DAIRY AND FOOD COMMISSIONER
Act 211 of 1893

AN ACT to provide for the appointment of a dairy and food commissioner, and to define his powers and duties and fix his compensation.

History: 1893, Act 211, Eff. Aug. 28, 1893.

The People of the State of Michigan enact:

289.35 State food analyst, chemists, inspectors; oath, tenure, laboratory, salaries, expenses, chemical supplies.

Sec. 5. The commissioner shall appoint a suitable and competent person as state analyst, who shall be a practical analytical chemist. The commissioner may appoint an assistant chemist and such inspectors as shall be necessary to carry out the provisions of this act. Before entering upon the duties of their offices, they shall take, subscribe and file in the office of the secretary of state the constitutional oath of office. Their term of office shall continue during the pleasure of the commissioner. The board of state auditors shall provide a room for the laboratory of the state analyst and his assistant, and the necessary furniture and fixtures therefor. In case of the absence or inability of the state analyst or his assistant to perform their duty, the commissioner may appoint some competent person to perform the same temporarily, which person shall take, subscribe and file the constitutional oath of office. The salaries of all employes hereby authorized, and the necessary expenses thereof while traveling in performing any of their duties, shall be paid in the same manner as the salaries and expenses of other state officers and employes. Such an amount as is found to be necessary in the proper performance of the work of the analyst may be expended for chemical supplies.

History: 1893, Act 211, Eff. Aug. 28, 1893;—Am. 1895, Act 245, Imd. Eff. June 1, 1895;—Am. 1897, Act 154, Imd. Eff. May 24, 1897;—CL 1897, 4977;—Am. 1901, Act 186, Imd. Eff. May 29, 1901;—Am. 1903, Act 230, Eff. Sept. 17, 1903;—Am. 1905, Act 12, Imd. Eff. Mar. 9, 1905;—CL 1915, 6364;—CL 1929, 5407;—Am. 1933, Act 163, Imd. Eff. June 22, 1933;—CL 1948, 289.35.

289.36 Dairy, food and drink products; inspection, analysis; commencement of proceedings; right of entry; warning notice; failure to obey, penalty.

Sec. 6. It shall be the duty of the dairy and food commissioner to carefully inquire into the dairy and food and drink products and the several articles which are foods or drinks, or the necessary constituents of foods or drinks, which are manufactured or sold or exposed or offered for sale in this state, and he may, in a lawful manner, procure samples of the same and direct the state analyst to make due and careful examination of the same, and report to the commissioner the result of the analysis of all and any of such food and drink products or dairy products as are adulterated, impure or unwholesome in contravention of the laws of this state; and it shall be the duty of the commissioner to make a complaint against the manufacturer or vendor thereof in the proper county and furnish all evidence thereof, to obtain a conviction of the offense charged. The dairy and food commissioner, or his deputy, or any person appointed by him for that purpose may make complaint and cause proceedings to be commenced against any person for the enforcement of any of the laws relative to adulterated, impure or unwholesome food or drink, and in such case he shall not be obliged to furnish security for costs and shall have power, in the performance of their duties, to enter into any creamery, factory, store, salesroom, drug store, or laboratory, or place where they have reason to believe food or drink are made, stored, sold or offered for sale and open any cask, tub, jar, bottle or package containing, or supposed to contain, any article of food or drink and examine or cause to be examined the contents thereof, and take therefrom samples for analysis. The person making such inspection shall take such sample of such article or product in the presence of at least 1 witness, and he shall, in the presence of said witness, mark or seal such sample and shall tender at the time of taking to the manufacturer or vendor of such product, or to the person having the custody of the same, the value thereof, and a statement in writing for the taking of such sample. Whenever it is determined by the dairy and food commissioner, his deputy or inspectors, that filthy or unsanitary conditions exist or are permitted to exist in the operation of any bakery, confectionary, or ice cream plant, or in any place where any food or drink products are manufactured, stored, deposited or sold for any purpose whatever, the proprietor or proprietors, owner or owners, of such bakery, confectionary or ice cream plant, or any person or persons owning or operating any plant where any food or drink products are manufactured, stored, deposited or sold, shall be first notified and warned by the commissioner, his deputy or inspectors to place such bakery, confectionary or ice cream plant, or any place where any food or drink products are manufactured, stored, deposited or sold in a sanitary condition within a reasonable length of time; and any person or persons owning and operating any bakery, confectionary or ice cream plant or any place where any food or drink products are manufactured, stored, deposited or sold, failing to obey such

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notice and warning, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not less than 25 dollars nor more than 300 dollars and costs of prosecution, or imprisonment in the county jail not to exceed 90 days, or until such fine and costs are paid, or both fine and imprisonment in the discretion of the court.

History: 1893, Act 211, Eff. Aug. 28, 1893;—Am. 1895, Act 245, Imd. Eff. June 1, 1895;—Am. 1897, Act 154, Imd. Eff. May 24, 1897;—CL 1897, 4978;—Am. 1899, Act 268, Eff. Sept. 23, 1899;—Am. 1905, Act 12, Imd. Eff. Mar. 9, 1905;—CL 1915, 6365;—CL 1929, 5408;—CL 1948, 289.36.

289.37 Seizure of goods; analysis of sample; show cause hearing; summons; judgment; forfeiture of seized goods; appeal; disposition of proceeds; duty of prosecuting attorney.

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.

History: 1893, Act 211, Eff. Aug. 28, 1893;—Am. 1895, Act 245, Imd. Eff. June 1, 1895;—CL 1897, 4979;—Am. 1899, Act 268, Eff. Sept. 23, 1899;—Am. 1903, Act 230, Eff. Sept. 17, 1903;—CL 1915, 6366;—CL 1929, 5409;—CL 1948, 289.37;—Am. 1991, Act 148, Imd. Eff. Nov. 25, 1991.

289.38 Giving of certificate by state analyst unlawful.

Sec. 8. It shall be unlawful for the state analyst, while he holds his office, to furnish to any individual, firm

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or corporation, any certificate as to the purity or excellence of any article manufactured or sold by them to be used as food or in the preparation of food.

History: 1893, Act 211, Eff. Aug. 28, 1893;—CL 1897, 4980;—CL 1915, 6367;—CL 1929, 5410;—CL 1948, 289.38.

289.39 Annual report to governor; contents, publication; monthly bulletin, contents, distribution, number limited.

Sec. 9. The commissioner shall make an annual report to the governor on or before the first day of July in each year, and which shall be printed and published on or before the first day of September next thereafter, which report shall cover the doings of his office for the preceding fiscal year, which shall show, among other things, the number of manufacturies and other places inspected and by whom, the number of specimens of food articles analyzed, and the state analyst's report upon each one; the number of complaints entered against persons for violation of the laws relative to the adulteration of food, the number of convictions had, and the amount of fines imposed therefor, together with such recommendations relative to the statutes in force as his experience may justify. The commissioner shall also prepare, print and distribute to all the papers of the state, and to such persons as may be interested or may apply therefor a monthly bulletin, in suitable paper covers, containing results of inspections, the results of analyses made by the state analyst, with popular explanation of the same, and such other information as may come to him in his official capacity relating to the adulteration of food and drink products and of dairy products, so far as he may deem the same of benefit and advantage to the public; also a brief summary of all the work done during the month by the commissioner and his assistants in the enforcement of the laws of the state, but not more than 10,000 copies of each such monthly bulletins shall be printed.

History: 1893, Act 211, Eff. Aug. 28, 1893;—Am. 1895, Act 245, Imd. Eff. June 1, 1895;—Am. 1897, Act 154, Imd. Eff. May 24, 1897;—CL 1897, 4981;—Am. 1899, Act 268, Eff. Sept. 23, 1899;—CL 1915, 6368;—CL 1929, 5411;—CL 1948, 289.39.

Compiler's note: In the second sentence of this section, the word "popular" evidently should read "proper".

289.40 Interference with food commissioners or inspectors; penalty.

Sec. 10. Any person who shall willfully hinder or obstruct the dairy and food commissioner, or his deputy, or other person or inspector by him duly authorized, in the exercise of the powers conferred upon him by this act, shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than 10 dollars nor more than 100 dollars, or by imprisonment in the county jail for not less than 10 days nor more than 90 days, or both such fine and imprisonment in the discretion of the court.

History: Add. 1895, Act 245, Imd. Eff. June 1, 1895;—CL 1897, 4982;—CL 1915, 6369;—CL 1929, 5412;—CL 1948, 289.40.

289.43 Investigation of creameries, dairy products factories; giving of instruction.

Sec. 13. It shall also be the duty of the dairy and food commissioner to foster and encourage the dairy industry of the state, and, for that purpose, he shall investigate the general conditions of the creameries, cheese factories, condensed milk factories, skimming stations, milk stations and farm dairies in this state, with full power to enter upon any premises for such investigation, with the object in view of improving the quality and creating and maintaining uniformity of the dairy products of the state; and should it become necessary, in the judgment of the dairy and food commissioner, he may cause instruction to be given in any creamery, cheese factory, condensed milk factory, skimming station, milk station, or farm dairy, or in any locality in this state, and in order to secure the proper feeding and care of cows, or the practical operation of any plant producing dairy products and in order to secure such a uniform and standard quality of dairy products in the state, he shall furnish a sufficient number of competent inspectors for that purpose, the appointment of whom is provided for in section 4 of this act, and they shall be duly qualified to act as such inspectors.

History: Add. 1905, Act 12, Imd. Eff. Mar. 9, 1905;—CL 1915, 6372;—CL 1929, 5415;—CL 1948, 289.43.

289.44 Warning notice; distributors of impure milk or cream; failure to obey, penalty.

Sec. 14. Whenever it is determined by the dairy and food commissioner, his deputy or inspectors, that any person is using, selling or furnishing to any skimming station, creamery, cheese factory, condensed milk factory, milk depot, farm dairy, milk dealer, the retail trade or to any consumer of milk, any impure or unwholesome milk or cream, which impurity or unwholesomeness is caused by the unsanitary or filthy condition of the premises where cows are kept, or by the unsanitary or filthy care or handling of the cows, or from unclean utensils being used, or from unwholesome food, or from any other cause, the person so using, selling or furnishing to any skimming station, creamery, cheese factory, condensed milk factory, milk depot, farm dairy, milk dealer, the retail trade, or to any consumer of milk, any such milk or cream, shall first be notified and warned by the commissioner, his deputy or inspectors not to use, sell, or furnish such milk or cream to such skimming station, creamery, cheese factory, condensed milk factory, milk depot, farm dairy,

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milk dealer, the retail trade, or to any consumer of milk, and any person failing to obey such notice and warning, and continuing to use, sell or furnish to any skimming station, creamery, cheese factory, condensed milk factory, farm dairy, milk dealer or to the retail trade such impure or unwholesome milk or cream, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not less than 10 dollars, nor more than 50 dollars, and costs of prosecution, or imprisonment in the county jail, not to exceed 90 days, or until such fine and costs are paid, or both fine and imprisonment in the discretion of the court.

History: Add. 1905, Act 12, Imd. Eff. Mar. 9, 1905;—CL 1915, 6373;—CL 1929, 5416;—CL 1948, 289.44.

289.45 Warning notice; operators of unsanitary creameries, dairy products factories; failure to obey, penalty.

Sec. 15. Whenever it is determined by the dairy and food commissioner, his deputy or inspectors, that unsanitary conditions exist or are permitted to exist in the operation of any skimming station, creamery, cheese factory, condensed milk factory, milk depot, or farm dairy, the proprietor or proprietors, or manager of said skimming station, creamery, cheese factory, condensed milk factory or farm dairy, shall be first notified and warned by the commissioner, his deputy or inspectors to place such skimming station, creamery, cheese factory, condensed milk factory, milk depot or farm dairy in a sanitary condition, within a reasonable length of time; and any person or persons owning or operating such skimming station, creamery, cheese factory, condensed milk factory, milk depot, or farm dairy, failing to obey such notice and warning, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not less than 25, nor more than 300 dollars, and costs of prosecution, or imprisonment in the county jail, not to exceed 90 days or until such fine and costs are paid, or both fine and imprisonment in the discretion of the court.

History: Add. 1905, Act 12, Imd. Eff. Mar. 9, 1905;—CL 1915, 6374;—CL 1929, 5417;—CL 1948, 289.45.

289.48 Repealed. 1975, Act 120, Imd. Eff. June 26, 1975.

Compiler's note: The repealed section pertained to concentrated commercial feeding stuff.

289.49 Annual report to governor; contents.

Sec. 19. The published annual report of the dairy and food commissioner which shall be made to the governor, shall include a complete accounting of all moneys received by the department from every source, and the amount expended by the department.

History: Add. 1905, Act 12, Imd. Eff. Mar. 9, 1905;—CL 1915, 6378;—CL 1929, 5419;—CL 1948, 289.49.

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