

SENATE BILL No. 402

May 3, 1989, Introduced by Senator NICHOLS 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
3 purpose, is authorized at all times to seize and take possession
4 of 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~~ THE DISTRICT OR MUNICIPAL COURT having juris-
3 diction ~~in the city, village or township~~ where such goods were
4 seized, and ~~thereupon said justice of the peace~~ THE COURT shall
5 issue ~~his~~ A summons to the person from whom ~~said~~ THE goods
6 were seized, directing him OR HER to appear not less than 6 nor
7 more than 12 days from the date of the ~~issuing of said~~ summons
8 and show cause why ~~said~~ THE goods should not be condemned and
9 disposed of. If the ~~said~~ person from whom ~~said~~ THE goods
10 were seized cannot be found, ~~said~~ THE summons shall be served
11 upon the person then in possession of the goods. The ~~said~~ sum-
12 mons shall be served at least 6 days before the time of appear-
13 ance mentioned therein. If the person from whom ~~said~~ THE goods
14 were seized cannot be found, and no one can be found in posses-
15 sion of ~~said~~ THE goods, and the defendants shall not appear on
16 the return day, then ~~said justice of the peace~~ THE COURT shall
17 proceed in ~~said~~ THE cause in the same manner provided by law
18 where a writ of attachment is returned not personally served upon
19 any of the defendants and none of the defendants shall appear
20 upon the return day.

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

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

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

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