((January)) July 1, ((1976)) 1982, each ((annual-brand)) registration for a commercial feed product distributed in packages of ten pounds or more shall be accompanied by a fee of ((five)) ten dollars((: PROVIDED, That)). If such commercial feed is also distributed in packages of less than ten pounds ((they)) it shall be registered under subsection (b) of this section.~~

(b) ~~Beginning ((January)) July 1, ((1976)) 1982, each ((annual-brand)) registration for a commercial feed product distributed in packages of less than ten pounds shall be accompanied by an annual registration fee of ((twenty)) forty dollars on each such commercial feed so distributed((: PROVIDED, That)), but no inspection fee ((shall)) may be collected on packages of less than ten pounds of the commercial feed so registered.~~

(2) The application for registration shall be on forms provided by the department.

(3) The department may require that such application be accompanied by a label and/or other printed matter describing the product. All registrations ((issued)) expire on ((or after January 1, 1975, shall be)) December 31st of each year, and are renewable unless such registration is canceled by the department or it has called for a new registration, or unless canceled by the registrant.

(4) The application shall include the information required by ((subsections (1)(b) through (1)(c) of)) RCW 15.53.9016(1)(b) through (1)(c).

(5) A distributor shall not be required to register any ((brand-of)) commercial feed brand or product which is already registered under the provisions of this chapter ((by any other person)).

(6) Changes in the guarantee of either chemical or ingredient composition of a commercial feed registered under the provisions of this chapter may be permitted ((provided)) if there is satisfactory evidence that such changes would not result in a lowering of the feed value of the product for the purpose for which designed.

(7) The department is empowered to refuse registration of any application not in compliance with the provisions of this chapter and to cancel any registration subsequently found ((not)) to be not in compliance with any provisions of this chapter((: PROVIDED, That no)), but a registration shall not be refused or canceled until the registrant ((shall have)) has been given

opportunity to be heard before the department and to amend his application in order to comply with the requirements of this chapter.

(8) If an application for renewal of the registration provided for in this section is not filed prior to January 1st of any one year, a penalty of ten dollars shall be assessed and added to the original fee and shall be paid by the applicant before the renewal registration may be issued, unless the applicant furnishes an affidavit that he has not distributed this feed subsequent to the expiration of his prior registration.

Sec. 3. Section 6, chapter 31, Laws of 1965 ex. sess. as last amended by section 17, chapter 297, Laws of 1981 and RCW 15.53.9018 are each amended to read as follows:

(1) On or after June 30, 1981, each initial distributor of a commercial feed in this state shall pay to the department an inspection fee on all commercial feed sold by such person during the year. The fee shall be not less than four cents nor more than fourteen cents per ton as prescribed by the director by rule; PROVIDED, That such fees shall be used for routine enforcement of RCW 15.53.9022 and for analysis for contaminants only when the department has reasonable cause to believe any lot of feed or any feed ingredient is adulterated.

(2) In computing the tonnage on which the inspection fee must be paid, sales of: (a) Commercial feed to other feed registrants(~~(-sales of)~~); (b) commercial feed in packages weighing less than ten pounds, (~~and sales of~~); (c) commercial feed for shipment to points outside this state; (d) food processing byproducts from fruit, vegetable, or potato processing plants, freezing or dehydrating facilities, or juice or jelly preserving plants; (e) un-mixed seed, whole or processed, made directly from the entire seed; (f) un-ground hay, straw, stover, silage, cobs, husks, and hulls, when not mixed with other material; and (g) bona fide experimental feeds on which accurate records and experimental programs are maintained may be excluded. The exemption for byproducts provided by this subsection does not apply to by-products or products of sugar refineries or to materials used in the preparation of pet foods.

(3) When more than one distributor is involved in the distribution of a commercial feed, the last registrant or initial distributor who distributes to a nonregistrant (dealer or consumer) is responsible for reporting the tonnage and paying the inspection fee, unless the reporting and paying of fees have been made by a prior distributor of the feed.

(4) Each person made responsible by this chapter for the payment of inspection fees for commercial feed sold in this state shall file a report with the department on January 1st(~~(-April 1st,))~~ and July 1st(~~(-and October 1st))~~ of each year showing the number of tons of such commercial feed sold during the (~~(three))~~ six calendar months immediately preceding the date the report is due. The proper inspection fee shall be remitted with the report. The person required to file the report and pay the fee shall have a

thirty-day period of grace immediately following the day the report and payment are due to file the report, and pay the fee(~~(-PROVIDED, That))~~. Upon permission of the department, an annual statement under oath may be filed by any person distributing within the state less than ~~((fifty))~~ one hundred tons for each ~~((three))~~ six-month period during any year, and upon filing such statement such person shall pay the inspection fee at the rate provided for in subsection (1) of this section.

(5) Each distributor shall keep such reasonable and practical records as may be necessary or required by the department to indicate accurately the tonnage of commercial feed distributed in this state, and the department ~~((shall have))~~ has the right to examine such records to verify statements of tonnage. Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided herein ~~((shall))~~ constitutes a violation of this chapter, and may result in the issuance of an order for "withdrawal from distribution" on any commercial feed being subsequently distributed.

(6) 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 collection fee of ten percent, but not less than ~~((five))~~ ten dollars, added to the amount due when payment is finally made. The assessment of this collection fee shall not prevent the department from taking other actions as provided for in this chapter.

(7) The report required by subsection (4) of this section shall not be a public record, and it ~~((shall be))~~ is a misdemeanor for any person to divulge any information given in such report which would reveal the business operation of the person making the report: PROVIDED, That nothing contained in this subsection shall be construed to prevent or make unlawful the use of information concerning the business operation of a person if any action, suit, or proceeding instituted under the authority of this chapter, including any civil action for collection of unpaid inspection fees, which action is hereby authorized and which shall be as an action at law in the name of the director of the department.

(8) Any commercial feed purchased by a consumer or contract feeder outside the jurisdiction of this state and brought into this state for use ~~((shall be))~~ is subject to all the provisions of this chapter, including inspection fees.

Sec. 4. Section 7, chapter 31, Laws of 1965 ex. sess. as amended by section 2, chapter 154, Laws of 1979 and RCW 15.53.902 are each amended to read as follows:

It ~~((shall be))~~ is unlawful for any person to distribute an adulterated feed. A commercial feed ~~((shall be))~~ is deemed to be adulterated:

(1) ~~((any poisonous, deleterious, or nonnutritive ingredient has been added in sufficient amount to render it injurious to health when fed in accordance with directions for use on the label;~~

(2)) 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 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); 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

(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

(6) If any valuable constituent has been in whole or in part omitted or abstracted therefrom (~~and~~) or any less valuable substance (~~added~~) substituted therefor;

~~((3))~~ (7) If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling; or

(8) If it contains viable, prohibited (primary) noxious weed seeds in excess of one per pound, or if it contains viable, restricted (secondary) noxious weed seeds in excess of twenty-five per pound. The primary and secondary noxious weed seeds shall be those as named pursuant to the provisions of chapter 15.49 RCW as enacted or hereafter amended and rules adopted thereunder.

Sec. 5. Section 16, chapter 31, Laws of 1965 ex. sess. as amended by section 7, chapter 257, Laws of 1975 1st ex. sess. and RCW 15.53.9038 are each amended to read as follows:

(1) When the department has ~~((determined))~~ reasonable cause to believe that any lot of commercial feed is adulterated or misbranded or is being distributed in violation of this chapter or any regulations hereunder 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 a court of competent jurisdiction. The department shall release the lot of commercial feed so withdrawn when ~~((said))~~ the provisions and regulations have been complied with. If compliance is not obtained within thirty days, the department may begin proceedings for condemnation.

(2) Any lot of commercial feed not in compliance with ~~((said))~~ the provisions and regulations ~~((shall be))~~ is subject to seizure on complaint of the department to a court of competent jurisdiction in the area in which ~~((said))~~ the commercial feed is located. ~~((In the event))~~ If the court finds the ~~((said))~~ commercial feed to be in violation of this chapter and orders the condemnation of ~~((said))~~ the commercial feed, it shall be disposed of in any manner consistent with the quality of the commercial feed and the laws of the state ~~((: PROVIDED, That in no instance shall the disposition of said commercial feed be ordered by))~~. The court ~~((without))~~ shall first ~~((giving))~~ give the claimant an opportunity to apply to the court for release of ~~((said))~~ the commercial feed or for permission to process or relabel ~~((said))~~ the commercial feed to bring it into compliance with this chapter.

Passed the House March 9, 1982.

Passed the Senate March 8, 1982.

Approved by the Governor April 1, 1982.

Filed in Office of Secretary of State April 1, 1982.

CHAPTER 178

[House Bill No. 894]

DEPARTMENT OF FISHERIES—RAZOR CLAM HARVESTING PROGRAM— APPROPRIATION

AN ACT Relating to razor clams; making an appropriation; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Section 1. Pursuant to RCW 75.25.040(4), there is appropriated from the general fund to the department of fisheries for the biennium ending June 30, 1983, the sum of one hundred eighteen thousand dollars for the development and operation of programs beneficial to razor clam harvesting.