

Act No. 148
Public Acts of 1991
Approved by the Governor
November 22, 1991
Filed with the Secretary of State
November 25, 1991

**STATE OF MICHIGAN
86TH LEGISLATURE
REGULAR SESSION OF 1991**

Introduced by Reps. Clarke and DeMars

ENROLLED HOUSE BILL No. 4921

AN ACT to amend section 7 of Act No. 211 of the Public Acts of 1893, entitled "An act to provide for the appointment of a dairy and food commissioner, and to define his powers and duties and fix his compensation," being section 289.37 of the Michigan Compiled Laws; and section 6 of Act No. 110 of the Public Acts of 1909, entitled "An act to prevent the adulteration of linseed oil or flaxseed oil and to prevent fraud in the sale thereof and in the sale of compounds thereof, and to repeal all acts in conflict herewith," being section 290.256 of the Michigan Compiled Laws, to harmonize provisions of law relating to the abolished office of justice of the peace in regard to agricultural and dairy items.

The People of the State of Michigan enact:

Section 1. Section 7 of Act No. 211 of the Public Acts of 1893, being section 289.37 of the Michigan Compiled Laws, is amended to read as follows:

Sec. 7. (1) The commissioner, his or her deputy, or any person by the commissioner duly appointed for that purpose, is authorized at all times to seize and take possession of any and all food and dairy products, substitutes therefor, or imitation thereof kept for sale, exposed for sale or held in possession or under the control of any person which in the opinion of the commissioner, or his or her deputy, or such person duly appointed, shall be contrary to the provisions of this act or other laws.

(2) The person so making such seizure as aforesaid, shall take from such goods as seized a sample for the purpose of analysis and shall cause the remainder thereof to be boxed and sealed and shall leave the same in the possession of the person from whom they were seized, subject to such disposition as shall hereafter be made thereof according to the provisions of this act.

(3) The person so making such seizure shall forward the sample so taken to the state analyst for analysis, who shall make an analysis of the same and shall certify the results of such analysis, which certificate shall be prima facie evidence of the fact or facts therein certified to in any court where the same may be offered in evidence.

(4) If upon such analysis, it shall appear that the food or dairy products are adulterated, substitutes, or imitations within the meaning of this act, the commissioner, or his or her deputy or any person duly authorized, may make complaint before the district or municipal court of the judicial district or municipality where such goods were seized, and the court shall issue a summons to the person from whom the goods were seized, directing him or her to appear not less than 6 nor more than 12 days from the date of the summons and show cause why the goods should not be condemned and disposed of. If the person from whom the goods were seized cannot be found, the summons shall be served upon the person then in possession of the goods. The summons shall be served at least 6 days before the time of appearance mentioned therein. If the person from whom the goods were seized cannot be found, and no one can be found in possession of the goods, and the defendants shall

not appear on the return day, then the court shall proceed in the cause in the same manner provided by law where a writ of attachment is returned not personally served upon any of the defendants and none of the defendants shall appear upon the return day.

(5) Unless cause to the contrary thereof is shown, or if the goods shall be found upon trial to be in violation of any of the provisions of this act or other laws which now exist or which may be hereafter enacted, it shall be the duty of the court to render judgment that the seized property be forfeited to the state of Michigan, and that the goods be destroyed or sold by the commissioner for any purpose other than to be used for food. Either parties may appeal to the circuit court as appeals are taken from the district or municipal court rendering the judgment, but it shall not be necessary for the people to give any appeal bond.

(6) The proceeds arising from any such sale shall be paid into the state treasury and credited to the general fund: Provided, That if the owner or party claiming the property or goods so declared forfeited can produce and prove a written guarantee of purity, signed by the wholesaler, jobber, manufacturer, or other party from whom the articles were purchased, then the proceeds of the sale of such articles, over and above the costs of seizure, forfeiture, and sale, shall be paid over to such owner or claimant to reimburse him or her, to the extent of such surplus, for his or her actual loss resulting from such seizure and forfeiture, as shown by the invoice.

(7) It shall be the duty of each prosecuting attorney when called upon by said commissioners [commissioner] or by any person by him or her authorized as aforesaid to render any legal assistance in his or her power in proceedings under the provisions of this act, or any subsequent act relative to the adulteration of food, for the sale of impure or unwholesome food or food products.

Section 2. Section 6 of Act No. 110 of the Public Acts of 1909, being section 290.256 of the Michigan Compiled Laws, is amended to read as follows:

Sec. 6. Any person, firm, or corporation convicted of violating any of the provisions of this act shall, for the first offense be punished by a fine in any sum not less than 25 dollars and not more than 100 dollars or by imprisonment not exceeding 30 days, or by both such fine and imprisonment in the discretion of the court; and for the second and each subsequent offense by a fine of not less than 50 dollars and not more than 200 dollars or by imprisonment not exceeding 1 year, or both in the discretion of the court.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved

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Governor.