

Hon. Mr. Fowlds.

PURE FOOD.

ANALYSIS.

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A BILL INTITULED

AN ACT to make Better Provision for the Sale of Food and Drugs in a Pure State. **Title.**

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows :—

1. (1.) The Short Title of this Act is "The Pure Food Act, 1906"; and it shall form part of and be read together with "The Public Health Act, 1900." **Short Title.**

10 (2.) This Act shall come into operation on the first day of January, one thousand nine hundred and seven. **Commencement of Act.**

2. In this Act, if not inconsistent with the context,— **Interpretation.**

"Analyst" means an analyst appointed under this Act :

15 "Appliance" includes the whole or any part of any utensil, machinery, instrument, tube, pipe, tap, apparatus, or article used or intended for use in or for the making, keeping, preparing, or supplying of any article of food :

20 "Article of food" includes every article used for food or drink by man, or that enters into or is used in the composition or preparation of food; and also includes confectionery, spices, flavouring substances, and essences ;

“Drug” includes medicine, whether for internal or external use :

“Officer” means an officer of the Health Department or a constable authorised by the Chief Health Officer :

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

“Premises” includes any vehicle used in connection with the business carried on at any premises :

“Sale,” “sell,” or “sold” includes barter, and also includes offer or attempt to sell or receive for sale, or have in possession for sale, or expose for sale, or send, forward, or deliver for sale, or cause or suffer or allow to be sold, offered, or exposed for sale, and refers only to sale for human consumption or use.

Appointment of analysts.

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.

Powers of officers to enter.

4. (1.) Any officer may—

(a.) At all reasonable times in the daytime enter into and inspect any place where any article of food or drugs are which he has reasonable ground for believing are intended to be sold or used for human consumption ; and

(b.) Examine and cut open any articles of foods or drugs or packages thereof found in such place, and remove portions of any such articles for examination or analysis ; and

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

(d.) Seize any such article which is or appears to the officer to be unwholesome or deleterious to health ; and

(e.) Destroy any such article or any portion thereof as is or before it is claimed becomes decayed or putrefied.

(2.) Any person claiming any article 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 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 article is made at a place other than that usually occupied by the owner of the article, the officer shall forthwith give notice in writing of the seizure to the owner or consignor of the article, if his name and address are attached to the article or any package covering the same, and such address is in New Zealand.

Power to demand, select, and take samples.

5. (1.) On payment or tender to any person dealing in or making any article of food or drug, or to his agent or servant, of the

current market value thereof, any officer may at any place of sale or manufacture or preparation or at any premises demand and select and take or obtain samples of the said food or drug for the purposes of analysis.

5 (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 article of food or drug is at the time kept and to take or draw therefrom the samples demanded.

10 (3.) Where any article of 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 such package.

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

15 7. (1.) Where it is intended to submit any sample for analysis, the officer purchasing or otherwise procuring the same shall forthwith inform the seller or his agent selling the article, or the person in whose possession the article was at the time the sample was procured, that he intends to have the same analysed by an analyst. Samples, how taken.

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

25 (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 posting the part by registered post to the analyst's usual address.

30 8. (1.) The certificate of the analyst shall be in the form prescribed by regulations. Certificate of analyst.

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

35 (3.) A copy of the result of any analysis of any sample or portion of any article of food or drug or substance procured by an officer may be obtained from the analyst by the person from whom the sample or portion was purchased or obtained, on payment of a fee not exceeding 40 *two shillings and sixpence* :

Provided that no copy of such analysis shall be used as an advertisement, and if any person so uses it he commits an offence.

45 9. Every person commits an offence who without authority opens, alters, breaks, removes, or erases any mark, fastening, or seal placed by any officer upon any article of food, or drug, or substance, or upon any package, place, or door or opening containing or affording access to such article of food, or drug, or substance. Interference with official marks or seals.

50 10. (1.) If in the opinion of the Chief Health Officer there is reasonable ground for suspecting that any person is in possession of, for the purposes of sale, or for manufacturing, or preparing for sale, any article of food, or drug, or substance in breach of this Act, he may require such person to produce for his inspection or to produce Power to require information to be made available.

to any specially authorised officer any books of the nature of store records or dealing with the reception, possession, or delivery of any article of food, or drug, or substance.

(2.) The Chief Health Officer may make or cause to be made copies of or extracts from any such books, and such copies of or extracts from any such books, certified as such by any specially authorised officer, shall be deemed to be true and correct copies or extracts. 5

(3.) Every person who refuses to comply with any provision of this section commits an offence.

(4.) Every officer who does not maintain and aid in maintaining 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 whatsoever, except for the purpose of carrying into effect the provisions of this Act, is liable to a fine not exceeding *fifty* pounds. 10 15

Articles of food in packages to be labelled as to weight or volume, &c.

11. There shall be legibly and durably written on or attached to every package immediately containing any article of food for sale a statement indicating the trade name or description, the net weight or number or true measure or volume of the contents thereof, and the name and address of the vendor or maker thereof or agent therefor, or of the owner of rights of manufacture; and no person shall, after the thirty-first day of December, one thousand nine hundred and *six*, sell in a package any article of food unless such statement is so written on or attached thereto. 20

When importer or manufacturer liable.

12. Where an article of food in connection with which there is a breach of any of the provisions of this Act is sold in an unopened package to any officer, any person who appears from any statement thereon or attached thereto to have imported or manufactured or prepared such article or to have enclosed such article in such package shall, unless he proves to the contrary, be deemed to have so imported, manufactured, prepared, or enclosed such article, and unless the breach is shown to be due to the default of the person on whose premises the package is found, or to deterioration or other causes beyond the control of the person named on the package, shall be liable to the same fine as if he had actually sold the same to the officer. 25 30 35

Selling adulterated or falsely described food or drug.

13. (1.) Every person who sells any article of food or drug that is adulterated or falsely described is liable for the first offence to a fine not exceeding *fifty* pounds, and for any subsequent offence to a fine not exceeding *two* hundred pounds, or to *six* months' imprisonment with hard labour, unless he proves— 40

(a.) That, having taken all reasonable precautions against committing an offence against this Act, he had at the time of the alleged offence no reason to suspect that such article of food or drug was adulterated or falsely described; and 45

(b.) That on demand by any officer he gave all the information in his power with respect to the person from whom he obtained the article of food or drug; and

(c.) That otherwise he acted innocently. 50

(2.) Where in the opinion of the Magistrate the offence was committed by the personal act, default, or culpable negligence of the accused, he shall be liable, if the Magistrate thinks that a fine will not meet the circumstances of the case, to *six* months' imprisonment with hard labour.

14. For the purposes of this Act an article of food shall be deemed adulterated or falsely described—

Adulteration or false description.

10 (a.) If it contains or is mixed with or diluted with any substance in any quantity to the prejudice of the purchaser or consumer, or in any proportion which diminishes in any manner its food value or nutritive properties as compared with such article in a pure or normal state and in an undeteriorated or sound condition; or

15 (b.) If it contains or is mixed with or diluted with any substance of lower commercial value than such article in a pure or normal state and in an undeteriorated or sound condition; or

20 (c.) If it does not comply either wholly or in part with the standard therefor prescribed under this Act by any regulation; or

(d.) If it contains any substance prescribed as a prohibited addition; or

25 (e.) If it contains any substance concerning which any restrictive regulation has been made in excess of any quantity or proportion permitted by such regulation; or

(f.) If it contains methyl alcohol, or not having paid Customs or Excise duty it contains more than two parts of proof spirit per centum; or

30 (g.) If it is contained in any package bearing or to which is attached any false or misleading statement, brand, label, or mark purporting to indicate the nature, quality, strength, purity, composition, origin, age, or proportion of the article contained in the package or of any ingredient thereof.

35 15. (1.) Proceedings in respect of an offence against the *last preceding* section shall be taken in a summary manner before a Magistrate sitting alone. Proceedings for offences.

(2.) Such proceedings shall not be instituted after the expiration of twenty-eight days from the time the sample was purchased or procured.

40 (3.) The summons shall state particulars of the offence or offences alleged, and the name of the prosecutor, and shall not be made returnable in less than fourteen days from the day on which it is served.

45 (4.) There shall be served with the summons a copy of the analyst's certificate on which the prosecution is based.

(5.) In any such proceedings it shall not be necessary to prove that any fee has been paid to the analyst.

50 16. (1.) The production by the prosecutor of the certificate of the analyst shall be sufficient proof 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 by 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. 5

Magistrate may order independent analysis to be made.

17. The Magistrate shall, on the request of either party to the proceedings, and may, if he thinks fit without such request, order that the part of the sample retained by the officer under section seven hereof shall be submitted to another analyst for analysis. 10

Defence that goods were purchased with a warranty or invoice.

18. (1.) A warranty or invoice shall not be available as a defence to any such proceedings unless the defendant has, within seven days after service of the summons, sent to the prosecutor a copy of such warranty or invoice with a written notice stating that he intends to rely on the warranty or invoice, and specifying the name and address of the person from whom he received it, and has also sent a like notice of his intention to such person. 15

(2.) The person by whom such warranty or invoice is alleged to have been given shall be entitled to appear at the hearing and to give evidence, and the Court may, if it thinks fit, adjourn the hearing to enable him to do so. 20

(3.) A warranty or invoice given by a person resident out of New Zealand shall not be available as a defence to any proceeding under this Act unless the defendant proves that he had taken reasonable steps to ascertain, and did in fact believe in, the accuracy of the statement contained in the warranty or invoice. 25

(4.) Where the defendant is a servant of the person who purchased the article under a warranty or invoice he shall be entitled to rely on this section in the same way and to the same extent as his employer would have been entitled to do if he had been the defendant, provided that the servant shall further prove that he had no reason to believe that the article was otherwise than that demanded by the prosecutor. 30

(5.) Where the defendant in a prosecution under this Act has been discharged under the provisions of subsection one of this section, any proceedings under this Act for giving the warranty or invoice relied on by the defendant in such prosecution may be taken either before a Court having jurisdiction in the place where the article of food or drug to which the warranty or invoice relates was purchased for analysis, or before a Court having jurisdiction in the place where the warranty or invoice was given. 35

Onus of proof.

19. The onus of proof that any article of food or drug or other substance was not offered or intended for sale, or sold for human consumption, shall in every case be on the defendant. 45

Source of information or reports.

20. No witness on behalf of 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 witness shall be compelled to produce any reports made or received by him confidentially in his official capacity or containing confidential information. 50

21. 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 for a first offence, and to a fine not less than *five* pounds and not exceeding *fifty* pounds for any subsequent offence.

General penalty.

5 22. (1.) Where any person is convicted of an offence under this Act, the Magistrate shall order that all fees and other expenses incident to the analysis of any article of food or drug in respect of which the conviction is obtained (including an analysis made under section *seventeen* hereof) shall be paid by the person convicted.

Expenses of analysis to be paid by offenders on conviction.

10 (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.

15 23. (1.) In the case of any conviction under this Act any article of food or drug or substance to which the conviction relates shall, unless otherwise ordered by the convicting Magistrate, be forfeited to His Majesty, and such forfeiture shall extend to the whole of the article or substance, and to the whole of any similar article or substance, and to all packages or vessels containing any similar article or substance found on the defendant's premises or in his possession at

Forfeiture of articles of food or appliance.

20 the time of the committal of the offence.

(2.) All articles, drugs, substances, and things forfeited under this Act shall be disposed of as the Minister directs.

25 24. (1.) A notification of the name of any person who has been convicted by any Court or Justices of an offence against this Act relating to the sale of any article of food or drug may, if the Court or Justices so direct, be published by the Chief Health Officer in the *Gazette*, together with the address of his place or places of business, and a description of the nature of the offence, the decision of the Court or Justices, and the fine imposed and any forfeiture incurred.

Publication of names of offenders.

30 (2.) In the case of a second or any subsequent conviction of any person for any such offence a copy of such notification shall be published in the *Gazette*, and may, if the Court or Justices so direct, be published in any newspaper circulating in any part of New Zealand.

35 (3.) During the pendency of any appeal against a conviction for any offence a notification shall not be published as aforesaid.

25. All proceedings in respect of offences against this Act shall be taken before a Magistrate sitting alone.

Proceedings to be taken before Magistrate alone.

26. The Governor may from time to time, by Order in Council gazetted, make regulations—

Governor may make regulations.

40 (a.) Prescribing the standard of strength, weight, quality, or quantity of any article of food, or of any ingredient or component part thereof;

45 (b.) Prohibiting the addition of any specified thing, or of more than the specified quantity or proportion thereof, to any article of food or specified article of food;

(c.) Prohibiting such modes of manufacture, preparation, or preservation of articles of food as may be specified;

50 (d.) Securing the cleanliness and freedom from contamination of any article of food or drug in the course of its manufacture, preparation, storage, packing, carriage, or delivery, 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 articles or any specified article of food 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 specified article of food or drug ; 5
- (g.) Fixing fees to be paid in respect of the analysis of any article of food or drug by any analyst ;
- (h.) Prescribing articles of food which shall be sold by weight ;
- (i.) Prescribing fines not exceeding *fifty* pounds for the breach of any regulation ; and 10
- (j.) Generally for carrying out the purposes of this Act.

Application of fees  
and fines.

27. 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.

Repeals.

28. (1.) The Acts mentioned in the Schedule hereto are hereby 15 repealed.

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

Schedule.

## SCHEDULE.

### ACTS REPEALED.

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

1882, No. 62.—“ The Tea Examination Act, 1882.”

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

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

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