

New Zealand.



ANALYSIS.

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1907, No. 22.

Title.	<p>AN ACT to make Better Provision for the Sale of Food and Drugs in a Pure State. [9th November, 1907.]</p> <p>BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—</p>
Short Title.	<p>1. (1.) This Act may be cited as the Sale of Food and Drugs Act, 1907, and shall form part of and be read together with the Public Health Act, 1900.</p>
Commencement of Act.	<p>(2.) This Act shall come into operation on the first day of January, nineteen hundred and eight.</p>
Interpretation.	<p>2. In this Act, if not inconsistent with the context,—</p> <p>“Analyst” means an Analyst appointed under this Act:</p> <p>“Appliance” includes the whole or any part of any utensil, machinery, instrument, apparatus, or article used or intended for use in or for the making, keeping, preparing, or supplying of any food:</p> <p>“Drug” means any substance or mixture of substances used by man as a medicine, whether internally or externally, and includes anæsthetics:</p>

“Food” includes every article which is used for food or drink by man, or which enters into or is used in the composition or preparation of any such article, and also includes flavouring matters and condiments :

“Officer” means an officer of the Health Department or any person appointed an officer for the purposes of this Act by the Governor :

“Package” includes every means by which goods for carriage or for sale are cased, covered, enclosed, contained, or packed :

“Sale” or “sell” includes barter, and also includes offering or attempting to sell or receiving for sale, or having in possession for sale, or exposing for sale, or sending or delivering for sale, or causing or allowing to be sold, offered, or exposed for sale, and refers only to sale for human consumption or use.

3. The Governor may from time to time appoint Analysts for the purposes of this Act, and may pay them such remuneration as may be appropriated by Parliament for the purpose. Appointment of Analysts.

4. (1.) Any officer may—

(a.) At all reasonable times enter into and inspect any place where there is any food or drug which he has reasonable ground for believing to be intended for sale ; and Powers of officers to enter.

(b.) Mark, seal, or otherwise secure, weigh, count, or measure any food or drug the sale, preparation, or manufacture of which is or appears to be contrary to the provisions of this Act ; and

(c.) Seize any food or drug, wherever found, which is or appears to be unwholesome or deleterious to health ; and

(d.) Destroy any food or drug, wherever found, which is decayed or putrefied ; and

(e.) Inspect any food or drug, wherever found, which he has reasonable ground for believing to be intended for sale.

(2.) Any person claiming anything seized under this section may within forty-eight hours after such seizure complain thereof to any Justice, and such complaint may be heard and determined before a Magistrate or any two Justices, who may either confirm or disallow such seizure wholly or in part, and may order the article seized to be restored.

(3.) If within forty-eight hours after such seizure no complaint has been made, or if such seizure is confirmed, the article seized shall become the property of the Crown, and shall be destroyed or otherwise disposed of so as to prevent it being used for human consumption.

(4.) Where the seizure of any food or drug is made in any place which is not in the occupation of the owner of the thing seized, the officer making the seizure shall forthwith give notice in writing of the seizure to the owner, or to the consignor or consignee, or to the agent of the owner, of the thing seized, if his name and address are attached thereto or are otherwise known to the officer, and such address is in New Zealand.

(5.) Any person who obstructs any officer in the exercise of his powers under this section is guilty of an offence.

Power to demand,
select, and take
samples.

5. (1.) On payment or tender to any person selling or making any food or drug, or to his agent or servant, of the current market value of the samples in this section referred to, any officer may at any place demand and select and take or obtain samples of the said food or drug for the purposes of analysis.

(2.) Any such officer may require the said person or his agent or servant to show and permit the inspection of the package in which such food or drug is at the time kept, and to take therefrom the samples demanded.

(3.) Where any food or drug is kept for retail sale in an unopened package, no person shall be required by any officer to sell less than the whole of the contents of such package.

(4.) Every person who refuses or neglects to comply with any demand or requisition made by an officer in pursuance of this section is liable to a fine not exceeding twenty pounds, unless he proves that he had no knowledge or reason to believe that the sample demanded was required for the purpose of analysis.

Any person may
have sample
analysed.

6. Any person may on payment of the prescribed fee, together with the cost of the sample, require any officer to purchase a sample of any food or drug and submit the same for analysis.

Samples, how taken.

7. (1.) Where it is intended to submit any sample for analysis, the officer purchasing or otherwise procuring it shall, before or forthwith after procuring it, inform the seller or his agent selling the article that he intends to have the same analysed by an Analyst.

(2.) He shall thereupon divide the sample into three parts, and shall mark and seal or fasten up in such manner as its nature will permit each such part, and shall offer one of such parts to the seller or his agent.

(3.) He shall subsequently deliver another of such parts to an Analyst, and shall retain the third of such parts.

(4.) Delivery to an Analyst under this section may be effected either personally or by registered post.

Certificate of
Analyst.

8. (1.) The certificate of the Analyst shall be in the form prescribed by regulations.

(2.) Where any method of analysis, chemical or physical, has been prescribed by regulations made under the authority of this Act for the analysis of any food or drug, any Analyst, either for the prosecution or defence, shall in his certificate of analysis declare that he has followed the prescribed method in his analysis.

(3.) A copy of the result of any analysis of any food or drug procured by an officer may be obtained from the Analyst by the person from whom the article so analysed was purchased or obtained, on payment of a fee not exceeding two shillings and sixpence.

(4.) No such copy of any analysis shall be used as an advertisement, and if any person so uses it he commits an offence.

Interference with
official marks or
seals.

9. Every person commits an offence who without authority opens, alters, breaks, removes, or erases any mark, fastening, or seal placed by any officer, in pursuance of the provisions of this Act, upon any food or drug, or upon any package, place, door, or opening containing or affording access to any food or drug.

Power to require
information to be
made available.

10. (1.) If in the opinion of the Chief Health Officer there is reasonable ground for suspecting that any person is in possession of

any food or drug or other substance for the purpose of sale, or of manufacturing or preparing the same for sale in breach of this Act, he may require such person to produce for his inspection, or to produce to any specially authorised officer, any books or documents dealing with the reception, possession, purchase, sale, or delivery of any such food or drug or other substance.

(2.) The Chief Health Officer may make or cause to be made copies of or extracts from any such books or documents, and such copies or extracts, certified as such by any specially authorised officer, shall be deemed to be true and correct copies or extracts, unless the contrary is proved.

(3.) Every person who refuses or neglects to comply with any requisition made in pursuance of this section commits an offence.

(4.) Every officer who does not maintain the secrecy of all matters which come to his knowledge in the performance of his official duties under this section, or who communicates any such matter to any person whomsoever, except for the purpose of carrying into effect the provisions of this Act, is liable to a fine not exceeding fifty pounds.

11. Where food in connection with which there is a breach of any of the provisions of this Act is sold in an unopened package, any person who appears from any statement thereon or attached thereto to have imported or manufactured or prepared such food, or to have enclosed it in such package, shall, unless he proves the contrary, be deemed to have so imported, manufactured, prepared, or enclosed the same, and shall be liable to the same fine as if he had actually sold the same.

When importer or
manufacturer
liable.

12. (1.) Every person commits an offence who sells any adulterated food or adulterated drug without fully informing the purchaser at the time of the sale of the nature of the adulteration, unless the package in which it is sold has conspicuously printed thereon a true description of the composition of such food or drug.

Offences under Act.

(2.) Every person commits an offence who sells any food or drug in any package which bears or has attached thereto any false or misleading statement, word, brand, label, or mark purporting to indicate the nature, quality, strength, purity, composition, weight, origin, age, or proportion of the article contained in the package or of any ingredient thereof.

(3.) Every person commits an offence who sells any food or drug containing any substance the addition of which is prohibited by regulations made under the authority of this Act.

(4.) Every person commits an offence who sells any food or drug containing a greater proportion of any substance than is permitted by regulations made under the authority of this Act.

(5.) Every person commits an offence who sells any food which contains methyl alcohol, or which, not having paid Customs or excise duty, contains more than two parts of proof spirit per centum.

(6.) Every person commits an offence who sells any food which is unsound or unfit for human consumption.

(7.) Every person committing any offence mentioned in this section is liable for the first offence to a fine not exceeding fifty pounds, and for any subsequent offence under the said section

(whether of the same or a different nature) to a fine not exceeding two hundred pounds:

Provided that if any such offence is wilfully committed, the person so committing it is liable to a fine not exceeding two hundred pounds or to three months' imprisonment, although it may be a first offence.

(8.) The provisions of subsection one of this section are subject to such exceptions as may be prescribed by regulations made by the Governor in Council and gazetted.

No defence that offence not wilfully or intentionally committed.

13. In a prosecution for selling any food or drug contrary to the provisions of this Act, or of any regulation made under the authority of this Act, it shall be no defence that the defendant did not act wilfully, unless he also proves that he took all reasonable steps to ascertain that the sale of the article would not constitute an offence against this Act or against any regulation made under the authority thereof.

Reliance on written warranty a good defence.

14. (1.) Subject to the provisions hereinafter in this section contained, it shall be a good defence in any prosecution for an offence under section twelve hereof if the defendant proves that he purchased the article sold by him in reliance on a written warranty or other written statement as to the nature of the article purchased, signed by or on behalf of the person from whom the defendant purchased the same, and that if the article had truly conformed to such warranty or statement the sale of the article by the defendant would not have constituted the offence charged against him.

(2.) No warranty or other written statement given or made by a person resident outside New Zealand shall be any defence under this section unless the defendant proves that he had taken reasonable steps to ascertain, and did in fact believe in, the truth of the matters set forth in such warranty or statement.

(3.) No warranty or other written statement shall be any defence under this section if it is proved that the defendant knew or had reason to suspect that the article sold did not conform to such warranty or statement.

(4.) No warranty or other written statement shall be any defence in any prosecution unless the defendant has within seven days after service of the summons delivered to the prosecutor a copy of such warranty or statement, with a written notice stating that he intends to rely thereon, and specifying the name and address of the person from whom he received it, and has also within the same time sent by post a like notice of his intention to such person.

(5.) When the defendant is a servant or agent of the person who purchased the article under such a warranty or written statement, he shall be entitled to the benefit of this section in the same manner and to the same extent as his employer or principal would have been if he had been the defendant, unless it is proved that the servant or agent knew or had reason to suspect that the article did not conform to the said warranty or statement.

What constitutes adulteration.

15. For the purposes of this Act any food or drug shall be deemed to be adulterated—

(a.) If it contains or is mixed or diluted with any substance which diminishes in any manner its nutritive or other

beneficial properties as compared with such article in a pure and normal state and in an undeteriorated and sound condition, or which in any other manner operates or may operate to the prejudice or disadvantage of the purchaser or consumer :

- (b.) If any substance or ingredient has been extracted or omitted therefrom, and by reason of such extraction or omission the nutritive or other beneficial properties of the article as sold are less than those of the article in its pure and normal state, or the purchaser or consumer is or may be in any other manner prejudiced :
- (c.) If it contains or is mixed or diluted with any substance of lower commercial value than such article in a pure and normal state and in an undeteriorated and sound condition :
- (d.) If it does not comply with the standard therefor prescribed by any regulations made under the authority of this Act.

16. For the purposes of this Act every person shall be deemed to sell any food or drug who sells the same either on his own account or as the agent or servant of any other person, and in the case of any sale by an agent or servant his principal or employer shall be under the same liability as if he had effected the sale personally.

Sales by agent or servant.

17. (1.) In the case of any conviction under this Act the convicting Magistrate may order that any food or drug to which the conviction relates, and any similar food or drug found on the defendant's premises or in his possession at the time of the offence committed, together with all packages or vessels containing the same, shall be forfeited to the Crown.

Forfeiture of food or drugs upon conviction.

(2.) Everything so forfeited to the Crown shall be disposed of as the Minister directs.

18. (1.) All proceedings in respect of an offence against this Act shall be taken in a summary manner before a Magistrate only.

Proceedings for offences.

(2.) The summons in any such proceedings shall not be made returnable in less than fourteen days from the day on which it is served.

(3.) There shall be served with the summons a copy of the Analyst's certificate (if any) on which the prosecution is based.

19. A notification of the name and occupation of any person who has been convicted of an offence against this Act, together with his place or places of business, the nature of the offence, and the fine, forfeiture, or other penalty inflicted, shall, if the convicting Magistrate so orders, be published by the Chief Health Officer in any newspaper or newspapers circulating in New Zealand or in any part thereof.

Notification of conviction may be published in newspapers.

20. (1.) The production by the prosecutor of a certificate of analysis purporting to be under the hand of an Analyst shall be sufficient evidence of the facts stated therein, unless the defendant requires that the Analyst shall be called as a witness, in which case he shall give notice thereof to the prosecutor not less than three clear days before the return day.

Analyst's certificate prima facie evidence.

(2.) In like manner the production by the defendant of a certificate of analysis purporting to be under the hand of an Analyst shall

be sufficient evidence of the facts stated therein, unless the prosecutor requires that the Analyst be called as a witness.

(3.) A copy of such last-mentioned certificate shall be sent to the prosecutor at least three clear days before the return day, and if it is not so sent the Magistrate may adjourn the hearing on such terms as he thinks proper.

Magistrate may order independent analysis to be made.

21. When a sample has been dealt with in accordance with section seven hereof, the Magistrate shall, on the request of either party to any proceedings for an offence against this Act, and may if he thinks fit without such request, order that the part of the sample retained by the officer shall be submitted to another Analyst for analysis.

Onus of proof.

22. (1.) When any food or drug is sold, or exposed or offered for sale, it shall be deemed to be sold, or exposed or offered for sale, for human consumption or use unless the contrary is proved.

(2.) The purchase and sale of a sample of any food or drug under the provisions of this Act for the purpose of analysis shall be deemed to be a purchase and sale of such food or drug for human consumption or use, unless the seller proves that the bulk from which such sample was taken was not offered, exposed, or intended for sale for human consumption or use.

(3.) For the purposes of this Act every person shall be deemed to sell or to intend to sell any food or drug if he sells or intends to sell for human consumption or use any article of which such food or drug is a constituent.

Source of information or reports.

23. No prosecutor or witness in any prosecution under this Act shall be compelled to disclose the fact that he received any information, or the nature of such information, or the name of any person who gave such information; and no officer appearing as a prosecutor or witness shall be compelled to produce any confidential reports or documents made or received by him in his official capacity, or to make any statement in relation thereto.

General penalty.

24. Every person who commits an offence against this Act for which a penalty is not expressly provided is liable to a fine not exceeding twenty pounds.

Expenses of analysis to be paid by offenders on conviction.

25. (1.) Where any person is convicted of an offence under this Act, the Magistrate may order that all fees and other expenses incident to the analysis of any food or drug in respect of which the conviction is obtained (including an analysis made under section twenty-one hereof) shall be paid by the person convicted.

(2.) All such fees and expenses shall be deemed to be part of the costs attending the conviction, and shall be recoverable in the same manner as such costs are recoverable.

Sale of bread.

26. (1.) Every person commits an offence who sells any bread the weight of which at the time of sale is less than the seller represents it to be, or is less than the weight which the buyer demands.

(2.) Every person who sells any loaf weighing at the time of sale less than four pounds but more than three pounds shall be deemed to represent that it weighs four pounds unless he states its true weight to the buyer at the time of sale.

(3.) Every person who sells any loaf weighing at the time of sale less than two pounds but more than one pound shall be

deemed to represent that it weighs two pounds unless he states its true weight to the buyer at the time of sale.

(4.) The Governor may by regulations from time to time provide that any particular class of bread shall be excepted from the operation of this section, and on such conditions (if any) as he may in such regulations prescribe.

(5.) Every person commits an offence, and is liable to a fine not exceeding five pounds, who, after having delivered any bread to a retail purchaser, and after the same has been in the possession of the purchaser for more than one hour,—

- (a.) Takes back such bread from the purchaser, unless the purchaser has a right to reject the same as not being in conformity with the contract of sale; or
- (b.) Takes back such bread from the purchaser and sells it to any other person.

27. (1.) The Governor may from time to time, by Order in Council gazetted, make regulations— Governor may make regulations.

- (a.) Prescribing the standard of strength, weight, quality, or quantity of any food or drug, or of any ingredient or component part thereof;
- (b.) Prohibiting the addition of any specified thing, or of more than the specified quantity or proportion thereof, to any food or drug;
- (c.) Prohibiting any modes of manufacture, preparation, or preservation of any food or drug;
- (d.) Securing the cleanliness and freedom from contamination of any food or drug in the course of its manufacture, preparation, storage, packing, carriage, delivery, or exposure for sale, and securing the cleanliness of places, receptacles, appliances, and vehicles used in such manufacture, preparation, storage, packing, carriage, or delivery;
- (e.) Prescribing the mode of labelling food or drugs sold in packages, and the matter to be contained or not to be contained in such labels;
- (f.) Prescribing the method of analysis of any food or drug;
- (g.) Fixing fees to be paid in respect of the analysis of any food or drug by an Analyst;
- (h.) Prohibiting the sale of specified articles of food otherwise than by weight;
- (i.) Prescribing fines not exceeding fifty pounds for the breach of any regulation; and
- (j.) Generally for carrying out the purposes of this Act.

(2.) Any such regulation may be made applicable either to foods or drugs generally or to specified foods or drugs only.

(3.) Notwithstanding anything contained in any regulation made under the authority of this section, it shall be lawful for any person, at any time within twelve months after the date of the gazetted of such regulation, to sell any food or drug the sale of which is otherwise lawful, if he proves that at the said date such food or drug was part of the existing stock-in-trade in New Zealand of any person carrying on business there, and that since the said date no act has been done whereby the said food or drug fails to conform to the

requirements of the said regulation. For the purposes of this subsection any goods purchased before the said date for importation into New Zealand shall be deemed to be part of the purchaser's stock-in-trade in New Zealand.

Regulations to be submitted to Parliament.

28. A copy of all regulations made under the authority of this Act shall, within twenty-one days after the gazetting thereof, be laid before Parliament if sitting, or if not, then within twenty-one days after the commencement of the next ensuing session.

Tobacco.

29. The provisions of this Act so far as they are applicable shall extend and apply to tobacco, cigars, and cigarettes in like manner as the said provisions apply to drugs.

Application of fees and fines.

30. All fees and fines received or recovered under this Act shall be paid into the Public Account and shall form part of the Consolidated Fund.

Inspectors and Analysts under Adulteration Prevention Acts.

31. (1.) Where in any unrepealed Act reference is made to an Inspector or to an Analyst under the Adulteration Prevention Act, 1880, such reference shall be deemed to be to an officer or to an Analyst respectively under this Act.

(2.) Nothing in this Act shall affect or interfere with any provision in any unrepealed Act relating to the adulteration of any food or drug; and where any person commits an offence both against this Act and against any other Act he may be proceeded against under either, but so that he shall not be punished twice for the same offence.

Repeals.

32. (1.) The Acts and parts of Acts mentioned in the Schedule hereto are hereby repealed.

(2.) All appointments made under any of such repealed Acts shall be deemed to have been made under this Act.

Schedule.

SCHEDULE.

ACTS AND PARTS OF ACTS REPEALED.

1880, No. 20.—The Adulteration Prevention Act, 1880.

1883, No. 11.—The Adulteration Prevention Act 1880 Amendment Act, 1883.

1895, No. 18.—The Adulteration Prevention Acts Amendment Act, 1895.

1900, No. 25.—The Public Health Act, 1900: Section 87.

1903, No. 82.—The Public Health Amendment Act, 1903: Section 10.