

## 1 HOUSE BILL NO. 130

2 INTRODUCED BY Z. PERRY

3 BY REQUEST OF THE DEPARTMENT OF AGRICULTURE

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO COMMERCIAL FEED INSPECTION  
6 FEES AND REPORTING REQUIREMENTS; REVISING DEFINITIONS; AND AMENDING SECTIONS 80-9-101,  
7 80-9-201, 80-9-206, AND 80-9-302, MCA."

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9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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11 **Section 1.** Section 80-9-101, MCA, is amended to read:

12 **"80-9-101. Definitions.** Unless the context requires otherwise, in this chapter the following definitions  
13 apply:

14 (1) "AOAC international" means the association of official analytical chemists.

15 (2) "Brand name" means any word, name, symbol, or device or any combination of them identifying the  
16 commercial feed of a ~~distributor~~ licensee or registrant and distinguishing it from that of others.

17 (3) (a) "Commercial feed" means all materials or combinations of materials that are distributed or  
18 intended for distribution for use as feed or for mixing in feed, unless the materials are specifically excluded by  
19 law.

20 (b) The term does not include unmixed whole seeds and physically altered entire unmixed seeds when  
21 those seeds are not chemically changed or adulterated within the meaning of 80-9-204. The department may by  
22 rule exclude from this definition or from specific provisions of this chapter commodities such as hay, straw, stover,  
23 silage, cobs, husks, hulls, and individual chemical compounds or substances when those commodities,  
24 compounds, or substances are not intermixed with other materials and are not adulterated within the meaning  
25 of 80-9-204.

26 (4) "Contract feeder" means a person who, as an independent contractor, feeds commercial feed to  
27 animals pursuant to a contract under which the commercial feed is supplied, furnished, or otherwise provided to  
28 that person and under which that person's remuneration is determined completely or in part by feed consumption,  
29 mortality, profits, or amount or quality of product.

30 (5) "Customer formula feed" means commercial feed that consists of a mixture of commercial feeds or

1 feed ingredients, each batch of which is manufactured according to the specific instructions of the final purchaser.

2 (6) "Distribute" means to offer for sale, sell, exchange, or barter commercial feed or to supply, furnish,  
3 or otherwise provide commercial feed to a contract feeder.

4 ~~(7) "Distributor" means a person who distributes commercial feed.~~

5 ~~(8)~~(7) "Drug" means any article intended for use in the diagnosis, cure, mitigation, treatment, or  
6 prevention of disease in animals, other than humans, and articles other than feed intended to affect the structure  
7 or function of the animal body.

8 ~~(9)~~(8) "Facility" means something that is built, installed, or established to serve a particular purpose.

9 ~~(10)~~(9) "Feed ingredient" means each of the constituent materials making up a commercial feed or a  
10 noncommercial feed.

11 ~~(11)~~(10) "Guarantor" means a person whose name and principal mailing address appear on the label and  
12 who guarantees the information contained on the label as required by 80-9-202. The person may or may not also  
13 be the manufacturer.

14 ~~(12)~~(11) "Label" means a display of written, printed, or graphic matter upon or affixed to the container in  
15 which a commercial feed is distributed or on the invoice or delivery slip with which a commercial feed is  
16 distributed.

17 ~~(13)~~(12) "Labeling" means all labels and other written, printed, or graphic matter upon a commercial feed,  
18 any of its containers, its wrapper, or accompanying the commercial feed.

19 ~~(14)~~(13) "Manufacture" means to grind, mix, blend, or further process a commercial feed.

20 ~~(15)~~(14) "Mineral feed" means a commercial feed intended to supply primarily mineral elements or  
21 inorganic nutrients.

22 ~~(16)~~(15) (a) "Noncommercial feed" means all materials or combinations of materials that are used as feed  
23 or for mixing in feed and that are not intended for distribution, unless the materials are specifically excluded by  
24 law.

25 (b) The term does not include unmixed whole seeds and physically altered entire unmixed seeds when  
26 those seeds are not chemically changed or adulterated within the meaning of 80-9-204. The department may by  
27 rule exclude from this definition or from specific provisions of this chapter commodities such as hay, straw, stover,  
28 silage, cobs, husks, hulls, and individual chemical compounds or substances when those commodities,  
29 compounds, or substances are not intermixed with other materials and are not adulterated within the meaning  
30 of 80-9-204.

1           ~~(17)~~(16) "Official sample" means a sample of feed taken by the department in accordance with the  
2 provisions of 80-9-301.

3           ~~(18)~~(17) "Percent" or "percentage" means percentage by weights.

4           ~~(19)~~(18) "Person" means an individual, partnership, corporation, or association.

5           ~~(20)~~(19) "Pet" means any domesticated animal normally maintained in or near the household of its owner.

6           ~~(21)~~(20) "Pet food" means any commercial feed prepared and distributed for consumption by pets.

7           ~~(22)~~(21) "Product name" means the name of the commercial feed which identifies it as to kind, class, or  
8 specific use.

9           ~~(23)~~(22) "Quantity statement" means the net weight or mass; net volume, either liquid or dry; or count.

10          ~~(24)~~(23) "Specialty pet" means any domesticated animal pet normally maintained in a cage or tank,  
11 including but not limited to gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish,  
12 snakes, and turtles.

13          ~~(25)~~(24) "Specialty pet food" means any commercial feed prepared and distributed for consumption by  
14 specialty pets.

15          (25) "Supplier" means a person who distributes commercial feed into Montana.

16          (26) "Ton" means a net weight of 2,000 pounds avoirdupois."

17

18          **Section 2.** Section 80-9-201, MCA, is amended to read:

19          **"80-9-201. Licenses and registration.** (1) Except as provided in subsection (4)(b), a license is required  
20 of a facility or person:

21           (a) who manufactures commercial feed in this state;

22           (b) who distributes commercial feed in or into this state; or

23           (c) whose name appears on the label of a commercial feed as guarantor.

24           (2) (a) A separate license is required for each facility that manufactures commercial feed within this state  
25 or for each facility that distributes commercial feed in or into this state. A facility or person that manufactures,  
26 distributes, or is a guarantor for commercial feed must be licensed once annually pursuant to this section.

27           (b) (i) Except as otherwise provided in this subsection (2)(b)(i), all new applicants shall pay a  
28 nonrefundable fee of \$100 each calendar year for a license for each facility. The department may by rule adjust  
29 the license fee to maintain adequate funding for the administration of this part. The fee may not be less than \$100  
30 a year or more than \$110 a year.

1 (ii) Except as otherwise provided in this subsection (2)(b)(ii), license renewals received by the department  
2 prior to January 1 of each year must be accompanied by a nonrefundable renewal fee of \$75 for each license.  
3 The department may by rule adjust the license fee to maintain adequate funding for the administration of this part.  
4 The fee may not be less than \$75 a year or more than \$85 a year.

5 (3) Applicants for licensure shall file with the department information on forms provided by the  
6 department, including the following:

- 7 (a) the applicant's name and place of business;  
8 (b) the mailing address and physical location of the facility to be licensed;  
9 (c) an indication of whether the facility to be licensed manufactures feed, distributes feed, or both; and  
10 (d) an indication of whether or not the person applying for licensure is a guarantor.

11 (4) (a) A license granted under this section remains in force until the end of the calendar year for which  
12 it is issued or until canceled by the licensee or by the department for cause. The department may collect a \$25  
13 late penalty fee for a license renewal application received after January 1 of any year. A license is  
14 nontransferable, and license fees are nonrefundable.

15 (b) A license is not required for a ~~distributor~~ person who distributes only pet food or specialty pet food.

16 (5) A person who manufactures for distribution or who distributes commercial feed in this state shall,  
17 upon written request by the department, submit the following information regarding products distributed in this  
18 state:

- 19 (a) a list of feed products;  
20 (b) all labeling, promotional material, and claims for any feed product;  
21 (c) analytical methods for ingredients claimed or listed on a label, if the methods are not available from  
22 AOAC international; and

23 (d) replicated data performed by a reputable investigator whose work is recognized as acceptable by  
24 the department, verifying any claims for effectiveness of a feed product.

25 (6) (a) A person may not manufacture for distribution or distribute in this state a pet food or specialty pet  
26 food that has not been registered under this section by the manufacturer or the guarantor. Except as otherwise  
27 provided in this subsection (6)(a), the application for registration must be accompanied by a nonrefundable fee  
28 of \$50 for each pet food or specialty pet food. The department may by rule adjust the registration fee to maintain  
29 adequate funding for the administration of this part. The fee may not be less than \$50 a year or more than \$60  
30 a year.

1 (b) The registration of pet food and specialty pet food is for a period of 1 year starting January 1 and  
2 ending December 31 of each year.

3 (7) An applicant for registration of a pet food or specialty pet food shall file with the department the  
4 following information:

5 (a) the applicant's name and address; and

6 (b) a complete standard list of all products being registered.

7 (8) The department may refuse registration of a pet food or specialty pet food that is not in compliance  
8 with this chapter and may cancel any registration subsequently found to not be in compliance with this chapter.  
9 A registration may not be refused or canceled unless the registrant has been given an opportunity to be heard  
10 before the department and to amend the application in order to comply with this chapter."  
11

12 **Section 3.** Section 80-9-206, MCA, is amended to read:

13 **"80-9-206. Inspection fees -- filing of annual statement.** (1) An inspection fee must be paid on all  
14 commercial feeds, including customer formula feeds, except pet foods and specialty pet foods, distributed in this  
15 state as follows:

16 ~~(a) The feed manufacturer has primary responsibility for paying inspection fees. However, the distributor~~  
17 ~~is responsible for inspection fees if the manufacturer has not paid them.~~

18 (a) (i) For commercial feed distributed into this state, the supplier has primary responsibility for paying  
19 inspection fees. However, the manufacturer is responsible for inspection fees if the supplier has not paid them.

20 (ii) For commercial feed distributed in this state, the manufacturer or guarantor are responsible for paying  
21 inspection fees.

22 (b) Except as otherwise provided in this subsection (1)(b), the inspection fee is 18 cents a ton. Inspection  
23 fees must be paid on each commercial feed, including customer formula feeds and feed ingredients that are  
24 defined as commercial feeds even though they are used in the manufacture of other commercial feeds. However,  
25 premixes prepared and used within a feed plant or transferred from one plant to another within the same  
26 organization are exempt. The department may by rule adjust the inspection fee to maintain adequate funding for  
27 the administration of this part. The fee may not be less than 18 cents a ton or more than 25 cents a ton.

28 (c) A person producing a commercial feed with a feed mixing plant at a feed lot or a poultry, swine, or  
29 dairy operation may not be required to pay inspection fees on the commercial feeds produced and used in the  
30 feeding operation at the site, but is responsible for ~~any unpaid inspection fees on commercial feed purchased by~~

1 ~~that person and~~ on any commercial feed that person produces and distributes other than in that person's feeding  
 2 operations at the site.

3 (2) ~~Each person who holds a license as required in 80-9-201(1)~~ Each in-state guarantor or manufacturer  
 4 who distributes commercial feed in this state and each supplier who distributes commercial feed into this state  
 5 shall:

6 (a) file, not later than January 31 of each year, an annual statement setting forth the number of tons of  
 7 commercial feeds distributed in this state during the preceding calendar year and, upon filing the statement, shall  
 8 pay the inspection fee. Inspection fees that have not been remitted to the department on or before January 31  
 9 have a penalty fee of 10% or a minimum of \$10, whichever is more, added to the amount due. The assessment  
 10 of this penalty fee does not prevent the department from taking other action as provided in this chapter.

11 (b) keep those records that are necessary or are required by the department to indicate accurately the  
 12 tonnage of commercial feed distributed in this state. The department may examine the records to verify  
 13 statements of tonnage.

14 (c) make accurate and prompt reports as required. Failure to do so is sufficient cause for the department  
 15 to cancel or refuse to reissue a license.

16 (3) A pet food or specialty pet food manufacturer, guarantor, or supplier or other person distributing pet  
 17 food or specialty pet food is exempt from the reporting requirements of subsection (2)."

18

19 **Section 4.** Section 80-9-302, MCA, is amended to read:

20 **"80-9-302. Enforcement -- embargo order -- condemnation.** (1) When the department has reasonable  
 21 cause to believe any lot of commercial feed or other feed is in violation of this chapter or a rule adopted by the  
 22 department, it may issue and enforce a written or printed embargo order requiring the person holding the  
 23 commercial feed not to dispose of it in any manner until written permission is given by the department or the court.  
 24 The department shall release the feed when this chapter and the rules of the department have been complied  
 25 with. If compliance is not obtained within 30 days, the department may begin or, upon the request of the  
 26 registrant, manufacturer, ~~distributor~~ licensee, or the person holding the commercial feed, shall begin proceedings  
 27 for condemnation.

28 (2) Commercial feed not in compliance with this chapter or the rules of the department may be seized  
 29 on complaint of the department to a district court in the area in which the commercial feed is located. If the court  
 30 finds the commercial feed in violation of this chapter and orders its condemnation, it must be disposed of in any

1 manner consistent with the quality of the commercial feed and state law. The disposition of the commercial feed  
2 may not be ordered by the court without first giving the owner or person from whom the feed was seized an  
3 opportunity to apply to the court for release of the commercial feed or for permission to process or relabel the  
4 commercial feed to bring it into compliance with this chapter."

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