

# Senate Bill No. 533

(By Senators Miller and Williams)

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[Introduced February 10, 2014; referred to the Committee on Agriculture and Rural Development; and then to the Committee on the Judiciary.]

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A BILL to amend and reenact §19-14-1, §19-14-2, §19-14-5 and §19-14-9 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §19-14-16, all relating to commercial feed; revising definitions; updating certain provisions; adding a small producer category; clarifying fees and penalties are set by rule; and permitting emergency and legislative rules.

*Be it enacted by the Legislature of West Virginia:*

That §19-14-1, §19-14-2, §19-14-5 and §19-14-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §19-14-16, all to read as follows:

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**ARTICLE 14. WEST VIRGINIA COMMERCIAL FEED  
LAW.**

**§19-14-1. Title.**

1 This article shall be known as the “West Virginia  
2 Commercial Feed Law”. ~~of 1991~~

**§19-14-2. Definitions.**

1 (a) “Brand name” means any word, name, symbol or  
2 device, or any combination thereof, identifying the  
3 commercial feed of a distributor or manufacturer and  
4 distinguishing it from all others.

5 (b) ~~“Bulk” refers to commercial feed distributed in  
6 nonpackaged form and accompanied by an invoice or  
7 delivery slip~~ means any lot of commercial feed that is not in  
8 a closed container at the time it passes into the possession of  
9 the consumer in any stage of distribution.

10 (c) “Commercial feed” means all materials distributed for  
11 use as feed or for mixing in feed for animals, other than man,  
12 except: (1) Unmixed or unprocessed whole seeds when ~~such~~  
13 whole or unprocessed seeds are not chemically changed or

14 adulterated; (2) unground hay, straw, stover, silage, cobs,  
15 husks, hulls and raw meat when not mixed with other  
16 materials and when not adulterated; or (3) individual  
17 chemical compounds when not mixed with other materials.  
18 ~~The term commercial feed shall include~~ “Commercial feed”  
19 includes the categories of feed ingredients, customer-formula  
20 feeds, pet foods and specialty pet foods.

21 (d) “Commissioner” refers to the Commissioner of  
22 Agriculture of the State of West Virginia or a duly authorized  
23 employee.

24 (e) “Container” means a bag, box, barrel, bottle, package,  
25 carton, object, apparatus, device or appliance in which  
26 commercial feed is placed, stored or packed for handling,  
27 transporting or distributing.

28 ~~(e)~~ (f) “Contract feeder” means a person who, as an  
29 independent contractor, feeds commercial feed to animals  
30 pursuant to a contract and the commercial feed is supplied,  
31 furnished or provided to the independent contractor and ~~such~~  
32 the contractor’s remuneration is determined all or in part by

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33 feed consumption, mortality, profits, or the amount or quality  
34 of the product.

35 ~~(f) “Customer-formula feed” means a commercial feed~~  
36 ~~which is manufactured according to the specific instructions~~  
37 ~~of the final purchaser.~~

38 (g) “Customer-formula feed” means commercial feed that  
39 consists of a mixture of commercial feed or ingredients, or  
40 both, in which each batch is manufactured according to the  
41 specific instructions of the final purchaser.

42 ~~(g)~~ (h) “Distribute” means to offer for sale, sell, expose  
43 for sale, exchange or barter commercial feed, or to supply,  
44 furnish or provide commercial feed to a contract feeder.

45 ~~(h)~~ (i) “Distributor” means any person who sells, exposes  
46 for sale, offers for sale, exchanges, barter, gives, parcels out,  
47 allots, shares or dispenses a commercial feed.

48 ~~(i) “Domesticated animal” means any species of animal~~  
49 ~~living and bred in a tame condition.~~

50 (j) “Drug” means any substance intended for use in the  
51 diagnosis, cure, mitigation, treatment or prevention of disease

52 in animals, other than man; and substances, other than  
53 nutritive components, intended to affect the structure or any  
54 function of the animal body.

55 (k) "Feed ingredient" means each constituent material  
56 ~~making up~~ composing commercial feed. ~~including individual~~  
57 ~~chemical compounds labeled for use as a feed ingredient.~~

58 (l) "Label" means a display of written, printed or graphic  
59 matter affixed to the container in which commercial feed is  
60 distributed; or affixed to the invoice, delivery slip or other  
61 shipping document which accompanies ~~bulk shipments of~~  
62 commercial feed or customer-formula feed. All ~~such~~ labels  
63 shall be legible and in English.

64 (m) "Labeling" means all written, printed or graphic  
65 matter, or advertising referencing ~~such~~ commercial feed.

66 (n) "Manufacture" means to grind, mix, blend, package,  
67 pack, repackage, repack or process a commercial feed for  
68 distribution.

69 (o) "Medicated feed" means any commercial feed ~~which~~  
70 that contains one or more drugs.

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71 (p) “Mineral feed” means a commercial feed designed or  
72 intended to supply primarily mineral elements or inorganic  
73 nutrients.

74 (q) “Official sample” means any sample of commercial  
75 feed taken by the commissioner in accordance with the  
76 provisions of this article and rules promulgated hereunder.

77 (r) “Percent” or “percentage” means percentage by  
78 weights.

79 (s) “Person” means an individual, partnership,  
80 association, fiduciary, firm, company, corporation or any  
81 organized group of persons whether incorporated or not.

82 (t) “Pet” or “pets” means ~~any domesticated species of~~  
83 ~~animal normally maintained in or near the household of the~~  
84 ~~owner including, but not limited to, dogs, cats and specialty~~  
85 ~~pets~~ a dog or cat.

86 (u) “Pet food” means ~~any~~ commercial feed manufactured  
87 and distributed for consumption by pets.

88 (v) “Principal display panel” means the part of a label  
89 that is intended to be shown and examined when the product  
90 is on display for retail sale.

91 (w) “Process” means any treatment that changes a feed  
92 ingredient so that it can no longer be restored to its previous  
93 form.

94 (x) “Product name” means the name of the commercial  
95 feed ~~which identifies it, such as: Species of animal, age~~  
96 ~~group of animal, characterizing ingredients, specific use, or~~  
97 ~~other descriptive terms~~ that identifies it as to kind, class or  
98 specific use and distinguishes it from all other products  
99 bearing the same brand name.

100 (y) “Registrant” means any person who registers  
101 commercial feed for distribution or use in this state.

102 (z) “Repack” or “repackaging” means to pack and label  
103 a previously manufactured and packaged commercial feed  
104 prior to a specific request of a customer.

105 (aa) “Small Producer” means any person who exclusively  
106 processes dog or cat treats, snacks or biscuits in the amount  
107 of one thousand pounds or less annually.

108 (aa) (bb) “Specialty pet” or “specialty pets” means any  
109 domesticated pet normally maintained in a cage or tank

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110 including, but not limited to, gerbils, hamsters, birds, tropical  
111 fish, goldfish, snakes and turtles.

112 ~~(bb)~~ (cc) “Specialty pet food” means any commercial  
113 feed intended for consumption by specialty pets.

114 ~~(cc)~~ (dd) “Ton” means a net weight of two thousand  
115 pounds avoirdupois.

**§19-14-5. Permits; registration.**

1 (a) ~~Permits~~ Commercial feed permits and registrations  
2 shall not be transferrable with respect to persons or locations.

3 (b) A person must apply for a permit or registration at  
4 least fifteen days prior to the expiration of the current permit  
5 or registration ~~expires~~; or at least fifteen days prior to the date  
6 that the person intends to engage in business or market  
7 products in this state or be subject to a penalty. ~~All~~  
8 ~~applications shall be accompanied by the fee established in~~  
9 ~~this section. A penalty of \$2 shall be added to the fee for all~~  
10 ~~permits or registrations that are not applied for or renewed~~  
11 ~~within the time limit.~~ Forms, fees and penalties shall be set  
12 forth in rules.



13 (c) Persons manufacturing commercial feed or  
14 customer-formula feed in this state must obtain a commercial  
15 feed manufacturing permit, except all persons manufacturing  
16 feed for only ~~his/her~~ his or her animals on ~~his/her~~ his or her  
17 premises. ~~Application forms shall be provided by the~~  
18 ~~commissioner and include such information as established by~~  
19 ~~rules.~~ A separate permit shall be obtained for each  
20 manufacturing facility or location in this state. Each  
21 commercial feed manufacturing permit application shall be  
22 accompanied by an application fee. ~~of \$15~~ Each permit  
23 issued shall expire on December 31, next following the date  
24 of issue.

25 (d) Each person ~~first~~ distributing commercial feed into  
26 West Virginia trade channels must obtain a commercial feed  
27 distributor permit, except: (1) Persons distributing pet food  
28 exclusively; (2) Persons holding a valid commercial feed  
29 manufacturing permit; ~~and~~ or (3) Persons distributing only  
30 those feeds that they register. ~~Application forms shall be~~  
31 ~~provided by the commissioner and include such information~~

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32 ~~as established by rules.~~ Each commercial feed distributor  
33 permit application shall be accompanied by an application  
34 fee. ~~of \$10~~ Each permit issued shall expire on December  
35 31st ~~next~~ following the date of issue.

36 (e) All commercial feed distributed or used in this state,  
37 except customer-formula feed, must be registered.  
38 Commercial feed that can be uniquely identified by its brand  
39 name, product name, physical form or other descriptive term  
40 shall be registered as a separate product. Commercial feed  
41 that is packaged ~~in such weights~~ by weight as to apply to  
42 several categories shall be registered in each applicable  
43 category. ~~Application forms shall be provided by the~~  
44 ~~commissioner and include such information as established by~~  
45 ~~rules.~~ Registration categories are as follows:

46 (1) Commercial feed, other than pet food, in packages  
47 over ten pounds or bulk shall be registered ~~permanently~~  
48 annually. A registration fee ~~of \$10 per product~~ shall  
49 accompany each application for registration, except that there  
50 will be no fee for ~~a revision of a~~ revising commercial feed

51 already on file that involves a change in the net weight, a  
52 change in the list of ingredients, ~~and/or~~ or a change in the  
53 guarantee for vitamins or minerals. The registration shall  
54 expire on December 31st following the date of issue.

55 (2) ~~On the thirty-first day of August, 1991, permanent~~  
56 ~~registrations for pet food in packages over ten pounds are~~  
57 ~~void and application for registration and payment of fees will~~  
58 ~~be required.~~ Pet food, including specialty pet foods, in  
59 packages over ten pounds or bulk shall be registered  
60 annually. ~~A registration fee of \$50 per product shall~~  
61 ~~accompany each application for registration.~~ The registration  
62 shall expire on August 31st ~~next~~ following the date of issue.

63 (3) Commercial feed ~~excluding specialty pet food in~~  
64 ~~packages of one pound or less,~~ in packages of ten pounds ~~and~~  
65 ~~under or less~~ shall be registered annually, excluding specialty  
66 pet food in packages of one pound or less. A registration fee  
67 ~~of \$40~~ per product shall accompany each application. ~~for~~  
68 ~~registration~~ The registration shall expire on December 31st  
69 ~~next~~ following the date of issue.

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70 (4) Specialty pet food in packages of one pound or less  
71 shall be registered annually. A registration fee ~~of \$20~~ per  
72 product shall accompany each application. ~~for registration~~  
73 The registration shall expire on December 31st ~~next~~  
74 following the date of issue.

75 (5) A small producer as defined herein shall register  
76 annually. A registration fee shall accompany each  
77 application. The registration shall expire on December 31st  
78 following the date of issue.

79 (f) A person is not required to register any brand name or  
80 product name of commercial feed ~~which~~ that is already  
81 registered by another person.

82 (g) Alteration of commercial feed that changes the label  
83 requires a new application for a commercial feed registration  
84 be ~~made~~ submitted and approved before distribution.

**§19-14-9. Tonnage reports; inspection fees.**

1 (a) Each person holding a commercial feed  
2 manufacturing permit, a commercial feed distributor permit  
3 and every registrant, except those persons exempted in

4 subsection (b) of this section, shall report the number of tons  
5 of commercial feed distributed and pay an inspection fee on  
6 all feed distributed, except no inspection fee shall be due on:

7 (1) Commercial feed, if the payment was made by a  
8 previous distributor;

9 (2) Customer-formula feeds or commercial feeds  
10 manufactured in this state, if the inspection fee was paid on  
11 the commercial feed or all the feed ingredients used as  
12 ingredients therein. For the purpose of this exemption, the  
13 sale of the feed ingredients used in customer-formula feeds  
14 are considered to have taken place before the processing of  
15 these items;

16 (3) Commercial feeds or commercial feeds manufactured  
17 in this state which are subsequently used as ingredients in the  
18 continuing manufacture of commercial feeds in which the  
19 end product is registered;

20 (4) Commercial feed supplied to a poultry contract  
21 feeder;

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22 (5) Commercial feed in packages of ten pounds or less;

23 (6) Pet food or specialty pet food; or

24 (7) Commercial feed, ~~where~~ when the inspection fee was  
25 paid during a previous quarter and is offered for sale in the  
26 current quarter.

27 (b) Each person holding a commercial feed  
28 manufacturing permit, a commercial feed distributor permit  
29 or a registrant shall file a semiannual statement under oath  
30 before January 31 and July 31 of each year, except those  
31 persons (1) exclusively distributing or manufacturing pet  
32 food or specialty pet food, or (2) exclusively distributing or  
33 manufacturing commercial feed in packages of ten pounds or  
34 less. ~~shall file a semiannual statement under oath before the~~  
35 ~~31st of January and July of each year~~ The statement shall  
36 include the number of net tons of commercial feeds and feed  
37 ingredients manufactured or first distributed in this state  
38 during the preceding six-month period.

39 (c) Each ~~report~~ statement shall be accompanied by an  
40 inspection fee ~~at the rate of 35¢ per ton on commercial feed~~

41 ~~and feed ingredients with the minimum inspection fee being~~  
42 ~~\$10 each statement. The minimum fee is waived if the total~~  
43 ~~amount of the calculated inspection fee due is \$2 or less.~~  
44 ~~Such fees become effective on July 1, 1991. Inspection fees~~  
45 ~~which are due and payable and not remitted to the~~  
46 ~~commissioner within fifteen days following the due date shall~~  
47 ~~be assessed a penalty. of ten percent of the amount due,~~  
48 ~~except that semiannual reports with no fees due received~~  
49 ~~fifteen days after the due date shall be assessed a penalty of~~  
50 ~~\$10~~ The assessment of this penalty fee shall not prevent the  
51 commissioner from taking other actions as provided in this  
52 chapter. Fees and penalties are set forth in rules.

53 (c) (d) All persons must keep accurate records, as may be  
54 necessary or required by the commissioner, to indicate the  
55 tonnage of commercial feed distributed in this state.

**§19-14-16. Commissioner to promulgate rules.**

1 (a) The commissioner may propose emergency or  
2 legislative rules for approval in accordance with the

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3 provisions of article three, chapter twenty-nine-a of this code  
4 to effectuate the provisions of this article.

5 (b) The rules may adopt by reference federal regulations,  
6 and terms, definitions and publications adopted by the  
7 Association of American Feed Control Officials,  
8 Incorporated.

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(NOTE: The purpose of this bill is update the commercial feed laws and have the fees set forth in rules.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§19-14-16 is new; therefore, strike-throughs and underscoring have been omitted.)