

HOUSE BILL No. 4921

June 5, 1991, Introduced by Reps. Clarke and DeMars and referred to the Committee on Judiciary.

A bill 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:

1 Section 1. Section 7 of Act No. 211 of the Public Acts of
2 1893, being section 289.37 of the Michigan Compiled Laws, is
3 amended to read as follows:

1 Sec. 7. (1) The commissioner, his OR HER deputy, or any
2 person by ~~said~~ THE commissioner duly appointed for that pur-
3 pose, is authorized at all times to seize and take possession of
4 any and all food and dairy products, substitutes therefor, or
5 imitation thereof kept for sale, exposed for sale or held in pos-
6 session or under the control of any person which in the opinion
7 of the ~~said~~ commissioner, or his OR HER deputy, or such person
8 ~~by him~~ duly appointed, shall be contrary to the provisions of
9 this act or other laws. ~~which now exist or which may be hereaf-~~
10 ~~ter enacted.~~

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

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

24 (4) ~~Third,~~ If upon such analysis, it shall appear that
25 ~~said~~ THE food or dairy products are adulterated, substitutes,
26 or imitations within the meaning of this act, ~~said~~ THE
27 commissioner, or his OR HER deputy or any person ~~by him~~ duly

1 authorized, may make complaint before ~~any justice of the peace~~
2 ~~or police justice having jurisdiction in the city, village or~~
3 ~~township~~ THE DISTRICT OR MUNICIPAL COURT OF THE JUDICIAL DIS-
4 TRICT OR MUNICIPALITY where such goods were seized, and
5 ~~thereupon said justice of the peace~~ THE COURT shall issue ~~his~~
6 A summons to the person from whom ~~said~~ THE goods were seized,
7 directing him OR HER to appear not less than 6 nor more than 12
8 days from the date of the ~~issuing of said~~ summons and show
9 cause why ~~said~~ THE goods should not be condemned and disposed
10 of. If the ~~said~~ person from whom ~~said~~ THE goods were seized
11 cannot be found, ~~said~~ THE summons shall be served upon the
12 person then in possession of the goods. The ~~said~~ summons shall
13 be served at least 6 days before the time of appearance mentioned
14 therein. If the person from whom ~~said~~ THE goods were seized
15 cannot be found, and no one can be found in possession of ~~said~~
16 THE goods, and the defendants shall not appear on the return day,
17 then ~~said justice of the peace~~ THE COURT shall proceed in
18 ~~said~~ THE cause in the same manner provided by law where a writ
19 of attachment is returned not personally served upon any of the
20 defendants and none of the defendants shall appear upon the
21 return day.

22 (5) ~~Fourth,~~ Unless cause to the contrary thereof is shown,
23 or if ~~said~~ THE goods shall be found upon trial to be in viola-
24 tion of any of the provisions of this act or other laws which now
25 exist or which may be hereafter enacted, it shall be the duty of
26 ~~said justice of the peace or police justice~~ THE COURT to render
27 judgment that ~~said~~ THE seized property be forfeited to the

1 state of Michigan, and that the ~~said~~ goods be destroyed or sold
2 by the ~~said~~ commissioner for any purpose other than to be used
3 for food. ~~The mode of procedure before said justice shall be~~
4 ~~the same, as near as may be, as in civil proceedings before jus-~~
5 ~~tices of the peace.~~ Either parties may appeal to the circuit
6 court as appeals are taken from ~~justices' courts~~ THE DISTRICT
7 OR MUNICIPAL COURT RENDERING THE JUDGMENT, but it shall not be
8 necessary for the people to give any appeal bond.

9 (6) ~~Fifth,~~ The proceeds arising from any such sale shall
10 be paid into the state treasury and credited to the general
11 fund: Provided, That if the owner or party claiming the property
12 or goods so declared forfeited can produce and prove a written
13 guarantee of purity, signed by the wholesaler, jobber, manufac-
14 turer, or other party from whom ~~said~~ THE articles were pur-
15 chased, then the proceeds of the sale of such articles, over and
16 above the costs of seizure, forfeiture, and sale, shall be paid
17 over to such owner or claimant to reimburse him OR HER, to the
18 extent of such surplus, for his OR HER actual loss resulting from
19 such seizure and forfeiture, as shown by the invoice.

20 (7) ~~Sixth,~~ It shall be the duty of each prosecuting attor-
21 ney when called upon by said commissioners [commissioner] or by
22 any person by him OR HER authorized as aforesaid, A COURT OF
23 JURISDICTION to render any legal assistance in his OR HER power
24 in proceedings under the provisions of this act, or any subse-
25 quent act relative to the adulteration of food, for the sale of
26 impure or unwholesome food or food products.

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

4 Sec. 6. Any person, firm, or corporation convicted of vio-
5 lating any of the provisions of ~~the foregoing~~ THIS act shall,
6 for the first offense be punished by a fine in any sum not less
7 than 25 dollars and not more than 100 dollars or by imprisonment
8 ~~in the county jail~~ not exceeding 30 days, or by both such fine
9 and imprisonment in the discretion of the court; and for the
10 second and each subsequent offense by a fine of not less than 50
11 dollars and not more than 200 dollars or by imprisonment ~~in the~~
12 ~~county jail~~ not exceeding 1 year, or both in the discretion of
13 the court. ~~; or the fine above may be sued for and recovered~~
14 ~~before any justice of the peace or any court of competent juris-~~
15 ~~diction, in the county where the offense shall have been commit-~~
16 ~~ted, at the instance of the state dairy and food commissioner or~~
17 ~~any other person in the name of the people of the state of~~
18 ~~Michigan as plaintiff and shall be recovered in an action of~~
19 ~~debt.~~