

FEED ENACTMENT 2021 (No. 4 of 2021)

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STATE OF SABAH

I assent,

TUN DATUK SERI PANGLIMA (DR) HAJI JUHAR
BIN DATUK HAJI MAHIRUDDIN,
Yang di-Pertua Negeri.

27TH December, 2021.

No. 4 of 2021

An Enactment to provide a law for regulating feed quality by controlling the exportation, importation, manufacture, sale and use of feed and feed additive, to ensure that feed satisfies nutritional requirement of animals, is not harmful to animals and is not contaminated so that animals and animal products are safe for human consumption and other usage, and for other matters incidental thereto.

ENACTED by the Legislature of the State of Sabah as follows:

PART I PRELIMINARY

Short title and commencement

1. (1) This Enactment may be cited as the Feed Enactment 2021.

(2) This Enactment comes into operation on 1 January 2022.

Interpretation

2. In this Enactment, unless the context otherwise requires -

"analyst" means a qualified person appointed by the Director under section 34;

"animal" means -

(a) any mammal other than human;

(b) any aquatic animal and includes fish, mollusc and crustacea;

(c) any amphibian;

(d) any reptile;

(e) any bird and includes chicken, duck, quail and ostrich; and

(f) any insect,

kept in captivity or under control for any purpose of human usage;

"antibiotic" means a substance produced by a micro-organism or any other product produced wholly or partially by chemical synthesis and which in low concentration inhibits the growth of or kills micro-organisms, and used for the purpose of growth stimulation and prevention of diseases;

"authorized officer" means any officer authorized by the Director under section 21;

"chemical" includes an antioxidant, preservative, binding agent, colouring substance, flavouring agent and non-antibiotic medicament;

"conveyance" means any vehicle, vessel, ship, aircraft or any other mode of transport whether by land, sea or air;

"Director" means the Director of Veterinary Services;

"export" means to take or cause to be taken out of Sabah, by land, sea or air or to place any feed or feed additive in a conveyance for the purpose of the feed or feed additive being taken out of Sabah by land, sea or air;

"feed" means any single or multiple material whether processed, semi- processed or raw, which is intended to be fed to animals;

"feed additive" means any added ingredient including micro-organism and enzyme not normally consumed as feed by itself, whether or not it has nutritive value, which affects the characteristics of feed or animal products;

"hormone" means a chemical substance derived from an endocrine gland or through synthetic processing that has a specific effect on tissues;

"import" means to bring or cause to be brought any feed or feed additive into Sabah, by land, sea or air;

"label" means any written, printed or graphic matter describing the contents of any feed on the package or otherwise on the feed, or accompanying the feed;

"manufacture" in relation to feed, means to formulate, prepare, compound, mix, make, pack, label or to treat the feed with a view to its sale or for own use but does not include a *bona fide* research or experiment relating to feed and any action forming part of or incidental to such research or experiment;

"Minister" means the Minister charged with the responsibility for veterinary services;

"officer of customs" has the meaning assigned to it in section 2 of the Customs Act 1967 [Act 235];

"package" means anything in which or by which any feed or feed additive is encased, covered, closed or contained;

"premises" includes any house, building, hut, shed, structure, platform, plant, warehouse, container or land whether or not enclosed or built upon;

"sale" includes barter or supply under integrated contract farming arrangement;

"veterinary authority" means the Director, or any public officer authorized in writing by the Director to exercise any power under this Enactment or any subsidiary legislation made under this Enactment.

PART II FUNCTIONS AND POWERS

Functions and powers of the Director

3. (1) The Director shall have the following functions and powers:

- (a) to regulate the feed industry, particularly in the manufacturing, utilizing, exporting and importing of feed and feed additive;
- (b) to issue licence for exportation and importation of feed and feed additive;
- (c) to issue licence for manufacturing of feed;

- (d) to regulate the quality and safety of feed and feed additive and the implementation of quality assurance programme for feed;
- (e) to advise the Minister on matters relating to the exportation and importation of feed and feed additive, manufacturing of feed and the making of subsidiary legislation under this Enactment;
- (f) to administer, enforce and ensure the effective implementation of this Enactment; and
- (g) to do all things necessary and expedient for the implementation or performance of his functions and powers under this Enactment or any subsidiary legislation made under this Enactment.

(2) In the exercise of his functions under this Enactment, the Director shall have the powers to issue directives, guidelines or code of practices in writing to any authority, public officer or person and such authority, public officer or person shall be bound to comply with such directives, guidelines or code of practices.

Power to delegate

4. (1) The Director may, in writing, delegate any of his functions or powers subject to such conditions, limitations or restrictions as he thinks fit, to any public officer, and such person to whom the functions or powers is delegated shall perform the functions and powers in the same manner and with the same effect as if the functions or powers had been conferred on him under this Enactment.

(2) A person purporting to act pursuant to a delegation made under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(3) A delegation made under this section may at any time be revoked by the Director.

(4) A delegation made under this section shall not preclude the Director himself from carrying out at any time the delegated functions or powers.

PART III LICENSING

Requirement for a licence

5. (1) No person shall –

(a) export any feed or feed additive;

(b) import any feed or feed additive; or

(c) manufacture any feed,

unless he holds a licence issued by the Director.

(2) Notwithstanding subsection (1), the Minister may, by order published in the *Gazette*, prohibit either absolutely or conditionally, the importation, from any country or territory or any part of any country or territory, of any feed or feed additive that is likely to convey or spread diseases or to affect the health of animals or humans or both.

(3) Any person who exports any feed or feed additive in contravention of subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both, and for a second or subsequent offence, to a fine not exceeding two hundred thousand ringgit or to imprisonment for a term not exceeding four years or to both.

(4) Any person who imports any feed or feed additive in contravention of subsection (1) or subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both, and for a second or subsequent offence, to a fine not exceeding two hundred thousand ringgit or to imprisonment for a term not exceeding four years or to both.

(5) Any person who manufactures any feed in contravention of subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both, and for a second or subsequent offence, to a fine not exceeding two hundred thousand ringgit or to imprisonment for a term not exceeding four years or to both.

Application for licence

6. (1) An application for a licence under section 5 shall be made to the Director in the prescribed form.

(2) Every application for a licence under subsection (1) shall be accompanied by such documents and information as may be specified by the Director.

(3) The Director may, in writing, at any time after the receipt of an application under subsection (1), request the applicant to provide within the period specified in the request, additional information, particulars or document on the application.

(4) If any additional information, particulars or document required under subsection (3) is not provided by the applicant within the period specified in the request or any extension of time granted by the Director, the application shall be deemed to be withdrawn and shall not be further proceeded with, but without affecting the right of the applicant to make a fresh application.

Issuance of licence

7. (1) Where an application for a licence is approved by the Director, the licence shall be issued in the name of the applicant upon payment of the prescribed fee.

(2) The licence issued under subsection (1) may subject to such conditions as the Director deems necessary.

Refusal to issue licence

8. (1) A licence to export or import feed or feed additive, shall not be issued -

- (a) if the country of origin from which the feed or feed additive is to be imported is unknown;
- (b) if the specification of the feed or feed additive is not provided;
- (c) if the specification of the feed or feed additive does not comply with the prescribed specification
- (d) if the Director has reasonable grounds to believe that the feed or feed additive is contaminated or likely to convey diseases which are hazardous to animals or humans health; or
- (e) if any other licence or certificate required under any other written laws has not been obtained by the applicant.

(2) A licence to manufacture feed shall not be issued -

- (a) if the specification of the feed is not provided;
- (b) if the specification of the feed does not comply with the prescribed specification;
- (c) if the Director has reasonable grounds to believe that the feed is contaminated or likely to convey diseases which are hazardous to animals or humans health; or
- (d) if any other licence or certificate required under any other written laws has not been obtained by the applicant.

Duration of licence

9. (1) A licence to export or import feed or feed additive, unless the licence is suspended or revoked under section 14, shall be valid for one consignment subject to the expiry date specified in the licence.

(2) A licence to manufacture feed shall, unless the licence is suspended or revoked, be valid for a term expiring not later than the end of the calendar year in which it commences, and shall terminate at the expiry of that term.

Renewal of licence

10. (1) A licensee may apply for a renewal of his licence to manufacture feed not later than sixty days before the date of expiry of such licence in any form and manner as determined by the Director.

(2) Where an application for a renewal of licence under subsection (1) is approved by the Director, the licence shall be renewed upon payment of the prescribed fee and the Director may impose such conditions as he deems necessary.

(3) An application for a renewal of licence to manufacture feed shall not be approved -

(a) if the licensee has failed to comply with any provisions of this Enactment or any subsidiary legislation made under this Enactment;

(b) if the licensee has failed to comply with any conditions of the licence; or

(c) if the licensee has failed to comply with any provisions under any other written laws.

(4) Where an application for a renewal of licence under subsection (1) is refused, the Director shall send a written notice to the applicant notifying the refusal.

Power to impose additional conditions or to vary conditions

11. The Director may, at any time -

(a) impose any additional conditions on the licence; or

(b) vary any of the conditions imposed on the licence.

Display of licence

12. (1) A licensee shall display his licence at a conspicuous place at his premises where feed is manufactured.

(2) Notwithstanding subsection (1), a licensee is not required to display his licence to export or import feed or feed additive but shall ensure that he or the person in charge of such exportation or importation of feed or feed additive has an original licence or a certified copy of the licence with him.

(3) Any person who contravenes subsection (1) or (2) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both, and for a second or subsequent offence, to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Licence not transferable

13. (1) A licence issued under this Enactment shall not be transferable and no person shall use a licence of another person.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both, and for a second or subsequent offence, to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Suspension or revocation of licence

14. (1) The Director may, by giving a notice in writing to the licensee, suspend or revoke his licence to export or import feed or feed additive or to manufacture feed for a period specified in the notice -

(a) if the licensee has failed to comply with any of the provisions of this Enactment or any subsidiary legislation made under this Enactment;

(b) if the licensee has failed to comply with any conditions of the licence;

(c) if the licensee has improperly or illegally obtained the licence; or

(d) if there has been any act or omission by the licensee or there has been a change of circumstances such that the licensee would no longer be entitled to be granted a licence under this Enactment.

(2) Before the suspension or revocation of the licence under subsection (1), the Director may, by notice in writing, give the licensee an opportunity to make written representation against the suspension or revocation within a period specified in the notice.

(3) The Director shall, after considering the written representation given under subsection (2), notify the licensee in writing of his decision as soon as practicable.

(4) If a licence is suspended under subsection (1), the Director may require the licensee to remedy the breach or the contravention within the time specified in the notice issued under subsection (3) and if the Director considers necessary, he may impose additional conditions on the licence.

(5) If the Director is satisfied that the licensee fails to remedy the breach or contravention within the specified time or the licensee has breached the additional conditions under subsection (4), or the breach or contravention continues after the licence is suspended under subsection (1), the Director shall revoke the licence.

(6) A licensee whose licence is suspended or revoked shall not be entitled to any compensation for any loss caused to him or any refund of the prescribed fee paid as a consequence of the suspension or revocation.

Altering licences

15. Any person who, without lawful authority, alters any licence issued under this Enactment or knowingly makes use of any licence so altered, commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Power of court to order revocation of licence

16. (1) Where any person is convicted of an offence under this Enactment, the court may, in addition to the penalty that it may impose, order his licence to be revoked.

(2) Where any person to whom a licence has been issued under this Enactment is convicted of a second or subsequent offence under this Enactment, the court may, in addition to the

penalty that may be imposed, direct that such person be disqualified from holding a licence under this Enactment for a period not exceeding five years as the court may specify.

(3) Any person who obtains or attempts to obtain a licence while he is disqualified under subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both, and for a second or subsequent offence, to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

PART IV

FEED OR FEED ADDITIVE SPECIFICATIONS AND CONDITIONS FOR PROPER KEEPING, STORING, PACKAGING, LABELLING AND TRANSPORTING

Compliance with specification

17. (1) All feeds or feed additives exported, imported, distributed, possessed, sold or utilised, or all feed manufactured for the feeding of animal shall comply with the prescribed feed or feed additive specification.

(2) Feed or feed additive imported shall be required to undergo an inspection by the veterinary authority either at the place of arrival or at such other place as the veterinary authority may appoint.

(3) Upon inspection under subsection (2), if such feed or feed additive is in the opinion of the veterinary authority does not comply with the specification or has been exposed to or contaminated with any disease or hazardous material or contained any prohibited antibiotics, hormones or other chemicals, notwithstanding that a licence has been issued under section 7 the veterinary authority may, in his discretion either -

(a) refuse to permit such feed or feed additive to be unloaded, landed or removed;

(b) cause such feed or feed additive to be destroyed at once and be disposed of in such manner as the veterinary authority deems fit; or

(c) cause such feed or feed additive to be detained either at the place of arrival or at such other place as the veterinary authority may appoint for such period as specified by him.

(4) Feed or feed additive which is about to be exported may be required to undergo an inspection by the veterinary authority at such place as the veterinary authority may appoint.

(5) Upon inspection under subsection (4), if such feed or feed additive is in the opinion of the veterinary authority does not comply with such specification or has been exposed to or contaminated with any disease or hazardous material or contained any prohibited antibiotics, hormones or other chemicals, the veterinary authority shall refuse to permit such feed or feed additive to be exported.

(6) Any person who contravenes subsection (1) or (2) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both, and for a second or subsequent offence, to a fine not exceeding two hundred thousand ringgit or to imprisonment for a term not exceeding four years or to both.

Compliance with conditions for proper keeping, storing, packaging, labelling and transporting

18. (1) All feeds or feed additives kept, stored, packaged, labelled or transported shall comply with the prescribed conditions for proper keeping, storing, packaging, labelling and transporting of feed or feed additive.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both, and for a second or subsequent offence, to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

PART V

CONTROL OF USE OF ANTIBIOTICS, HORMONES AND OTHER CHEMICALS

Manner and levels of inclusion

19. (1) No person shall -

(a) incorporate any antibiotic, hormone or other chemical into feed; or

(b) introduce any antibiotic, hormone or other chemical directly or through a medium into animals,

unless in accordance with the prescribed manner and at the prescribed level.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both, and for a second or subsequent offence, to a fine not

exceeding two hundred thousand ringgit or to imprisonment for a term not exceeding four years or to both.

(3) Notwithstanding subsection (1), any antibiotic, hormone or other chemical may be incorporated into feed or introduced directly or through medium into animals, at a level higher than the prescribed level if prescribed as such by a veterinary surgeon in writing and only for the purpose of treatment, control or eradication of disease.

(4) For the purpose of this section, "veterinary surgeon" has the meaning assigned to it under the Veterinary Surgeons Act 1974 [Act 147].

Possession of feed or feed additive containing antibiotics, etc.

20. (1) No person shall possess any feed or feed additive which contains antibiotics, hormones or other chemicals the addition of which are not permitted under this Enactment or any subsidiary legislation made under this Enactment.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both, and for a second or subsequent offence, to a fine not exceeding two hundred thousand ringgit or to imprisonment for a term not exceeding four years or to both.

PART VI
ENFORCEMENT

Authorized officer

21. (1) The Director may in writing authorize any public officer to be an authorized officer to exercise the powers of enforcement under this Enactment.

(2) An authorized officer shall exercise all powers vested in him under this Enactment or any subsidiary legislation made under this Enactment.

Authority card

22. (1) The Director shall issue an authority card to each authorized officer which shall be signed by the Director.

(2) Whenever an authorized officer exercises any of the powers under this Enactment or any subsidiary legislation made under this Enactment, he shall on demand, produce to the person against whom the power is being exercised the authority card issued to him under subsection (1).

Power of investigation

23. An authorized officer or a police officer shall have the power to investigate any offence under this Enactment, and such power shall be in addition to the powers provided for under this Enactment and not in derogation thereof.

Power of arrest

24. (1) An authorized officer, a police officer or an officer of customs may arrest without warrant any person who commits or attempts to commit, or whom the authorized officer, police officer or officer of customs reasonably suspects of committing or attempting to commit, any offence under this Enactment or any subsidiary legislation made under this Enactment if -

- (a) he refuses to furnish his name and address;
- (b) there are reasonable grounds for believing that he has furnished a false name or address;
- (c) he is likely to abscond: or
- (d) he furnishes his address in a place not within Sabah.

(2) An authorized officer or an officer of customs making an arrest under subsection (1) shall without unnecessary delay hand over the person so arrested to the nearest police officer or, in the absence of a police officer take the person to the nearest police station, and thereafter the person shall be dealt with in accordance with the law relating to criminal procedure for the time being in force as if he had been arrested by a police officer.

Search and seizure with warrant

25. (1) If it appears to a Magistrate, upon written information on oath from an authorized officer and after such inquiry as the Magistrate considers necessary, that there is reasonable cause to believe that -

- (a) any premises has been used for or are about to be used for; or

(b) there is in any premises evidence necessary to the conduct of an investigation into, the commission of an offence under this Enactment or any subsidiary legislation made under this Enactment, the Magistrate may issue a warrant authorizing any authorized officer named therein, at any reasonable time by day or by night and with or without assistance, to enter the premises and if need be by force.

(2) A warrant issued under subsection (1) may authorize the authorized officer to -

(a) search the premises, and seize any feed, feed additive, receptacle, package, conveyance, contrivance, book, document, computerized data or other thing that is reasonably believed to furnish evidence of the commission of such offence;

(b) take samples of any feed, feed additive or other thing found in the premises for the purposes of ascertaining by testing or otherwise, whether the offence has been committed; and

(c) make copies of or take extracts from any book, record, document, computerized data or other thing found in the premises.

(3) An authorized officer entering any premises under this section may take with him such other persons and equipment as may appear to him to be necessary.

(4) An authorized officer may, in the exercise of his powers under this section, if it is necessary so to do -

(a) break open any outer or inner door of the premises or any fence, enclosure, gate or other obstruction to the premises, in order to effect entry into the premises;

(b) remove by force any obstruction to entry, search, seizure and removal as he is empowered to effect under this section; and

(c) detain any person found in the premises until the search has been completed.

(5) Where by reason of its nature, size or amount, it is not practicable to remove any feed, feed additive, receptacle, package, conveyance, contrivance, book, document, computerized data or other thing seized under this section, the authorized officer shall seal the conveyance or premises in which such feed, feed additive, receptacle, package, conveyance, contrivance, book, document, computerized data or other thing is found.

(6) It shall be an offence for any person without any written permission or lawful authority to break or tamper with the seal mentioned in subsection (5), or to remove any feed, feed additive,

receptacle, package, conveyance, contrivance, book, document, computerized data or other thing from such premises.

Search and seizure without warrant

26. Whenever an authorized officer has reasonable cause to believe that any feed, feed additive, receptacle, package, conveyance, contrivance, book, document, computerized data or other thing in respect of which an offence has been committed is likely to be found in or on any place, premises, person or conveyance and that by reason of delay in obtaining a warrant under section 25 the object of the search may be frustrated, he may, without warrant, with such assistance and force as is necessary -

- (a) enter and search such place or premises;
- (b) stop and search such person or conveyance; and
- (c) seize any feed, feed additive, receptacle, package, conveyance, contrivance, book, document, computerized data or other thing which may be found and which may furnish evidence of the commission of such offence.

Power to enter premises

27. Notwithstanding sections 25 and 26, an authorized officer or a police officer may at any time enter any premises for the purpose of -

- (a) inspecting any feed, feed additive, receptacle, package, conveyance, contrivance, book, document, computerized data or other thing as he considers necessary;
- (b) verifying the accuracy of records or statement or any information given to an authorized officer or a police officer;
- (c) collecting samples of any feed, feed additive or other substance found in the premises for the purpose of ascertaining, by testing or otherwise, whether an offence has been committed; or
- (d) taking any photograph.

Access to computerized data

28. (1) Any authorized officer conducting a search under this Enactment or any subsidiary legislation made under this Enactment, shall be given access to computerized data whether stored in a computer or otherwise.

(2) For the purpose of this section, the authorized officer shall be provided with the necessary password, encryption code, decryption code, software or hardware or any other means required to enable the comprehension of the computerized data.

Power to stop, search and seize conveyance

29. (1) Where an authorized officer, a police officer or an officer of customs has reasonable cause to suspect that any conveyance is carrying any feed, feed additive, receptacle, package, contrivance, book, document, computerized data or other thing in respect of which an offence under this Enactment or any subsidiary legislation made under this Enactment, is being or has been committed, he may stop and examine the conveyance and may, if on examination he has reasonable cause to believe that such conveyance is or has been used for the commission of such offence, seize the conveyance and any feed, feed additive, receptacle, package, contrivance, book, document, computerized data or other thing found in the conveyance that is reasonably believed to furnish evidence of the commission of such offence.

(2) The person in control or in charge of the conveyance shall, if required to do so by the authorized officer, police officer or officer of customs -

(a) stop the conveyance and allow the authorized officer, police officer or officer of customs to examine it; and

(b) open all parts of the conveyance for examination and take all measures necessary to enable or facilitate the carrying out of such examination as the authorized officer, police officer or officer of customs considers necessary.

(3) Any person who contravenes subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

List of things seized

30. (1) Where any seizure is made under this Enactment, the authorized officer, police officer or officer of customs making the seizure shall prepare a list of feed, feed additive, receptacle,

package, conveyance, contrivance, book, document, computerized data or other thing seized and of the premises in which it is found and shall sign the list.

(2) The list prepared in accordance with subsection (1) shall be delivered immediately to -

(a) the occupant of the premises where the feed, feed additive, receptacle, package, conveyance, contrivance, book, document, computerized data or other thing seized is found; or

(b) the person in control or in charge of the conveyance, if the seizure is made under section 29.

(3) Where the seizure is made in or from any premises which is unoccupied, the authorized officer, police officer or officer of customs shall whenever possible post a list of the things seized conspicuously at the premises.

(4) Where the feed, feed additive, receptacle, package, conveyance, contrivance, book, document, computerized data or other thing is seized otherwise than in or from any premises, the authorized officer, police officer or an officer of customs making the seizure shall give a notice in writing of the seizure and the grounds of the seizure to the owner of the feed, feed additive, receptacle, package, conveyance, contrivance, book, document, computerized data or other thing seized by delivering a copy of such notice to the owner in person or by post at his place of business or residence.

Authorized officer may seek assistance to examine things relating to offence

31. An authorized officer may seek the assistance of any person who has the necessary qualifications to examine any feed, feed additive, receptacle, package, conveyance, contrivance, book, document, computerized data or other thing seized or detained under this Enactment for the purposes of an investigation.

Power to take samples

32. (1) An authorized officer may demand, select, take or obtain samples of any feed or feed additive for the purposes of analysis without payment from any person exporting, importing, manufacturing, distributing, selling, utilizing or having possession of such feed or feed additive, or his or its agent or servant from whom the feed or feed additive is procured.

(2) The procedure for taking and dealing with the samples shall be as prescribed.

Designation of laboratories

33. The Director may designate laboratories as he considers necessary for the purpose of this Enactment.

Appointment of analysts

34. The Director may appoint any qualified person to be an analyst for the purpose of carrying out analysis under this Enactment.

Certificate of analysis

35. (1) A certificate of analysis signed by an analyst shall, on production by the Public Prosecutor in any trial under this Enactment, be sufficient evidence of the facts stated in the certificate unless the accused requires that the analyst be called as a witness, in which case he shall give a written notice to the Public Prosecutor not less than three clear days before the commencement of the trial.

(2) Where the Public Prosecutor intends to give in evidence any certificate referred to in subsection (1), he shall deliver a copy of such certificate to the accused not less than ten clear days before the commencement of the trial.

Examination or testing of seized feed or feed additive

36. (1) When any feed or feed additive is seized under this Enactment, it shall be sufficient to open and examine five per centum only of each description of the package or receptacle in which such feed or feed additive is contained.

(2) If it is necessary to test any feed or feed additive seized under this Enactment, it shall be sufficient to test only a sample not exceeding five per centum in volume or weight of the feed or feed additive examined under subsection (1).

(3) The court shall presume that the feed or feed additive contained in unopened packages or receptacles is of the same nature, quantity and quality as those found in the similar packages or receptacles which have been opened.

Power to require information on feed or feed additive

37. (1) The Director may require any person undertaking any activity involving feed or feed additive to furnish to the Director, within the time specified in a notice, any information relating to the feed or feed additive.

(2) Any person who fails to furnish the information as may be required by the Director under subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Power to require attendance of person acquainted with case

38. (1) An authorized officer making an investigation under this Enactment may, by order in writing, require the attendance before himself of any person who appears to the authorized officer to be acquainted with the facts and circumstances of the case, and such person shall attend as so required.

(2) If the person refuses or fails to attend as so required, the authorized officer may report such refusal or failure to a court who shall issue a summons to secure the attendance of such person as may be required by the order made under subsection (1).

Examination of person acquainted with case

39. (1) An authorized officer making an investigation under this Enactment may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) The person examined under subsection (1) shall be bound to answer all questions relating to the case put to him by the authorized officer, but he may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture.

(3) A person making a statement under this section shall be legally bound to state the truth, whether or not such statement is made wholly or partly in answer to the questions.

(4) The authorized officer examining a person under subsection (1) shall first inform that person of the provisions of subsections (2) and (3).

(5) A statement made by any person under this section shall, whenever possible, be reduced into writing and signed by the person making it or affixed with his thumb print, as the case may be, after it has been read to him in the language in which he made it and after he has been given an opportunity to make any correction he may wish.

Admissibility of statements in evidence

40. (1) Except as provided in this section, no statement made by any person to an authorized officer in the course of an investigation under this Enactment shall be used in evidence.

(2) When any witness is called for the prosecution or for the defence, other than the accused, the court shall, on the request of the accused or the prosecutor, refer to any statement made by that witness to the authorized officer in the course of the investigation under this Enactment and may then, if the court thinks fit in the interest of justice, direct the accused to be furnished with a copy of it and the statement may be used to impeach the credit of the witness in the manner provided by the Evidence Act 1950 [Act 56].

(3) Where the accused had made a statement during the course of an investigation, such statement may be admitted in evidence in support of his defence during the course of the trial.

(4) Nothing in this section shall be deemed to apply to any statement made in the course of an identification parade or falling within section 27 or paragraphs 32(1)(a), (i) and (j) of the Evidence Act 1950 [Act 56].

(5) When any person is charged with any offence in relation to -

- (a) the making; or
- (b) the contents,

of any statement made by him to the authorized officer in the course of an investigation made under this Enactment, that statement may be used as evidence in the prosecution's case.

Release or disposal of feed, feed additive, etc.

41. (1) Where any feed, feed additive, receptacle, package, conveyance, contrivance, book, document, computerized data or other thing has been seized under this Enactment, an authorized officer may -

- (a) release the receptacle, package, conveyance, contrivance, book, document, computerized data or other thing seized to the owner or to the person from whose possession, custody or control it was seized, or to such person as the authorized officer may consider entitled to it, subject to such terms and conditions as the authorized officer may impose, and subject, in any case, to sufficient security being furnished to the satisfaction of the authorized officer that the receptacle, package, conveyance, contrivance, book, document, computerized data or other thing seized shall be surrendered to the authorized officer on demand being made by the authorized officer and that the said terms and conditions, if any, shall be complied with;

- (b) release the feed, feed additive, receptacle, package, conveyance, contrivance, book, document, computerized data or other thing to the owner or to the person from whose possession, custody or control it was seized, or to such person as the authorized officer may consider entitled to it, with liberty for the person to whom the same is so released to dispose of the same, subject to such terms and conditions as the authorized officer may impose, and subject, in any case, to sufficient security being furnished to the satisfaction of the authorized officer in an amount not less than an amount which in the opinion of the authorized officer represents
- (i) the open market value of the feed, feed additive, receptacle, package, conveyance, contrivance, book, document, computerized data or other thing on the date on which it is so released;
 - (ii) the customs duty payable in respect thereof, if any; and
 - (iii) the tax payable in respect thereof under any written law, if any, for the payment of the amount so secured to the Director in the event of the court making an order for the forfeiture of such amount under this Enactment; or
- (c) sell or destroy, as appropriate in the circumstances, the feed, feed additive, receptacle, package or other thing which, in the opinion of the authorized officer, is of a perishable nature or likely to speedily deteriorate in quality or value, and where it is so sold, the authorized officer shall hold the proceeds of sale to abide the result of any prosecution or claim.

(2) Any person who -

- (a) fails to surrender on demand to an authorized officer any receptacle, package, conveyance, contrivance, book, document, computerized data or other thing released to him under paragraph (1)(a); or
- (b) fails to comply with or contravenes any of the terms or conditions imposed under paragraph (1)(a) or (b),

commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

(3) The criminal liability of a person under subsection (2) shall be in addition to any other liability that the person or any other person may incur under the terms and conditions relating to the release of any receptacle, package, conveyance, contrivance, book, document, computerized data or other thing under paragraph (1)(a) or any feed, feed additive, receptacle,

package, conveyance, contrivance, book, document, computerized data or other thing under paragraph (1)(b).

Forfeiture or release of feed, etc., seized

42. (1) Any feed, feed additive, receptacle, package, conveyance, contrivance, book, document, computerized data or other thing seized in exercise of any power under this Enactment shall be liable to forfeiture.

(2) An order for the forfeiture of the feed, feed additive, receptacle, package, conveyance, contrivance, book, document, computerized data or other thing seized shall be made if it is proved to the satisfaction of the court that an offence under this Enactment has been committed and that the feed, feed additive, receptacle, package, conveyance, contrivance, book, document, computerized data or other thing seized was the subject matter of or was used in the commission of the offence, even though no person has been convicted of such offence.

(3) If there is no prosecution with regard to any feed, feed additive, receptacle, package, conveyance, contrivance, book, document, computerized data or other thing seized under this Enactment, such feed, feed additive, receptacle, package, conveyance, contrivance, book, document, computerized data or other thing shall be taken and deemed to be forfeited at the expiration of a period of thirty days from the date of service of a notice to the last known address of the person from whom the feed, feed additive, receptacle, package, conveyance, contrivance, book, document, computerized data or other thing was seized indicating that there is no prosecution in respect of such feed, feed additive, receptacle, package, conveyance, contrivance, book, document, computerized data or other thing unless before the expiration of that period a claim thereto is made in the manner set out in subsections (4), (5), (6) and (7).

(4) Any person asserting that he is the owner of the feed, feed additive, receptacle, package, conveyance, contrivance, book, document, computerized data or other thing referred to in subsection (3) and that it is not liable to forfeiture may personally or by his agent authorized in writing, give a written notice to the authorized officer in whose custody such feed, feed additive, receptacle, package, conveyance, contrivance, book, document, computerized data or other thing is held that he claims the feed, feed additive, receptacle, package, conveyance, contrivance, book, document, computerized data or other thing.

(5) On receipt of the notice referred to in subsection (4), the authorized officer shall refer the claim to a Magistrate for his decision.

(6) The Magistrate to which a matter is referred under subsection (5) shall issue a summons requiring the person asserting that he is the owner of the feed, feed additive, receptacle,

package, conveyance, contrivance, book, document, computerized data or other thing and the person from whom it was seized to appear before him, and when they appear or they fail to appear, due service of the summons having been proved, the Magistrate shall proceed to the examination of the matter.

(7) If it is proved that an offence under this Enactment has been committed and that the feed, feed additive, receptacle, package, conveyance, contrivance, book, document, computerized data or other thing referred to in subsection (6) was the subject matter of or was used in the commission of such offence, the Magistrate shall order the feed, feed additive, receptacle, package, conveyance, contrivance, book, document, computerized data or other thing to be forfeited, and shall, in the absence of such proof, order its release.

(8) Any feed, feed additive, receptacle, package, conveyance, contrivance, book, document, computerized data or other thing forfeited or deemed to be forfeited shall be delivered to the authorized officer and shall be disposed of in accordance with the direction of the Director.

Cost of holding feed, etc., seized

43. If any feed, feed additive, receptacle, package, conveyance, contrivance, book, document, computerized data or other thing seized under this Enactment is held in the custody of the Director pending the completion of any proceedings in respect of an offence under this Enactment, the cost of holding it in custody shall, irrespective of whether any prosecution is instituted or otherwise against any person, be a civil debt due to the Government by such person and shall be recoverable accordingly.

No costs or damages arising from seizure to be recoverable

44. No person shall, in any proceedings before any court in respect of the seizure of any feed, feed additive, receptacle, package, conveyance, contrivance, book, document, computerized data or other thing seized in the exercise or the purported exercise of any power conferred under this Enactment, be entitled to the costs of such proceedings or to any damages or other relief unless such seizure was made without reasonable cause.

Obstructing etc., officers

45. Any person who –

- (a) in any way assaults, hinders or obstructs the authorized officer. police officer or officer of customs in the performance of his duties under this Enactment or any subsidiary legislation made under this Enactment; or

(b) fails to give reasonable facilities or assistance to the authorized officer in the performance of his duties under this Enactment or any subsidiary legislation made under this Enactment,

commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

PART VII MISCELLANEOUS

Offences by body corporate and by employees or agents

46. (1) If an offence under this Enactment or any subsidiary legislation made under this Enactment has been committed by a body corporate, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of the body corporate, or was purporting to act in any such capacity, or was in any manner or to any extent responsible for the management of any of the affairs of the body corporate, or was assisting in such management, shall be deemed to be guilty of the offence unless he proves that the offence was committed without his knowledge, consent or connivance and he had exercised due diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

(2) Where any person would be liable under this Enactment or any subsidiary legislation made under this Enactment to any punishment or penalty for any act, omission, neglect or default, he shall be liable to the same punishment or penalty for every such act, omission, neglect or default of any employee or agent of his or of the employee of such agent, if such act, omission, neglect or default was committed by the employee of such agent in the course of his employment by such agent or otherwise on behalf of the agent.

(3) Nothing under subsection (2) shall absolve an agent, officer or employee from any liability for an offence.

General penalty

47. (1) Any person who commits an offence under this Enactment or any subsidiary legislation made under this Enactment for which no penalty is expressly provided shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

(2) Any body corporate which commits an offence under this Enactment or any subsidiary legislation made under this Enactment for which no penalty is expressly provided, shall, on conviction, be liable to a fine not exceeding two hundred thousand ringgit.

Compounding of offences

48. (1) The Director may compound any offence committed by any person under this Enactment or any subsidiary legislation made under this Enactment and prescribed to be a compoundable offence by making a written offer to such person to compound the offence upon payment to the Director of such amount not exceeding fifty per centum of the amount of the maximum fine for that offence within such time as specified in the offer.

(2) An offer under subsection (1) may be made at any time after the offence has been committed, but before any prosecution for it has been instituted.

(3) If the amount specified in the offer made under subsection (1) is not paid within the time specified in the offer or within such extended period as the Director may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

(4) Where an offence has been compounded under subsection (1), no prosecution shall be instituted in respect of such offence against the person to whom the offer to compound was made and any feed, feed additive, receptacle, package, conveyance, contrivance, book, document, computerized data or other thing seized under this Enactment in connection with the offence may be released or forfeited by the Director subject to such terms and conditions as the Director thinks fit to impose.

Prosecution

49. No prosecution for an offence under this Enactment or any subsidiary legislation made under this Enactment shall be instituted except by or with the consent in writing of the Public Prosecutor.

Protection against suit and legal proceedings

50. No action or prosecution shall be brought, instituted or maintained in any court against -

- (a) the veterinary authority, analyst or authorized officer for or on account of or in respect of any act ordered or done for the purpose of carrying into effect of this Enactment and any subsidiary legislation made under this Enactment; and

(b) any other person for any act done or purported to be done by him under the order, direction or instruction of the Director or any other officers duly authorized under this Enactment,

if the act was done in good faith and in a reasonable belief that it was necessary for the purpose intended to be served by it and for the carrying into effect the provisions of this Enactment.

Information and informer not to be disclosed

51. (1) Except as provided in this section, no witness in any civil or criminal proceedings pursuant to this Enactment shall be obliged or permitted to disclose the name or address of any informer or the substance and nature of the information received from him or state any matter which might lead to his discovery.

(2) If a book or document which is in evidence or is liable to inspection in any civil or criminal proceedings contains any entry which might lead to his discovery, the court shall cause all such entries to be concealed from view or to be obliterated so far as may be necessary to protect the informer from discovery.

(3) If in a trial for an offence under this Enactment the court, after full inquiry into the case, is of the opinion that the informer wilfully made in his complaint a material statement which he knew or believed to be false or did not believe to be true, or if in any other proceedings the court is of the opinion that justice cannot be fully done between the parties to the proceedings without the discovery of the informer, it shall be lawful for the court to require the production of the original complaint, if in writing, and permit an inquiry and require full disclosure concerning the informer.

Interference with official marks

52. Any person who without authority opens, alters, counterfeits, copies, breaks, removes, defaces or erases any mark, fastening or seal placed by any veterinary authority, authorized officer, police officer or officer of customs pursuant to the provisions of this Enactment upon any feed or feed additive, or upon any receptacle, package, premises, conveyance, contrivance, door or any opening containing or affording access to the feed or feed additive commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both, and for a second or subsequent offence, to a fine not exceeding two hundred thousand ringgit or to imprisonment for a term not exceeding four years or to both.

Failure to comply with lawful order

53. Any person who fails to comply with any written order issued by the veterinary authority or any authorized officer commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both, and for a second or subsequent offence, to a fine not exceeding two hundred thousand ringgit or to imprisonment for a term not exceeding four years or to both.

Giving or making false information or statement

54. Any person who gives information or makes a statement on the requirement of this Enactment or any subsidiary legislation made under this Enactment, that is false in any material particular, unless he proves that he did not know and had no reason to suspect that the information or statement is false and had taken all reasonable steps to ascertain the truth of the information or statement, commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both, and for a second or subsequent offence, to a fine not exceeding two hundred thousand ringgit or to imprisonment for a term not exceeding four years or to both.

Jurisdiction to try offences

55. Notwithstanding any written law to the contrary, a Magistrate Court shall have jurisdiction to try any offence under this Enactment or any subsidiary legislation made under this Enactment, and to impose full punishment for any such offence.

Power to make regulations

56. (1) The Minister may make regulations as may be necessary or expedient for the purpose of carrying into effect the provisions of this Enactment.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations -

(a) to prescribe the analyst's qualifications, conduct and duties;

(b) to prescribe all matters relating to the application, renewal, suspension and revocation of licence to export or import feed or feed additive;

(c) to prescribe all matters relating to the application, renewal, suspension and revocation of licence to manufacture feed:

- (d) to prescribe the conditions and restrictions of licence to export or, import feed or feed additive;
- (e) to prescribe all matters relating to feed and feed additives specifications and standards and make provisions for giving effect to such specifications and standards;
- (f) to prescribe all matters relating to the transporting, storing, keeping, labelling and packaging of feed or feed additive;
- (g) to prescribe all matters relating to the use of feed additive, antibiotics, hormones or other chemicals;
- (h) to prescribe the method of analysis of feed and the form of certificate of analysis;
- (i) to prescribe the fees payable under this Enactment;
- (j) to regulate the manufacture, sale, advertisement and use of feed or feed additive;
- (k) to designate laboratories and provide for its functions;
- (l) to prescribe the offences which may be compounded; and
- (m) to provide for such other matters as are contemplated by, or necessary for giving full effect to the provisions of this Enactment.

Transitional provision

57. Any person who, on the date of the coming into operation of this Enactment, has been manufacturing feed and intends to continue manufacturing feed shall, within six months from the date of the coming into operation of this Enactment, apply for a licence under section 6.

FOR REFERENCE ONLY (JUNE 2022)

CERTIFIED by me to be a true copy of the Bill passed by the Legislative Assembly on Thursday, the 9th day of December, 2021.

DATUK HAJI KADZIM BIN HAJI M. YAHYA
Speaker,
State Legislative Assembly

Sabah LawNet