



ANNO QUADRAGESIMO QUINTO ET QUADRAGESIMO  
SEXTO

# VICTORIÆ REGINÆ.

A.D. 1882.

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## No. 257.

An Act to make provision for the Sale of Food and Drugs  
in a pure state.

[Assented to, November 17th, 1882.]

**W**HEREAS it is desirable to make provision for the sale of food Preamble.  
and drugs in a pure state—Be it therefore Enacted by the  
Governor of the Province of South Australia, with the advice and  
consent of the Legislative Council and House of Assembly of the  
said province, in this present Parliament assembled:

**1.** This Act may be cited for all purposes as “The Sale of Food Short title.  
and Drugs Act, 1882.”

**2.** This Act shall come into operation on the first day of January, Commencement of Act.  
one thousand eight hundred and eighty-three.

**3.** In the construction and for the purposes of this Act— Interpretation of words.

“Food” shall include every article used for food or drink by  
man, other than drugs or water:

“Drug” shall include medicine for internal or external use:

“Justices” shall mean Justices of the Peace for the said province:

“Local authority” shall mean any Council within the meaning  
of “The Municipal Corporations Act, 1880;” or any District  
Council under the District Councils Acts in force for the  
time being; or, in places not within a Corporation or  
District, the Central Board of Health of the province.

DESCRIPTION

## DESCRIPTION OF OFFENCES.

Prohibition of the mixing of injurious ingredients, and of selling the same.

4. No person shall mix, color, stain, or powder, or order or permit any other person to mix, color, stain, or powder, any article of food with any ingredient or material so as to render the article injurious to health, with intent that the same may be sold in that state; and no person shall sell any such article so mixed, colored, stained, or powdered, under a penalty in each case not exceeding Fifty Pounds for the first offence. Every offence, after a conviction for a first offence, shall be a misdemeanor, for which the person, on conviction, shall be imprisoned for a period not exceeding six months with hard labor.

Prohibition of the mixing of drugs with injurious ingredients, and of selling the same.

5. No person shall, except for the purpose of compounding, as hereinafter described, mix, color, stain, or powder, or order or permit any other person to mix, color, stain, or powder, any drug with any ingredient or material so as to affect injuriously the quality or potency of such drug, with intent that the same may be sold in that state; and no person shall sell any such drug so mixed, colored, stained, or powdered, under the same penalty in each case respectively as in the preceding section for a first and subsequent offence.

Exemption in case of proof of absence of knowledge.

6. No person shall be liable to be convicted under either of the two last preceding sections of this Act in respect of the sale of any article of food, or of any drug, if he shows to the satisfaction of the Justices or Court before whom he is charged that he did not know of the article of food or drug sold by him being so mixed, colored, stained, or powdered, as in either of those sections mentioned, and that he could not with reasonable diligence have obtained that knowledge.

Prohibition of the sale of articles of food and of drugs not of the proper nature, substance, and quality.

7. No person shall sell to the prejudice of the purchaser any article of food, or any drug, which is not of the nature, substance, and quality of the article demanded by such purchaser, under a penalty not exceeding Twenty Pounds: Provided that an offence shall not be deemed committed under this section in the following cases, that is to say—

- (1.) Where any matter or ingredient not injurious to health has been added to the food or drug because the same is required for the production or preparation thereof as an article of commerce, in a state fit for carriage or consumption, and not fraudulently to increase the bulk, weight, or measure of the food or drug, or conceal the inferior quality thereof:
- (2.) Where the drug or food is a proprietary medicine, or is the subject of a patent in force, and is supplied in the state required by the specification of the patent:
- (3.) Where the food or drug is compounded as in this Act mentioned:
- (4.) Where the food or drug is unavoidably mixed with some extraneous matter in the process of collection or preparation:

(5.) Where

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- (5.) Where spirits are not adulterated otherwise than by the admixture of water, and such admixture has not reduced the spirits more than twenty-five degrees under proof for brandy, whisky, or rum, or thirty-five degrees under proof for gin:

It shall be no defence to any prosecution under this section to allege that the purchaser, having bought only for analysis, was not prejudiced by such sale. Neither shall it be a good defence to prove that the article of food or drug in question, though defective in nature or in substance, or in quality, was not defective in all three respects.

**8.** No person shall sell any compound article of food or compounded drug which is not composed of ingredients in accordance with the demand of the purchaser, under a penalty not exceeding Twenty Pounds.

Provision for the sale of compounded articles of food and compounded drugs.

**9.** No person shall be guilty of any such offence as last aforesaid in respect of the sale of an article of food or a drug mixed with any matter or ingredient not injurious to health, and not intended fraudulently to increase its bulk, weight, or measure, or conceal its inferior quality, if, at the time of delivering such article or drug, he shall supply to the person receiving the same a notice, by a label distinctly and legibly written or printed on or with the article or drug, to the effect that the same is so mixed.

Protection from offences by giving of label.

**10.** No person shall, with the intent that the same may be sold in its altered state, without express notice to the purchaser, abstract from an article of food any part of it so as to affect injuriously its quality, substance, or nature, and no person shall sell any such article so altered without making disclosure of the alteration, under a penalty in each case not exceeding Twenty Pounds.

Prohibition of the abstraction of any part of an article of food before sale, and selling without notice.

#### APPOINTMENT AND DUTIES OF ANALYSTS, AND PROCEEDINGS TO OBTAIN ANALYSIS.

**11.** Every local authority may, as soon as convenient after the passing of this Act, or when required so to do by the Central Board of Health, from time to time appoint one or more persons possessing competent knowledge, skill, and experience, as analysts of all articles of food and drugs sold within the said city or town, district or elsewhere, and shall pay to such analysts such remuneration as shall be mutually agreed upon, and may remove him or them as they shall deem proper: Provided that no person shall hereafter be appointed an analyst for any place under this section who shall be engaged directly or indirectly in any trade or business connected with the sale of food or drugs in such place.

Appointment of analysts.

**12.** A local authority may agree with any other local authority that any analyst already appointed by any one local authority shall act for any other local authority, and may make due provision for the payment

Local authority may engage the analyst of another local authority.

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ment of his remuneration, or such proportionate part thereof as may be agreed upon, and if such analyst shall consent, he shall, during such time as such agreement shall be in force, be the analyst for the purposes of this Act of such other local authority.

Power to purchaser of an article of food to have it analysed.

13. Any purchaser of any article of food or of a drug within the limits of any local authority where there is an analyst appointed under this Act, on payment of the sum of Ten Shillings and Sixpence, or such less sum as the local authority may direct, or if there be no such analyst then acting for such local authority, on payment of the sum of Ten Shillings and Sixpence to the analyst of another local authority, shall be entitled to have such article analysed, and to receive from the analyst a certificate of the result of his analysis.

Officer or constable to obtain a sample of food or drug to submit to analysis.

14. Any officer appointed by any local authority, or any police constable under the direction and at the cost of any local authority, may procure any sample of any milk in course of delivery to the purchaser or consignee in pursuance of any contract or agreement for the sale to such purchaser or consignee of such milk, or any sample of food or drugs, and if he suspects the same to have been sold to him contrary to any provision of this Act, shall submit the same to be analysed by the analyst of the local authority for which he acts, or if there be no such analyst then acting for such local authority, to the analyst of another local authority, and such analyst shall, upon receiving payment of the sum of Ten Shillings and Sixpence, with all convenient speed analyse the same, and give a certificate to such officer, wherein he shall specify the result of the analysis.

Penalty for refusing to give milk for analysis.

15. If the seller or consignor, or any person entrusted by him or either of them for the time being with the charge of such milk, shall refuse to allow any such officer or constable to take the quantity which such officer or constable shall require for the purpose of analysis, he shall be liable to a penalty not exceeding Ten Pounds.

Provision for dealing with the sample when purchased.

16. Every person purchasing any article with the intention of submitting the same to analysis shall, after the purchase shall have been completed, forthwith notify to the seller or his agent selling the article his intention to have the same analysed, and shall offer to divide the article into three parts, to be then and there separated, and each part to be marked and sealed or fastened up in such a manner as its nature will permit, and shall, if required to do so, proceed accordingly, and shall deliver one of the parts to the seller or his agent.

He shall afterwards retain one of the said parts for future comparison, and submit the third part, if he deems it right to have the article analysed, to the analyst.

Provision when sample is not divided.

17. If the seller or his agent do not accept the offer of the purchaser to divide the article purchased in his presence, the analyst receiving the article for analysis shall divide the same into two parts, and shall seal or fasten up one of those parts, and shall cause it to be delivered,

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delivered, either upon receipt of the sample, or when he supplies his certificate to the purchaser, who shall retain the same for production in case proceedings shall afterwards be taken in the matter.

**18.** If the analyst do not reside within two miles of the residence of the person requiring the article to be analysed, such article may be forwarded to the analyst through the post office as a registered letter, subject to any regulations which the local authority may make in reference to the carrying and delivery of such article, and the charge for the postage of such article shall be deemed one of the charges of this Act or of the prosecution, as the case may be.

Provision for sending article to the analyst through the post office.

**19.** If any such officer or constable, as above described, shall apply to purchase any article of food or any drug exposed for sale, or on sale by retail on any premises or in any shop or stores, or in any street or open place, and shall tender the price for the quantity which he shall require for the purpose of analysis, not being more than shall be reasonably requisite, and the person exposing the same for sale shall refuse to sell the same to such officer or constable, such person shall be liable to a penalty not exceeding Ten Pounds.

Person refusing to sell any article to any officer, liable to a penalty.

**20.** The certificate of the analysis shall be in the form set forth in the Schedule hereto, or to the like effect.

Form of certificate.

**21.** Every analyst appointed under this Act shall report quarterly, to the authority appointing him, the number of articles analysed by him under this Act during the foregoing quarter, and shall specify the result of each analysis and the sum paid to him in respect thereof, and such report shall be presented at the next meeting of the authority appointing such analyst, and every such authority shall annually transmit to the Central Board of Health, at such time and in such form as the Council shall direct, a certified copy of such quarterly report.

Quarterly report of analyst.

#### PROCEEDINGS AGAINST OFFENDERS.

**22.** All proceedings for offences against this Act, in respect of which any fine or penalty is imposed, shall be had and taken, and may be heard and determined in a summary way, by any two Justices of the Peace, under the provisions of an Ordinance No. 6 of 1850, "To facilitate the performance of the Duties of Justices of the Peace out of Session, with respect to summary convictions and orders," or of any Act hereafter to be in force relating to the duties of Justices of the Peace with respect to summary convictions and orders, and all convictions and orders may be enforced as in the said Ordinance is mentioned.

Summary procedure.

**23.** All fines and forfeitures recovered by or before Justices of the Peace for any offence committed within the limits of any local authority against this Act shall be paid to such local authority.

Fine to be paid to local authority.

**24.** The

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Governor may remit fines.

**24.** The Governor, with the advice of the Executive Council, may remit the whole or any part of any fine or penalty, although the same may have been appropriated to some local authority.

Certificate of analyst *prima facie* evidence for the prosecution, but analyst to be called if required.

**25.** At the hearing of all proceedings before Justices under this Act the production of the certificate of the analyst shall be sufficient evidence of the facts therein stated, unless the defendant shall require that the analyst shall be called as a witness, and the part of the articles retained by the person who purchased the article shall be produced, and the defendant, with his or her wife or husband, shall on all such proceedings be a competent witness.

Defendant and his wife may be examined.

Power to Justices to have articles of food and drug analysed.

**26.** The Justices before whom any proceedings are taken, or the Local Court of Full Jurisdiction on any appeal, may, upon the request of either party, in their discretion, cause any article of food or drug to be sent to the Central Board of Health, who shall thereupon direct some duly qualified analyst to make the analysis, and give a certificate to such Justices or the Court of the result of the analysis; and the expense of such analysis shall be payable as the Justices of the Court may by order direct.

Appeal to nearest Local Court of Full Jurisdiction.

**27.** There shall be an appeal from any conviction by any Justices of the Peace for any offence against this Act, or from any order dismissing any information or complaint, or from any order for payment of money, whether for costs or otherwise, which appeal shall be to the nearest Local Court of Full Jurisdiction; and the proceedings on such appeal shall be conducted in manner appointed by the said Ordinance, No. 6 of 1850, for appeals to Local Court; but the Local Court aforesaid may make such order as to the payment of the cost of appeal as it shall think fit, although such cost may exceed Ten Pounds.

In any prosecution defendant to prove that he is protected by exception or provision.

**28.** In any prosecution under this Act, where the fact of an article having been sold in a mixed state has been proved, if the defendant shall desire to rely upon any exception or provision contained in this Act, it shall be incumbent upon him to prove the same.

Defendant to be discharged if he prove that he bought the article in the same state as sold, and with a warranty.

**29.** If the defendant in any prosecution under this Act prove to the satisfaction of the Justices or Court that he had purchased the article in question as the same in nature, substance, and quality as that demanded of him by the prosecutor, and with a written warranty to that effect that he had no reason to believe at the time when he sold it that the article was otherwise, and that he sold it in the same state as when he purchased it, he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor, unless he shall have given due notice to him that he will rely on the above defence, and the article so adulterated as to render it injurious to health shall be forfeited.

No costs except on issues proved against him.

**30.** Any person who shall forge, or shall utter, knowing it to be forged,

Punishment for forging certificate or warranty.

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forged, for the purposes of this Act, any certificate or any writing purporting to contain a warranty, shall be guilty of a misdemeanor, and be punishable on conviction by imprisonment for a term of not exceeding two years with hard labor:

Every person who shall wilfully apply to an article of food, or a drug, in any proceedings under this Act, a certificate or warranty given in relation to any other article or drug, shall be guilty of an offence under this Act, and be liable to a penalty not exceeding Twenty Pounds:

For wilful misapplication of warranty.

Every person who shall give a false warranty, in writing, to any purchaser in respect of an article of food or a drug sold by him as principal or agent, shall be guilty of an offence under this Act, and be liable to a penalty not exceeding Twenty Pounds:

For false warranty.

And every person who shall wilfully give a label with any article sold by him which shall falsely describe the article sold shall be guilty of an offence under this Act, and be liable to a penalty not exceeding Twenty Pounds.

For false label.

**31.** Nothing in this Act contained shall affect the power of proceedings by indictment, or take away any other remedy against any offender, under this Act, or in any way interfere with contracts and bargains between individuals, and the rights and remedies belonging thereto: Provided that, in any action brought by any person for a breach of contract on the sale of any article of food or of any drug, such person may recover alone, or in addition to any other damages recoverable by him, the amount of any penalty in which he may have been convicted under this Act, together with the costs paid by him upon such conviction and those incurred by him in and about his defence thereto, if he prove that the article or drug, the subject of such conviction, was sold to him as and for an article or drug of the same nature, substance, and quality as that which was demanded of him, and that he purchased it not knowing it to be otherwise, and afterwards sold it in the same state in which he purchased it.

Proceedings by indictment and contracts not to be affected.

## EXPENSES OF EXECUTING THE ACT.

**32.** The expenses of executing this Act shall be borne by any general rates or funds applicable to the purposes of "The Municipal Corporations Act, 1880," "The Public Health Act," or "The Public Health Act, 1876:" Provided that the expenses of executing section 33 hereof shall be borne by the general revenue of the province.

Expenses of executing Act.

## SPECIAL PROVISION AS TO TEA.

**33.** From and after a day to be fixed by the Governor by Proclamation in the *Government Gazette*, all tea imported as merchandise into or landed at any port in the said province shall be subject to examination

Tea to be examined by the Customs on importation.

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examination by inspectors and analysts, to be appointed by the Collector of Customs, for which purpose samples may, when deemed necessary by such inspectors, be taken and with all convenient speed be examined by the analysts to be so appointed; and if, upon such analysis, the same shall be found to be mixed with other substances or "exhausted tea," the same shall not be delivered unless with the sanction of the said Collector, and on such terms and conditions as he shall see fit to direct, either for home consumption, or for use as ships' stores, or for exportation; but if, on such inspection and analysis, it shall appear that such tea is in the opinion of the analyst unfit for human food, the same shall be forfeited and destroyed or otherwise disposed of in such manner as the said Collector may direct.

For the purposes of this section, "exhausted," as applied to tea, shall mean any tea which has been deprived of its proper quality, strength, or virtue by steeping, infusion, decoction, or other means.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

WM. F. DRUMMOND JERVOIS, Governor.



SCHEDULE.

*Form of Certificate.*

To\*  
 I, the undersigned, public analyst for the \_\_\_\_\_ do  
 hereby certify that I received, on the \_\_\_\_\_ day of \_\_\_\_\_,  
 18\_\_\_\_, from† \_\_\_\_\_, a sample of \_\_\_\_\_ for analysis  
 (which then weighed‡ \_\_\_\_\_), and have analysed the same, and  
 declare the result of my analysis to be as follows:—  
 I am of opinion that the same is a sample of genuine \_\_\_\_\_  
 or  
 I am of opinion that the said sample contained the parts as under, or the per-  
 centages of foreign ingredients as under:—

*Observations.§*

As witness my hand this \_\_\_\_\_ day of \_\_\_\_\_  
 A. B.,  
 at \_\_\_\_\_

\* Here insert the name of the person submitting the article for analysis.  
 † Here insert the name of the person delivering the sample.  
 ‡ When the article cannot be conveniently weighed, this passage may be erased, or the blank may be left unfilled.  
 § Here the analyst may insert, at his discretion, his opinion as to whether the mixture (if any) was for the purpose of rendering the article portable or palatable, or of preserving it, or of improving the appearance, or was unavoidable, and may state whether in excess of what is ordinary, or otherwise, and whether the ingredients or materials mixed are or are not injurious to health.  
 In the case of a certificate regarding milk, butter, or any article liable to decomposition, the analyst shall specially report whether any change had taken place in the constitution of the article that would interfere with the analysis.