New South Wales.

ANNO OCTAVO

GEORGII VI REGIS.

* *

Act No. 5, 1944.

An Act to amend the Pure Food Act, 1908, and certain other Acts, in certain respects; and for purposes connected therewith. [Assented to, 4th April, 1944.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title, commencement, and citation.

1. (1) This Act may be cited as the "Pure Food (Amendment) Act, 1944."

(2) This Act (other than section six) shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

(3) The Pure Food Act, 1908, as amended by subsequent Acts, is in this Act referred to as the Principal Act.

(4) The Principal Act, as amended by this Act, may be cited as the Pure Food Act, 1908-1944.

Amendment of Act No. 31, 1908. Sec. 4. (Interpretation.)

2. The Principal Act is amended—

(a) (i) by omitting from section four the definition of "Appliance" and by inserting in lieu thereof the following definition:—

"Appliance" includes the whole or any part of any utensil, machinery, instrument, apparatus or article used or intended for use in or for the making, manufacturing, keeping, preserving, preparing, handling, serving, or supplying of any food or drug, or which in the course of such use may come into contact with any food or drug; the term also includes any instrument or contrivance which is held out to any person or to the public as of use for curative purposes, or in relieving human suffering, or in overcoming or alleviating any physical defect.

(ii) by inserting in the same section at the end of the definition of "Drug" the words "and any substance or article for consumption or use by man which the Governor may by proclamation published in the Gazette declare to be a drug";

(iii) by inserting in the same section at the end of the definition of "Food," or "article of food" the words "and any substance or article used for consumption by man which the Governor may by proclamation published in the Gazette declare to be food or an article of food";

(iv)

(iv) (a) by inserting in the same section in the definition of "To sell" after the words "deliver for sale" the words "or supply as part of a meal where consideration is to be received by the supplier for such supply either specifically or as part of a service contracted for";

(b) by inserting at the end of the same definition the words "or for purposes of analysis or other examination in pursuance of this Act";

(b) (i) by omitting from paragraph (f) of section five the words "or stained" and by inserting in lieu thereof the words "stained, prepared, or treated";

Sec. 5. (Adulteration or false description.)

(ii) by omitting from paragraph (m) of the same section the words "attached thereto" and by inserting in lieu thereof the words "or written matter attached thereto or enclosed therewith";

(iii) by inserting in the same paragraph after the words "contained therein" the words "or its physiological, curative, or therapeutic effect."

3. The Principal Act is further amended—

Further amendment of Act No. 31, 1908.

(a) by inserting next after section ten the following new section:—

New sec. 10A.

10A. No person shall in or from New South Wales tender or despatch or offer to tender or despatch for or on sale any food, drug, or article which is adulterated or falsely described, or which is packed or enclosed for sale or labelled, branded or marked in any manner contrary to or not in compliance with any provision of this Act, whether the actual sale shall be effected or is to become effective in New South Wales or elsewhere:

Tender or despatch of food, etc., adulterated or falsely described.

cf. 5 Geo. VI, No. 8 (Q'ld), s. 3.

Provided

Provided that if the actual sale was effective or is to be effective elsewhere than in New South Wales it shall be a defence to a charge of an offence against this section to prove that the sale was legally authorised under the laws in force where it was effected or to become effective.

Sec. 12. (Selling goods not of nature demanded—defence.)

(b) by omitting from subsection three of section twelve the word "defective" wherever occurring and by inserting in lieu thereof the word "different";

Sec. 13. (Sale of mixture.)

(c) (i) by inserting in subsection one of section thirteen after the words "sound condition" the words "and shall comply with the prescribed standards";

(ii) by inserting at the end of the same section the following new subsection:—

(3) No person shall sell any food or drug which is a mixture in respect of which a standard has been prescribed under this Act unless the mixture is in accordance with such standard.

Sec. 14. (Packages to be labelled.)

(d) (i) by inserting in the short heading to section fourteen after the word "food" the words "or drug";

(ii) by inserting in subsection one of the same section after the word "food" where firstly and secondly occurring the words "or drug";

(iii) by inserting at the end of the same subsection the following words:—

No person shall, after the expiration of six months from the commencement of the Pure Food (Amendment) Act, 1944, sell in a package any drug unless such a statement or label is written on or attached to such package as required by this section.

Nothing in this subsection shall apply to any package of drug where such drug is supplied by prescription or order signed by

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a legally qualified medical practitioner for any person then under his care and treatment.

(iv) by inserting in subsection three of the same section after the word "food" the words "or drugs";

(e) (i) by omitting from subsection one of section seventeen the words "which by reason of its inactivity or inefficiency"; Sec. 17. (Prohibition of sale of injurious drugs, etc.)

(ii) by omitting from the same subsection the words "of cure";

(f) by inserting next after section nineteen the following new section:— New sec. 19A.

19A. (1) The board may by notification in the Gazette prohibit the packing for sale of any disinfectant or poisonous substance in any container which bears upon it any brand, mark or statement which may be capable of misleading a purchaser into the belief that the contents of such container are for the purpose of human consumption. Packing of disinfectant or poisonous substance.

(2) No person shall sell or pack for sale any disinfectant or poisonous substance in respect of which a notification under subsection one of this section is in force in any container bearing any such brand, mark or statement.

(g) by inserting in section twenty after the words "in private" the words and figures "Division 7 of Part III of the District Courts Act, 1912-1936, shall apply, mutatis mutandis, to any such appeal. Sec. 20. (Appeal.)

The judge may make such order for the payment of the costs and charges of and incidental to the appeal as to him seems just.

Such costs and charges shall be taxed by such officer as the judge directs and may be recovered in like manner as any debt adjudged by the judge of a district court to be paid can be recovered."

Sec. 21. (Milk of infected cow.)

(h) (i) by omitting from subsection one of section twenty-one the words "the milk of" and by inserting in lieu thereof the words "milk or any product thereof from";

(ii) by inserting in subsection two of the same section after the words "sells milk" the words "or any product thereof";

(iii) by omitting from the same subsection the words "the milk of" and by inserting in lieu thereof the words "the milk or any product thereof from";

(iv) by inserting after the same subsection the following new subsection:—

(2A) A person who sells milk or any product thereof shall not knowingly allow any diseased cattle to be in his milking herd or on his dairy premises as defined in the Dairies Supervision Act, 1901, as amended by subsequent Acts.

Further amendment of Act No. 31, 1908. Sec. 22. (Entry and inspection.)

4. The Principal Act is further amended—

(a) (i) by inserting at the end of subsection six of section twenty-two the words "and why he should not be ordered to pay the expenses incurred by the officer in the examination, seizure, and destruction of the article, package, or vessel";

(ii) by inserting in subsection seven of the same section after the words "shall be destroyed" the words "The said magistrate or justices may further order that such owner or person shall pay the reasonable expenses incurred by the officer in the examination, seizure, and destruction of the article, package, or vessel";

(iii) by inserting in subsection nine of the same section after the words "licensed house" the word "boarding-house";

(b)

(b) by omitting from subsection two of section twenty-four the words "and shall retain one of the said parts for future comparison, and submit the third part to an analyst," and by inserting in lieu thereof the words "and submit one of the said parts to an analyst, and shall retain the third part for future comparison and for such examination or analysis as a magistrate may direct." Sec. 24 (2). (Samples.)

5. The Principal Act is further amended— Further amendment of Act No. 31, 1908.

(a) by inserting in paragraph (a) of section thirty-eight after the word "Act" the words "or upon demand by an officer or authorised person to state his name and place of abode refuses so to do or states a false name or place of abode"; Sec. 38 (a). (Obstruction to officers.)

(b) by inserting next after section thirty-nine the following new section:— New sec. 39A.

39A. (1) Where any person engaged in the sale of any food, drug or article has been convicted of an offence against this Act the court may, on such conviction or at any time thereafter, upon application made as in this section provided, by order, prohibit such person from engaging in the sale of any food, drug or article for such period as the court may determine. Power to prohibit carrying on of business by persons convicted of offence against Act.

(2) An application for an order under this section shall be made by an officer specifically authorised in that behalf by the Minister.

An authority to make such application, purporting to have been signed by the Minister, shall be evidence of such authority without proof of the Minister's signature.

(3) Any person who engages in the sale of any food, drug or article in contravention of an order made under this section shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding one hundred pounds.

(4) Any person dissatisfied with an order made under subsection one of this section may

may appeal from the same under and in accordance with Part V of the Justices Act, 1902, as amended by subsequent Acts, and the provisions of that Part shall, mutatis mutandis, apply to and in respect of such appeal as if the same were an appeal from a determination or order of a justice or justices.

Sec. 44. (Evidence.)

(c) by inserting in section forty-four after the word "analysis" the words "or examination";

Sec. 51 (3). (Refusing information.)

(d) by omitting from subsection three of section fifty-one the words "ten pounds" and by inserting in lieu thereof the words "twenty pounds";

Sec. 52. (Suggestive names.)

(e) by inserting in section fifty-two after the word "food" wherever occurring the words "or drug";

Sec. 54. (Regulations.)

(f) (i) by omitting from subsection one of section fifty-four the words "articles of food, or to packages containing such articles," and by inserting in lieu thereof the words "any food or drug, or to packages containing any food or drug";

(ii) by inserting in the same subsection after the words "payment of analysts" the following new paragraph:—

prohibiting the publication, use or exhibition in any manner whatsoever, of any printed or pictorial matter with respect to any food or drug which is false or misleading or likely to mislead;

(iii) by inserting at the end of the same subsection the following new paragraphs:—

prescribing requirements to be observed as to the situation and construction of premises used for the manufacture, preparation, storage or packing of any food, drug or article, and securing the sanitation of such premises, and the provision of satisfactory facilities

facilities for protecting such food or drug from contamination;

prohibiting the placing in food for sale or in packages of such food, of any toy, coin or other thing, which, if swallowed or taken into the mouth, might be harmful or injurious to the consumer.

6. (1) The Principal Act is further amended—

Further amendment of Act No. 31, 1908.

(a) by omitting section forty-seven and by inserting in lieu thereof the following section:—

Subst. sec. 47.

Guarantee, when a defence.

47. (1) Where any person is prosecuted under this Act for the sale of any food, or drug, or article which is adulterated or falsely described, or is mixed, coloured, composed, or constituted in contravention of any provision of this Act, he shall be entitled to be discharged from such prosecution upon proving—

(a) that he has received from the person from whom he purchased such food, or drug, or article, or his duly authorised agent, a guarantee in writing that the same is not adulterated or falsely described, or mixed, coloured, composed, or constituted as aforesaid; and

(b) that he had no reason to believe that the same was adulterated or falsely described, or mixed, coloured, composed, or constituted as aforesaid; and

(c) that he sold it in the same state as when he purchased it,

subject, however, to the following conditions:—

(i) The person giving the guarantee must be resident in New South Wales, or, if a company, must have a registered office in New South Wales, or, if a firm, must have a place of business in New South Wales.

(ii) The guarantee must state the name and the place of business of the guarantor, and the name under which he trades.

(iii) A guarantee may be general or specific.

(iv) A general guarantee shall apply to the sale of the description of goods or classes of goods named therein.

(v) A specific guarantee shall apply to the sale of specific goods and shall refer to a sale note, bill of sale, invoice, bill of lading, or other document describing the goods and the weight, measure, and number of the same.

(vi) A guarantee, general or specific, shall not be available as a defence unless the defendant has, within seven days after service of the summons, sent to the informant a copy of such guarantee with a written notice stating that he intends to rely on the same as a defence, and specifying the name and place of business of the person giving the guarantee, and the name under which he trades, and has also sent a like notice of his intention to the person giving the guarantee.

The person by whom any guarantee is alleged to have been given under this section shall be entitled to offer evidence at the hearing, and the court may, if it thinks fit, adjourn the hearing to enable him to do so.

The form of any guarantee under this section may be prescribed.

Penalty on guarantor.

(2) Any person who gives any such guarantee which is false shall, in addition to any penalty for the sale of any food, or drug, or article in contravention of this Act, be guilty of an offence against this Act, unless he proves that when he gave the guarantee he had reasonable grounds for believing and did in fact believe that

that the statements or descriptions contained therein were true.

A prosecution of any person for an offence against this Act by reason of giving a false guarantee may be commenced at any time after the giving of such guarantee notwithstanding any limit of time prescribed by this or any other Act for instituting prosecutions.

Proceedings for such penalty.

(3) Proceedings under subsection two of this section against the person who has given the guarantee may be taken before a court having jurisdiction in the place where the food, or drug, or article was sold, or before a court having jurisdiction in the place where the guarantee was given.

Existing guarantees.

(4) No person shall, after a date to be appointed by the Governor and notified by proclamation published in the Gazette, place on any package of goods sold by him any serial number allotted to a guarantee in pursuance of paragraph (d) of subsection one of the section which this section replaces, or the words "Guaranteed under the Pure Food Act, 1908", or words of similar import, or any words or expression signifying, suggesting, or implying that the contents of any such package are guaranteed under the provisions of this Act or the regulations, or any other law.

Sec. 50. (Prosecution of employee for selling adulterated article.)

(b) by inserting in section fifty after the words "falsely described" where secondly occurring the words "or was mixed, coloured, composed or constituted in contravention of any provision of this Act".

(2) Subsection one of this section shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette. The day so appointed shall be a day subsequent to the day appointed pursuant to subsection two of section one of this Act.

By Authority:
ALFRED HENRY PETTIFER, Acting Government Printer, Sydney, 1944.
[6d.]

I certify that this PUBLIC BILL, *which originated in the* LEGISLATIVE ASSEMBLY, *has finally passed the* LEGISLATIVE COUNCIL *and the* LEGISLATIVE ASSEMBLY *of* NEW SOUTH WALES.

W. R. McCOURT,
Clerk of the Legislative Assembly.

Legislative Assembly Chamber,
Sydney, 30 *March,* 1944.

New South Wales.

ANNO OCTAVO

GEORGII VI REGIS.

* *

Act No. 5, 1944.

An Act to amend the Pure Food Act, 1908, and certain other Acts, in certain respects; and for purposes connected therewith. [Assented to, 4th April, 1944.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. (1) This Act may be cited as the "Pure Food (Amendment) Act, 1944." **Short title, commencement, and citation.**

(2) This Act (other than section six) shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

(3)

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

G. BOOTH,
Chairman of Committees of the Legislative Assembly.

(3) The Pure Food Act, 1908, as amended by subsequent Acts, is in this Act referred to as the Principal Act.

(4) The Principal Act, as amended by this Act, may be cited as the Pure Food Act, 1908-1944.

Amendment of Act No. 31, 1908. Sec. 4. (Interpretation.)

2. The Principal Act is amended—

(a) (i) by omitting from section four the definition of "Appliance" and by inserting in lieu thereof the following definition:—

"Appliance" includes the whole or any part of any utensil, machinery, instrument, apparatus or article used or intended for use in or for the making, manufacturing, keeping, preserving, preparing, handling, serving, or supplying of any food or drug, or which in the course of such use may come into contact with any food or drug; the term also includes any instrument or contrivance which is held out to any person or to the public as of use for curative purposes, or in relieving human suffering, or in overcoming or alleviating any physical defect.

(ii) by inserting in the same section at the end of the definition of "Drug" the words "and any substance or article for consumption or use by man which the Governor may by proclamation published in the Gazette declare to be a drug";

(iii) by inserting in the same section at the end of the definition of "Food," or "article of food" the words "and any substance or article used for consumption by man which the Governor may by proclamation published in the Gazette declare to be food or an article of food";

(iv)

(iv) (a) by inserting in the same section in the definition of "To sell" after the words "deliver for sale" the words "or supply as part of a meal where consideration is to be received by the supplier for such supply either specifically or as part of a service contracted for";

(b) by inserting at the end of the same definition the words "or for purposes of analysis or other examination in pursuance of this Act";

(b) (i) by omitting from paragraph (f) of section five the words "or stained" and by inserting in lieu thereof the words "stained, prepared, or treated"; Sec. 5. (Adulteration or false description.)

(ii) by omitting from paragraph (m) of the same section the words "attached thereto" and by inserting in lieu thereof the words "or written matter attached thereto or enclosed therewith";

(iii) by inserting in the same paragraph after the words "contained therein" the words "or its physiological, curative, or therapeutic effect."

3. The Principal Act is further amended— Further amendment of Act No. 31, 1908.

(a) by inserting next after section ten the following new section:— New sec. 10A.

10A. No person shall in or from New South Wales tender or despatch or offer to tender or despatch for or on sale any food, drug, or article which is adulterated or falsely described, or which is packed or enclosed for sale or labelled, branded or marked in any manner contrary to or not in compliance with any provision of this Act, whether the actual sale shall be effected or is to become effective in New South Wales or elsewhere: Tender or despatch of food, etc., adulterated or falsely described. cf. 5 Geo. VI, No. 8 (Q'ld), s. 3.

Provided

Provided that if the actual sale was effective or is to be effective elsewhere than in New South Wales it shall be a defence to a charge of an offence against this section to prove that the sale was legally authorised under the laws in force where it was effected or to become effective.

Sec. 12. (Selling goods not of nature demanded—defence.)

(b) by omitting from subsection three of section twelve the word "defective" wherever occurring and by inserting in lieu thereof the word "different";

Sec. 13. (Sale of mixture.)

(c) (i) by inserting in subsection one of section thirteen after the words "sound condition" the words "and shall comply with the prescribed standards";

(ii) by inserting at the end of the same section the following new subsection:—

(3) No person shall sell any food or drug which is a mixture in respect of which a standard has been prescribed under this Act unless the mixture is in accordance with such standard.

Sec. 14. (Packages to be labelled.)

(d) (i) by inserting in the short heading to section fourteen after the word "food" the words "or drug";

(ii) by inserting in subsection one of the same section after the word "food" where firstly and secondly occurring the words "or drug";

(iii) by inserting at the end of the same subsection the following words:—

No person shall, after the expiration of six months from the commencement of the Pure Food (Amendment) Act, 1944, sell in a package any drug unless such a statement or label is written on or attached to such package as required by this section.

Nothing in this subsection shall apply to any package of drug where such drug is supplied by prescription or order signed by

a legally qualified medical practitioner for any person then under his care and treatment.

(iv) by inserting in subsection three of the same section after the word "food" the words "or drugs";

(e) (i) by omitting from subsection one of section seventeen the words "which by reason of its inactivity or inefficiency"; Sec. 17. (Prohibition of sale of injurious drugs, etc.)

(ii) by omitting from the same subsection the words "of cure";

(f) by inserting next after section nineteen the following new section:— New sec. 19A.

19A. (1) The board may by notification in the Gazette prohibit the packing for sale of any disinfectant or poisonous substance in any container which bears upon it any brand, mark or statement which may be capable of misleading a purchaser into the belief that the contents of such container are for the purpose of human consumption. Packing of disinfectant or poisonous substance.

(2) No person shall sell or pack for sale any disinfectant or poisonous substance in respect of which a notification under subsection one of this section is in force in any container bearing any such brand, mark or statement.

(g) by inserting in section twenty after the words "in private" the words and figures "Division 7 of Part III of the District Courts Act, 1912-1936, shall apply, mutatis mutandis, to any such appeal. Sec. 20. (Appeal.)

The judge may make such order for the payment of the costs and charges of and incidental to the appeal as to him seems just.

Such costs and charges shall be taxed by such officer as the judge directs and may be recovered in like manner as any debt adjudged by the judge of a district court to be paid can be recovered."

(h)

Sec. 21. (Milk of infected cow.)

(h) (i) by omitting from subsection one of section twenty-one the words "the milk of" and by inserting in lieu thereof the words "milk or any product thereof from";

(ii) by inserting in subsection two of the same section after the words "sells milk" the words "or any product thereof";

(iii) by omitting from the same subsection the words "the milk of" and by inserting in lieu thereof the words "the milk or any product thereof from";

(iv) by inserting after the same subsection the following new subsection:—

(2A) A person who sells milk or any product thereof shall not knowingly allow any diseased cattle to be in his milking herd or on his dairy premises as defined in the Dairies Supervision Act, 1901, as amended by subsequent Acts.

Further amendment of Act No. 31, 1908. Sec. 22. (Entry and inspection.)

4. The Principal Act is further amended—

(a) (i) by inserting at the end of subsection six of section twenty-two the words "and why he should not be ordered to pay the expenses incurred by the officer in the examination, seizure, and destruction of the article, package, or vessel";

(ii) by inserting in subsection seven of the same section after the words "shall be destroyed" the words "The said magistrate or justices may further order that such owner or person shall pay the reasonable expenses incurred by the officer in the examination, seizure, and destruction of the article, package, or vessel";

(iii) by inserting in subsection nine of the same section after the words "licensed house" the word "boarding-house";

(b)

(b) by omitting from subsection two of section twenty-four the words "and shall retain one of the said parts for future comparison, and submit the third part to an analyst," and by inserting in lieu thereof the words "and submit one of the said parts to an analyst, and shall retain the third part for future comparison and for such examination or analysis as a magistrate may direct." Sec. 24 (2). (Samples.)

5. The Principal Act is further amended— Further amendment of Act No. 31, 1908.

(a) by inserting in paragraph (a) of section thirty-eight after the word "Act" the words "or upon demand by an officer or authorised person to state his name and place of abode refuses so to do or states a false name or place of abode"; Sec. 38 (a). (Obstruction to officers.)

(b) by inserting next after section thirty-nine the following new section:— New sec. 39A.

Power to prohibit carrying on of business by persons convicted of offence against Act.

39A. (1) Where any person engaged in the sale of any food, drug or article has been convicted of an offence against this Act the court may, on such conviction or at any time thereafter, upon application made as in this section provided, by order, prohibit such person from engaging in the sale of any food, drug or article for such period as the court may determine.

(2) An application for an order under this section shall be made by an officer specifically authorised in that behalf by the Minister.

An authority to make such application, purporting to have been signed by the Minister, shall be evidence of such authority without proof of the Minister's signature.

(3) Any person who engages in the sale of any food, drug or article in contravention of an order made under this section shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding one hundred pounds.

(4) Any person dissatisfied with an order made under subsection one of this section

may

may appeal from the same under and in accordance with Part V of the Justices Act, 1902, as amended by subsequent Acts, and the provisions of that Part shall, mutatis mutandis, apply to and in respect of such appeal as if the same were an appeal from a determination or order of a justice or justices.

Sec. 44. (Evidence.)

(c) by inserting in section forty-four after the word "analysis" the words "or examination";

Sec. 51 (3). (Refusing information.)

(d) by omitting from subsection three of section fifty-one the words "ten pounds" and by inserting in lieu thereof the words "twenty pounds";

Sec. 52. (Suggestive names.)

(e) by inserting in section fifty-two after the word "food" wherever occurring the words "or drug";

Sec. 54. (Regulations.)

(f) (i) by omitting from subsection one of section fifty-four the words "articles of food, or to packages containing such articles," and by inserting in lieu thereof the words "any food or drug, or to packages containing any food or drug";

(ii) by inserting in the same subsection after the words "payment of analysts" the following new paragraph:—

prohibiting the publication, use or exhibition in any manner whatsoever, of any printed or pictorial matter with respect to any food or drug which is false or misleading or likely to mislead;

(iii) by inserting at the end of the same subsection the following new paragraphs:—

prescribing requirements to be observed as to the situation and construction of premises used for the manufacture, preparation, storage or packing of any food, drug or article, and securing the sanitation of such premises, and the provision of satisfactory facilities

facilities for protecting such food or drug from contamination;

prohibiting the placing in food for sale or in packages of such food, of any toy, coin or other thing, which, if swallowed or taken into the mouth, might be harmful or injurious to the consumer.

6. (1) The Principal Act is further amended— Further amendment of Act No. 31, 1908.

(a) by omitting section forty-seven and by inserting in lieu thereof the following section:— Subst. sec. 47.

47. (1) Where any person is prosecuted under this Act for the sale of any food, or drug, or article which is adulterated or falsely described, or is mixed, coloured, composed, or constituted in contravention of any provision of this Act, he shall be entitled to be discharged from such prosecution upon proving— Guarantee, when a defence.

(a) that he has received from the person from whom he purchased such food, or drug, or article, or his duly authorised agent, a guarantee in writing that the same is not adulterated or falsely described, or mixed, coloured, composed, or constituted as aforesaid; and

(b) that he had no reason to believe that the same was adulterated or falsely described, or mixed, coloured, composed, or constituted as aforesaid; and

(c) that he sold it in the same state as when he purchased it,

subject, however, to the following conditions:—

(i) The person giving the guarantee must be resident in New South Wales, or, if a company, must have a registered office in New South Wales, or, if a firm, must have a place of business in New South Wales.

(ii)

(ii) The guarantee must state the name and the place of business of the guarantor, and the name under which he trades.

(iii) A guarantee may be general or specific.

(iv) A general guarantee shall apply to the sale of the description of goods or classes of goods named therein.

(v) A specific guarantee shall apply to the sale of specific goods and shall refer to a sale note, bill of sale, invoice, bill of lading, or other document describing the goods and the weight, measure, and number of the same.

(vi) A guarantee, general or specific, shall not be available as a defence unless the defendant has, within seven days after service of the summons, sent to the informant a copy of such guarantee with a written notice stating that he intends to rely on the same as a defence, and specifying the name and place of business of the person giving the guarantee, and the name under which he trades, and has also sent a like notice of his intention to the person giving the guarantee.

The person by whom any guarantee is alleged to have been given under this section shall be entitled to offer evidence at the hearing, and the court may, if it thinks fit, adjourn the hearing to enable him to do so.

The form of any guarantee under this section may be prescribed.

Penalty on guarantor.

(2) Any person who gives any such guarantee which is false shall, in addition to any penalty for the sale of any food, or drug, or article in contravention of this Act, be guilty of an offence against this Act, unless he proves that when he gave the guarantee he had reasonable grounds for believing and did in fact believe

that

that the statements or descriptions contained therein were true.

A prosecution of any person for an offence against this Act by reason of giving a false guarantee may be commenced at any time after the giving of such guarantee notwithstanding any limit of time prescribed by this or any other Act for instituting prosecutions.

Proceedings for such penalty.

(3) Proceedings under subsection two of this section against the person who has given the guarantee may be taken before a court having jurisdiction in the place where the food, or drug, or article was sold, or before a court having jurisdiction in the place where the guarantee was given.

Existing guarantees.

(4) No person shall, after a date to be appointed by the Governor and notified by proclamation published in the Gazette, place on any package of goods sold by him any serial number allotted to a guarantee in pursuance of paragraph (d) of subsection one of the section which this section replaces, or the words "Guaranteed under the Pure Food Act, 1908", or words of similar import, or any words or expression signifying, suggesting, or implying that the contents of any such package are guaranteed under the provisions of this Act or the regulations, or any other law.

Sec. 50. (Prosecution of employee for selling adulterated article.)

(b) by inserting in section fifty after the words "falsely described" where secondly occurring the words "or was mixed, coloured, composed or constituted in contravention of any provision of this Act".

(2) Subsection one of this section shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette. The day so appointed shall be a day subsequent to the day appointed pursuant to subsection two of section one of this Act.

In the name and on behalf of His Majesty I assent to this Act.

WAKEHURST,
Governor.

Government House,
Sydney, 4th April, 1944.

PURE FOOD (AMENDMENT) BILL

Schedule of the Amendment referred to in Legislative Council's Message of 22nd March, 1944.

Page 7, line 27. After "officer" *insert* **"specifically"**

37219 34—

This PUBLIC BILL *originated in the* LEGISLATIVE ASSEMBLY, *and, having this day passed, is now ready for presentation to the* LEGISLATIVE COUNCIL *for its concurrence.*

W. R. McCOURT,
Clerk of the Legislative Assembly.

Legislative Assembly Chamber,
Sydney, 7 March, 1944.

The LEGISLATIVE COUNCIL *has this day agreed to this Bill with an Amendment.*

W. K. CHARLTON,
Clerk of the Parliaments.

Legislative Council Chamber,
Sydney, 22nd March, 1944.

New South Wales.

ANNO OCTAVO

GEORGII VI REGIS.

* *

Act No. , 1944.

An Act to amend the Pure Food Act, 1908, and certain other Acts, in certain respects; and for purposes connected therewith.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

Short title, commencement, and citation.

1. (1) This Act may be cited as the "Pure Food (Amendment) Act, 1944."

(2) This Act (other than section six) shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

NOTE.—The word to be *inserted* is printed in **black letter.**

(3) The Pure Food Act, 1908, as amended by subsequent Acts, is in this Act referred to as the Principal Act.

(4) The Principal Act, as amended by this Act, may be cited as the Pure Food Act, 1908-1944.

5 **2.** The Principal Act is amended—

Amendment of Act No. 31, 1908. Sec. 4. (Interpretation.)

(a) (i) by omitting from section four the definition of "Appliance" and by inserting in lieu thereof the following definition:—

"Appliance" includes the whole or any part of any utensil, machinery, instrument, apparatus or article used or intended for use in or for the making, manufacturing, keeping, preserving, preparing, handling, serving, or supplying of any food or drug, or which in the course of such use may come into contact with any food or drug; the term also includes any instrument or contrivance which is held out to any person or to the public as of use for curative purposes, or in relieving human suffering, or in overcoming or alleviating any physical defect.

(ii) by inserting in the same section at the end of the definition of "Drug" the words "and any substance or article for consumption or use by man which the Governor may by proclamation published in the Gazette declare to be a drug";

(iii) by inserting in the same section at the end of the definition of "Food," or "article of food" the words "and any substance or article used for consumption by man which the Governor may by proclamation published in the Gazette declare to be food or an article of food";

(iv) (a) by inserting in the same section in the definition of "To sell" after the words "deliver for sale" the words "or supply as part of a meal where consideration is to be received by the supplier for such supply either specifically or as part of a service contracted for";

(b) by inserting at the end of the same definition the words "or for purposes of analysis or other examination in pursuance of this Act";

(b) (i) by omitting from paragraph (f) of section five the words "or stained" and by inserting in lieu thereof the words "stained, prepared, or treated"; Sec. 5. (Adulteration or false description.)

(ii) by omitting from paragraph (m) of the same section the words "attached thereto" and by inserting in lieu thereof the words "or written matter attached thereto or enclosed therewith";

(iii) by inserting in the same paragraph after the words "contained therein" the words "or its physiological, curative, or therapeutic effect."

3. The Principal Act is further amended— Further amendment of Act No. 31, 1908.

(a) by inserting next after section ten the following new section:— New sec. 10A.

10A. No person shall in or from New South Wales tender or despatch or offer to tender or despatch for or on sale any food, drug, or article which is adulterated or falsely described, or which is packed or enclosed for sale or labelled, branded or marked in any manner contrary to or not in compliance with any provision of this Act, whether the actual sale shall be effected or is to become effective in New South Wales or elsewhere: Tender or despatch of food, etc., adulterated or falsely described. cf. 5 Geo. VI, No. 8 (Q'ld), s. 3.

Provided

Provided that if the actual sale was effective or is to be effective elsewhere than in New South Wales it shall be a defence to a charge of an offence against this section to prove that the sale was legally authorised under the laws in force where it was effected or to become effective.

(b) by omitting from subsection three of section twelve the word "defective" wherever occurring and by inserting in lieu thereof the word "different"; Sec. 12. (Selling goods not of nature demanded—defence.)

(c) (i) by inserting in subsection one of section thirteen after the words "sound condition" the words "and shall comply with the prescribed standards"; Sec. 13. (Sale of mixture.)

(ii) by inserting at the end of the same section the following new subsection:—

(3) No person shall sell any food or drug which is a mixture in respect of which a standard has been prescribed under this Act unless the mixture is in accordance with such standard.

(d) (i) by inserting in the short heading to section fourteen after the word "food" the words "or drug"; Sec. 14. (Packages to be labelled.)

(ii) by inserting in subsection one of the same section after the word "food" where firstly and secondly occurring the words "or drug";

(iii) by inserting at the end of the same subsection the following words:—

No person shall, after the expiration of six months from the commencement of the Pure Food (Amendment) Act, 1944, sell in a package any drug unless such a statement or label is written on or attached to such package as required by this section.

Nothing in this subsection shall apply to any package of drug where such drug is supplied by prescription or order signed by

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a legally qualified medical practitioner for any person then under his care and treatment.

(iv) by inserting in subsection three of the same section after the word "food" the words "or drugs";

(e) (i) by omitting from subsection one of section seventeen the words "which by reason of its inactivity or inefficiency";

(ii) by omitting from the same subsection the words "of cure";

Sec. 17. (Prohibition of sale of injurious drugs, etc.)

(f) by inserting next after section nineteen the following new section:—

New sec. 19A.

19A. (1) The board may by notification in the Gazette prohibit the packing for sale of any disinfectant or poisonous substance in any container which bears upon it any brand, mark or statement which may be capable of misleading a purchaser into the belief that the contents of such container are for the purpose of human consumption.

Packing of disinfectant or poisonous substance.

(2) No person shall sell or pack for sale any disinfectant or poisonous substance in respect of which a notification under subsection one of this section is in force in any container bearing any such brand, mark or statement.

(g) by inserting in section twenty after the words "in private" the words and figures "Division 7 of Part III of the District Courts Act, 1912-1936, shall apply, mutatis mutandis, to any such appeal.

Sec. 20. (Appeal.)

The judge may make such order for the payment of the costs and charges of and incidental to the appeal as to him seems just.

Such costs and charges shall be taxed by such officer as the judge directs and may be recovered in like manner as any debt adjudged by the judge of a district court to be paid can be recovered."

(h)

(h) (i) by omitting from subsection one of section twenty-one the words "the milk of" and by inserting in lieu thereof the words "milk or any product thereof from"; Sec. 21. (Milk of infected cow.)

(ii) by inserting in subsection two of the same section after the words "sells milk" the words "or any product thereof";

(iii) by omitting from the same subsection the words "the milk of" and by inserting in lieu thereof the words "the milk or any product thereof from";

(iv) by inserting after the same subsection the following new subsection:—

(2A) A person who sells milk or any product thereof shall not knowingly allow any diseased cattle to be in his milking herd or on his dairy premises as defined in the Dairies Supervision Act, 1901, as amended by subsequent Acts.

4. The Principal Act is further amended— Further amendment of Act No. 31, 1908.

(a) (i) by inserting at the end of subsection six of section twenty-two the words "and why he should not be ordered to pay the expenses incurred by the officer in the examination, seizure, and destruction of the article, package, or vessel"; Sec. 22. (Entry and inspection.)

(ii) by inserting in subsection seven of the same section after the words "shall be destroyed" the words "The said magistrate or justices may further order that such owner or person shall pay the reasonable expenses incurred by the officer in the examination, seizure, and destruction of the article, package, or vessel";

(iii) by inserting in subsection nine of the same section after the words "licensed house" the word "boarding-house";

(b)

(b) by omitting from subsection two of section twenty-four the words "and shall retain one of the said parts for future comparison, and submit the third part to an analyst," and by inserting in lieu thereof the words "and submit one of the said parts to an analyst, and shall retain the third part for future comparison and for such examination or analysis as a magistrate may direct." Sec. 24 (2). (Samples.)

5. The Principal Act is further amended— Further amendment of Act No. 31, 1908.

(a) by inserting in paragraph (a) of section thirty-eight after the word "Act" the words "or upon demand by an officer or authorised person to state his name and place of abode refuses so to do or states a false name or place of abode"; Sec. 38 (a). (Obstruction to officers.)

(b) by inserting next after section thirty-nine the following new section:— New sec. 39A.

39A. (1) Where any person engaged in the sale of any food, drug or article has been convicted of an offence against this Act the court may, on such conviction or at any time thereafter, upon application made as in this section provided, by order, prohibit such person from engaging in the sale of any food, drug or article for such period as the court may determine. Power to prohibit carrying on of business by persons convicted of offence against Act.

(2) An application for an order under this section shall be made by an officer specifically authorised in that behalf by the Minister.

An authority to make such application, purporting to have been signed by the Minister, shall be evidence of such authority without proof of the Minister's signature.

(3) Any person who engages in the sale of any food, drug or article in contravention of an order made under this section shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding one hundred pounds.

(4) Any person dissatisfied with an order made under subsection one of this section

may

may appeal from the same under and in accordance with Part V of the Justices Act, 1902, as amended by subsequent Acts, and the provisions of that Part shall, mutatis mutandis, apply to and in respect of such appeal as if the same were an appeal from a determination or order of a justice or justices.

(c) by inserting in section forty-four after the word "analysis" the words "or examination"; Sec. 44. (Evidence.)

(d) by omitting from subsection three of section fifty-one the words "ten pounds" and by inserting in lieu thereof the words "twenty pounds"; Sec. 51 (3). (Refusing information.)

(e) by inserting in section fifty-two after the word "food" wherever occurring the words "or drug"; Sec. 52. (Suggestive names.)

(f) (i) by omitting from subsection one of section fifty-four the words "articles of food, or to packages containing such articles," and by inserting in lieu thereof the words "any food or drug, or to packages containing any food or drug"; Sec. 54. (Regulations.)

(ii) by inserting in the same subsection after the words "payment of analysts" the following new paragraph:—

prohibiting the publication, use or exhibition in any manner whatsoever, of any printed or pictorial matter with respect to any food or drug which is false or misleading or likely to mislead;

(iii) by inserting at the end of the same subsection the following new paragraphs:—

prescribing requirements to be observed as to the situation and construction of premises used for the manufacture, preparation, storage or packing of any food, drug or article, and securing the sanitation of such premises, and the provision of satisfactory facilities

facilities for protecting such food or drug from contamination;

prohibiting the placing in food for sale or in packages of such food, of any toy, coin or other thing, which, if swallowed or taken into the mouth, might be harmful or injurious to the consumer.

6. (1) The Principal Act is further amended—

Further amendment of Act No. 81, 1908.

(a) by omitting section forty-seven and by inserting in lieu thereof the following section:—

Subst. sec. 47.

Guarantee, when a defence.

47. (1) Where any person is prosecuted under this Act for the sale of any food, or drug, or article which is adulterated or falsely described, or is mixed, coloured, composed, or constituted in contravention of any provision of this Act, he shall be entitled to be discharged from such prosecution upon proving—

(a) that he has received from the person from whom he purchased such food, or drug, or article, or his duly authorised agent, a guarantee in writing that the same is not adulterated or falsely described, or mixed, coloured, composed, or constituted as aforesaid; and

(b) that he had no reason to believe that the same was adulterated or falsely described, or mixed, coloured, composed, or constituted as aforesaid; and

(c) that he sold it in the same state as when he purchased it,

subject, however, to the following conditions:—

(i) The person giving the guarantee must be resident in New South Wales, or, if a company, must have a registered office in New South Wales, or, if a firm, must have a place of business in New South Wales.

(ii) The guarantee must state the name and the place of business of the guarantor, and the name under which he trades.

(iii) A guarantee may be general or specific.

(iv) A general guarantee shall apply to the sale of the description of goods or classes of goods named therein.

(v) A specific guarantee shall apply to the sale of specific goods and shall refer to a sale note, bill of sale, invoice, bill of lading, or other document describing the goods and the weight, measure, and number of the same.

(vi) A guarantee, general or specific, shall not be available as a defence unless the defendant has, within seven days after service of the summons, sent to the informant a copy of such guarantee with a written notice stating that he intends to rely on the same as a defence, and specifying the name and place of business of the person giving the guarantee, and the name under which he trades, and has also sent a like notice of his intention to the person giving the guarantee.

The person by whom any guarantee is alleged to have been given under this section shall be entitled to offer evidence at the hearing, and the court may, if it thinks fit, adjourn the hearing to enable him to do so.

The form of any guarantee under this section may be prescribed.

Penalty on guarantor.

(2) Any person who gives any such guarantee which is false shall, in addition to any penalty for the sale of any food, or drug, or article in contravention of this Act, be guilty of an offence against this Act, unless he proves that when he gave the guarantee he had reasonable grounds for believing and did in fact believe

that

that the statements or descriptions contained therein were true.

A prosecution of any person for an offence against this Act by reason of giving a false guarantee may be commenced at any time after the giving of such guarantee notwithstanding any limit of time prescribed by this or any other Act for instituting prosecutions.

Proceedings for such penalty.

(3) Proceedings under subsection two of this section against the person who has given the guarantee may be taken before a court having jurisdiction in the place where the food, or drug, or article was sold, or before a court having jurisdiction in the place where the guarantee was given.

Existing guarantees.

(4) No person shall, after a date to be appointed by the Governor and notified by proclamation published in the Gazette, place on any package of goods sold by him any serial number allotted to a guarantee in pursuance of paragraph (d) of subsection one of the section which this section replaces, or the words "Guaranteed under the Pure Food Act, 1908", or words of similar import, or any words or expression signifying, suggesting, or implying that the contents of any such package are guaranteed under the provisions of this Act or the regulations, or any other law.

Sec. 50. (Prosecution of employee for selling adulterated article.)

(b) by inserting in section fifty after the words "falsely described" where secondly occurring the words "or was mixed, coloured, composed or constituted in contravention of any provision of this Act".

(2) Subsection one of this section shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette. The day so appointed shall be a day subsequent to the day appointed pursuant to subsection two of section one of this Act.

Sydney: Alfred Henry Pettifer, Acting Government Printer—1944.

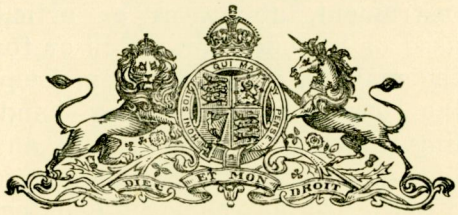
[10*d*.]

This PUBLIC BILL *originated in the* LEGISLATIVE ASSEMBLY, *and, having this day passed, is now ready for presentation to the* LEGISLATIVE COUNCIL *for its concurrence.*

W. R. McCOURT,
Clerk of the Legislative Assembly.

Legislative Assembly Chamber,
Sydney, 7 March, 1944.

New South Wales.



ANNO OCTAVO

GEORGII VI REGIS.

* *

Act No. , 1944.

An Act to amend the Pure Food Act, 1908, and certain other Acts, in certain respects; and for purposes connected therewith.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

Short title, commencement, and citation.

1. (1) This Act may be cited as the "Pure Food (Amendment) Act, 1944."

(2) This Act (other than section six) shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

(3) The Pure Food Act, 1908, as amended by subsequent Acts, is in this Act referred to as the Principal Act.

(4) The Principal Act, as amended by this Act, may be cited as the Pure Food Act, 1908-1944.

5 **2.** The Principal Act is amended—

Amendment of Act No. 31, 1908.

Sec. 4. (Interpretation.)

(a) (i) by omitting from section four the definition of "Appliance" and by inserting in lieu thereof the following definition:—

"Appliance" includes the whole or any part of any utensil, machinery, instrument, apparatus or article used or intended for use in or for the making, manufacturing, keeping, preserving, preparing, handling, serving, or supplying of any food or drug, or which in the course of such use may come into contact with any food or drug; the term also includes any instrument or contrivance which is held out to any person or to the public as of use for curative purposes, or in relieving human suffering, or in overcoming or alleviating any physical defect.

(ii) by inserting in the same section at the end of the definition of "Drug" the words "and any substance or article for consumption or use by man which the Governor may by proclamation published in the Gazette declare to be a drug";

(iii) by inserting in the same section at the end of the definition of "Food," or "article of food" the words "and any substance or article used for consumption by man which the Governor may by proclamation published in the Gazette declare to be food or an article of food";

(iv)

(iv) (a) by inserting in the same section in the definition of "To sell" after the words "deliver for sale" the words "or supply as part of a meal where consideration is to be received by the supplier for such supply either specifically or as part of a service contracted for";

(b) by inserting at the end of the same definition the words "or for purposes of analysis or other examination in pursuance of this Act";

(b) (i) by omitting from paragraph (f) of section five the words "or stained" and by inserting in lieu thereof the words "stained, prepared, or treated";

Sec. 5. (Adulteration or false description.)

(ii) by omitting from paragraph (m) of the same section the words "attached thereto" and by inserting in lieu thereof the words "or written matter attached thereto or enclosed therewith";

(iii) by inserting in the same paragraph after the words "contained therein" the words "or its physiological, curative, or therapeutic effect."

3. The Principal Act is further amended—

Further amendment of Act No. 31, 1908.

(a) by inserting next after section ten the following new section:—

New sec. 10A.

10A. No person shall in or from New South Wales tender or despatch or offer to tender or despatch for or on sale any food, drug, or article which is adulterated or falsely described, or which is packed or enclosed for sale or labelled, branded or marked in any manner contrary to or not in compliance with any provision of this Act, whether the actual sale shall be effected or is to become effective in New South Wales or elsewhere:

Tender or despatch of food, etc., adulterated or falsely described.

cf. 5 Geo. VI, No. 8 (Q'ld), s. 3.

Provided

Provided that if the actual sale was effective or is to be effective elsewhere than in New South Wales it shall be a defence to a charge of an offence against this section to prove that the sale was legally authorised under the laws in force where it was effected or to become effective.

(b) by omitting from subsection three of section twelve the word "defective" wherever occurring and by inserting in lieu thereof the word "different"; Sec. 12. (Selling goods not of nature demanded—defence.)

(c) (i) by inserting in subsection one of section thirteen after the words "sound condition" the words "and shall comply with the prescribed standards"; Sec. 13. (Sale of mixture.)

(ii) by inserting at the end of the same section the following new subsection:—

(3) No person shall sell any food or drug which is a mixture in respect of which a standard has been prescribed under this Act unless the mixture is in accordance with such standard.

(d) (i) by inserting in the short heading to section fourteen after the word "food" the words "or drug"; Sec. 14. (Packages to be labelled.)

(ii) by inserting in subsection one of the same section after the word "food" where firstly and secondly occurring the words "or drug";

(iii) by inserting at the end of the same subsection the following words:—

No person shall, after the expiration of six months from the commencement of the Pure Food (Amendment) Act, 1944, sell in a package any drug unless such a statement or label is written on or attached to such package as required by this section.

Nothing in this subsection shall apply to any package of drug where such drug is supplied by prescription or order signed by

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a legally qualified medical practitioner for any person then under his care and treatment.

(iv) by inserting in subsection three of the same section after the word "food" the words "or drugs";

(e) (i) by omitting from subsection one of section seventeen the words "which by reason of its inactivity or inefficiency"; Sec. 17. (Prohibition of sale of injurious drugs, etc.)

(ii) by omitting from the same subsection the words "of cure";

(f) by inserting next after section nineteen the following new section:— New sec. 19A.

19A. (1) The board may by notification in the Gazette prohibit the packing for sale of any disinfectant or poisonous substance in any container which bears upon it any brand, mark or statement which may be capable of misleading a purchaser into the belief that the contents of such container are for the purpose of human consumption. Packing of disinfectant or poisonous substance.

(2) No person shall sell or pack for sale any disinfectant or poisonous substance in respect of which a notification under subsection one of this section is in force in any container bearing any such brand, mark or statement.

(g) by inserting in section twenty after the words "in private" the words and figures "Division 7 of Part III of the District Courts Act, 1912-1936, shall apply, mutatis mutandis, to any such appeal. Sec. 20. (Appeal.)

The judge may make such order for the payment of the costs and charges of and incidental to the appeal as to him seems just.

Such costs and charges shall be taxed by such officer as the judge directs and may be recovered in like manner as any debt adjudged by the judge of a district court to be paid can be recovered."

(h)

(h) (i) by omitting from subsection one of section twenty-one the words "the milk of" and by inserting in lieu thereof the words "milk or any product thereof from"; Sec. 21. (Milk of infected cow.)

(ii) by inserting in subsection two of the same section after the words "sells milk" the words "or any product thereof";

(iii) by omitting from the same subsection the words "the milk of" and by inserting in lieu thereof the words "the milk or any product thereof from";

(iv) by inserting after the same subsection the following new subsection:—

(2A) A person who sells milk or any product thereof shall not knowingly allow any diseased cattle to be in his milking herd or on his dairy premises as defined in the Dairies Supervision Act, 1901, as amended by subsequent Acts.

4. The Principal Act is further amended— Further amendment of Act No. 31, 1908.

(a) (i) by inserting at the end of subsection six of section twenty-two the words "and why he should not be ordered to pay the expenses incurred by the officer in the examination, seizure, and destruction of the article, package, or vessel"; Sec. 22. (Entry and inspection.)

(ii) by inserting in subsection seven of the same section after the words "shall be destroyed" the words "The said magistrate or justices may further order that such owner or person shall pay the reasonable expenses incurred by the officer in the examination, seizure, and destruction of the article, package, or vessel";

(iii) by inserting in subsection nine of the same section after the words "licensed house" the word "boarding-house";

(b)

(b) by omitting from subsection two of section twenty-four the words "and shall retain one of the said parts for future comparison, and submit the third part to an analyst," and by inserting in lieu thereof the words "and submit one of the said parts to an analyst, and shall retain the third part for future comparison and for such examination or analysis as a magistrate may direct." Sec. 24 (2). (Samples.)

5. The Principal Act is further amended— Further amendment of Act No. 31, 1908.

(a) by inserting in paragraph (a) of section thirty-eight after the word "Act" the words "or upon demand by an officer or authorised person to state his name and place of abode refuses so to do or states a false name or place of abode"; Sec. 38 (a). (Obstruction to officers.)

(b) by inserting next after section thirty-nine the following new section:— New sec. 39A.

39A. (1) Where any person engaged in the sale of any food, drug or article has been convicted of an offence against this Act the court may, on such conviction or at any time thereafter, upon application made as in this section provided, by order, prohibit such person from engaging in the sale of any food, drug or article for such period as the court may determine. Power to prohibit carrying on of business by persons convicted of offence against Act.

(2) An application for an order under this section shall be made by an officer authorised in that behalf by the Minister.

An authority to make such application, purporting to have been signed by the Minister, shall be evidence of such authority without proof of the Minister's signature.

(3) Any person who engages in the sale of any food, drug or article in contravention of an order made under this section shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding one hundred pounds.

(4) Any person dissatisfied with an order made under subsection one of this section may

may appeal from the same under and in accordance with Part V of the Justices Act, 1902, as amended by subsequent Acts, and the provisions of that Part shall, mutatis mutandis, apply to and in respect of such appeal as if the same were an appeal from a determination or order of a justice or justices.

(c) by inserting in section forty-four after the word "analysis" the words "or examination"; Sec. 44. (Evidence.)

(d) by omitting from subsection three of section fifty-one the words "ten pounds" and by inserting in lieu thereof the words "twenty pounds"; Sec. 51 (3). (Refusing information.)

(e) by inserting in section fifty-two after the word "food" wherever occurring the words "or drug"; Sec. 52. (Suggestive names.)

(f) (i) by omitting from subsection one of section fifty-four the words "articles of food, or to packages containing such articles," and by inserting in lieu thereof the words "any food or drug, or to packages containing any food or drug"; Sec. 54. (Regulations.)

(ii) by inserting in the same subsection after the words "payment of analysts" the following new paragraph:—

prohibiting the publication, use or exhibition in any manner whatsoever, of any printed or pictorial matter with respect to any food or drug which is false or misleading or likely to mislead;

(iii) by inserting at the end of the same subsection the following new paragraphs:—

prescribing requirements to be observed as to the situation and construction of premises used for the manufacture, preparation, storage or packing of any food, drug or article, and securing the sanitation of such premises, and the provision of satisfactory facilities

facilities for protecting such food or drug from contamination;

prohibiting the placing in food for sale or in packages of such food, of any toy, coin or other thing, which, if swallowed or taken into the mouth, might be harmful or injurious to the consumer.

6. (1) The Principal Act is further amended— Further amendment of Act No. 31, 1908.

(a) by omitting section forty-seven and by inserting in lieu thereof the following section:— Subst. sec. 47.

47. (1) Where any person is prosecuted under this Act for the sale of any food, or drug, or article which is adulterated or falsely described, or is mixed, coloured, composed, or constituted in contravention of any provision of this Act, he shall be entitled to be discharged from such prosecution upon proving— Guarantee, when a defence.

(a) that he has received from the person from whom he purchased such food, or drug, or article, or his duly authorised agent, a guarantee in writing that the same is not adulterated or falsely described, or mixed, coloured, composed, or constituted as aforesaid; and

(b) that he had no reason to believe that the same was adulterated or falsely described, or mixed, coloured, composed, or constituted as aforesaid; and

(c) that he sold it in the same state as when he purchased it,

subject, however, to the following conditions:—

(i) The person giving the guarantee must be resident in New South Wales, or, if a company, must have a registered office in New South Wales, or, if a firm, must have a place of business in New South Wales.

(ii) The guarantee must state the name and the place of business of the guarantor, and the name under which he trades.

(iii) A guarantee may be general or specific.

(iv) A general guarantee shall apply to the sale of the description of goods or classes of goods named therein.

(v) A specific guarantee shall apply to the sale of specific goods and shall refer to a sale note, bill of sale, invoice, bill of lading, or other document describing the goods and the weight, measure, and number of the same.

(vi) A guarantee, general or specific, shall not be available as a defence unless the defendant has, within seven days after service of the summons, sent to the informant a copy of such guarantee with a written notice stating that he intends to rely on the same as a defence, and specifying the name and place of business of the person giving the guarantee, and the name under which he trades, and has also sent a like notice of his intention to the person giving the guarantee.

The person by whom any guarantee is alleged to have been given under this section shall be entitled to offer evidence at the hearing, and the court may, if it thinks fit, adjourn the hearing to enable him to do so.

The form of any guarantee under this section may be prescribed.

Penalty on guarantor.

(2) Any person who gives any such guarantee which is false shall, in addition to any penalty for the sale of any food, or drug, or article in contravention of this Act, be guilty of an offence against this Act, unless he proves that when he gave the guarantee he had reasonable grounds for believing and did in fact believe that

that the statements or descriptions contained therein were true.

A prosecution of any person for an offence against this Act by reason of giving a false guarantee may be commenced at any time after the giving of such guarantee notwithstanding any limit of time prescribed by this or any other Act for instituting prosecutions.

Proceedings for such penalty.

(3) Proceedings under subsection two of this section against the person who has given the guarantee may be taken before a court having jurisdiction in the place where the food, or drug, or article was sold, or before a court having jurisdiction in the place where the guarantee was given.

Existing guarantees.

(4) No person shall, after a date to be appointed by the Governor and notified by proclamation published in the Gazette, place on any package of goods sold by him any serial number allotted to a guarantee in pursuance of paragraph (d) of subsection one of the section which this section replaces, or the words "Guaranteed under the Pure Food Act, 1908", or words of similar import, or any words or expression signifying, suggesting, or implying that the contents of any such package are guaranteed under the provisions of this Act or the regulations, or any other law.

Sec. 50. (Prosecution of employee for selling adulterated article.)

(b) by inserting in section fifty after the words "falsely described" where secondly occurring the words "or was mixed, coloured, composed or constituted in contravention of any provision of this Act".

(2) Subsection one of this section shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette. The day so appointed shall be a day subsequent to the day appointed pursuant to subsection two of section one of this Act.

Sydney: Alfred Henry Pettifer, Acting Government Printer—1944.

[10*d*.]

No. , 1943.

A BILL

To amend the Pure Food Act, 1908, and certain other Acts, in certain respects; and for purposes connected therewith.

[Mr. Kelly;—25 *November*, 1943.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. (1) This Act may be cited as the "Pure Food (Amendment) Act, 1943." Short title, commencement, and citation.

(2) This Act (other than section six) shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

(3) The Pure Food Act, 1908, as amended by subsequent Acts, is in this Act referred to as the Principal Act.

(4) The Principal Act, as amended by this Act, may be cited as the Pure Food Act, 1908-1943.

5 **2.** The Principal Act is amended—

Amendment of Act No. 31, 1908.

Sec. 4. (Interpretation.)

(a) (i) by omitting from section four the definition of "Appliance" and by inserting in lieu thereof the following definition:—

"Appliance" includes the whole or any part of any utensil, machinery, instrument, apparatus or article used or intended for use in or for the making, manufacturing, keeping, preserving, preparing, handling, serving, or supplying of any food or drug, or which in the course of such use may come into contact with any food or drug; the term also includes any instrument or contrivance which is held out to any person or to the public as of use for curative purposes, or in relieving human suffering, or in overcoming or alleviating any physical defect.

(ii) by inserting in the same section at the end of the definition of "Drug" the words "and any substance or article for consumption or use by man which the Governor may by proclamation published in the Gazette declare to be a drug";

(iii) by inserting in the same section at the end of the definition of "Food," or "article of food" the words "and any substance or article used for consumption by man which the Governor may by proclamation published in the Gazette declare to be food or an article of food";

(iv) (a) by inserting in the same section in the definition of "To sell" after the words "deliver for sale" the words "or supply as part of a meal where consideration is to be received by the supplier for such supply either specifically or as part of a service contracted for";

(b) by inserting at the end of the same definition the words "or for purposes of analysis or other examination in pursuance of this Act";

(b) (i) by omitting from paragraph (f) of section five the words "or stained" and by inserting in lieu thereof the words "stained, prepared, or treated"; Sec. 5. (Adulteration or false description.)

(ii) by omitting from paragraph (m) of the same section the words "attached thereto" and by inserting in lieu thereof the words "or written matter attached thereto or enclosed therewith";

(iii) by inserting in the same paragraph after the words "contained therein" the words "or its physiological, curative, or therapeutic effect."

3. The Principal Act is further amended— Further amendment of Act No. 31, 1908.

(a) by inserting next after section ten the following new section:— New sec. 10A.

10A. No person shall in or from New South Wales tender or despatch or offer to tender or despatch for or on sale any food, drug, or article which is adulterated or falsely described, or which is packed or enclosed for sale or labelled, branded or marked in any manner contrary to or not in compliance with any provision of this Act, whether the actual sale shall be effected or is to become effective in New South Wales or elsewhere: Tender or despatch of food, etc., adulterated or falsely described. cf. 5 Geo. VI, No. 8 (Q'ld), s. 3.

Provided

Provided that if the actual sale was effective or is to be effective elsewhere than in New South Wales it shall be a defence to a charge of an offence against this section to prove that the sale was legally authorised under the laws in force where it was effected or to become effective.

(b) by omitting from subsection three of section twelve the word "defective" wherever occurring and by inserting in lieu thereof the word "different"; Sec. 12. (Selling goods not of nature demanded—defence.)

(c) (i) by inserting in subsection one of section thirteen after the words "sound condition" the words "and shall comply with the prescribed standards"; Sec. 13. (Sale of mixture.)

(ii) by inserting at the end of the same section the following new subsection:—

(3) No person shall sell any food or drug which is a mixture in respect of which a standard has been prescribed under this Act unless the mixture is in accordance with such standard.

(d) (i) by inserting in subsection one of section fourteen and in the short heading to that section after the word "food" wherever occurring the words "or drug"; Sec. 14. (Packages to be labelled.)

(ii) by inserting in subsection three of the same section after the word "food" the words "or drugs";

(e) (i) by omitting from subsection one of section seventeen the words "which by reason of its inactivity or inefficiency"; Sec. 17. (Prohibition of sale of injurious drugs, etc.)

(ii) by omitting from the same subsection the words "of cure";

(f) by inserting next after section nineteen the following new section:— New sec. 19A.

19A. (1) The board may by notification in the Gazette prohibit the packing for sale of any disinfectant or poisonous substance in any container which bears upon it any brand, mark or statement which may be capable of misleading Packing of disinfectant or poisonous substance.

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a purchaser into the belief that the contents of such container are for the purpose of human consumption.

(2) No person shall sell or pack for sale any disinfectant or poisonous substance in respect of which a notification under subsection one of this section is in force in any container bearing any such brand, mark or statement.

(g) by inserting in section twenty after the words "in private" the words and figures "Division 7 of Part III of the District Courts Act, 1912-1936, shall apply, mutatis mutandis, to any such appeal. Sec. 20. (Appeal.)

The judge may make such order for the payment of the costs and charges of and incidental to the appeal as to him seems just.

Such costs and charges shall be taxed by such officer as the judge directs and may be recovered in like manner as any debt adjudged by the judge of a district court to be paid can be recovered."

(h) (i) by omitting from subsection one of section twenty-one the words "the milk of" and by inserting in lieu thereof the words "milk or any product thereof from"; Sec. 21. (Milk of infected cow.)

(ii) by inserting in subsection two of the same section after the words "sells milk" the words "or any product thereof";

(iii) by omitting from the same subsection the words "the milk of" and by inserting in lieu thereof the words "the milk or any product thereof from";

(iv) by inserting after the same subsection the following new subsection:—

(2A) A person who sells milk shall not knowingly allow any diseased cattle to be in his milking herd or on his dairy premises as defined in the Dairies Supervision Act, 1901, as amended by subsequent Acts.

4. The Principal Act is further amended— Further amendment of Act No. 31, 1908.

(a) (i) by inserting at the end of subsection six of section twenty-two the words "and why he should not be ordered to pay the expenses incurred by the officer in the examination, seizure, and destruction of the article, package, or vessel"; Sec. 22. (Entry and inspection.)

(ii) by inserting in subsection seven of the same section after the words "shall be destroyed" the words "The said magistrate or justices may further order that such owner or person shall pay the reasonable expenses incurred by the officer in the examination, seizure, and destruction of the article, package, or vessel";

(iii) by inserting in subsection nine of the same section after the words "licensed house" the word "boarding-house";

(b) by omitting from subsection two of section twenty-four the words "and shall retain one of the said parts for future comparison, and submit the third part to an analyst," and by inserting in lieu thereof the words "and submit one of the said parts to an analyst, and shall retain the third part for future comparison and for such examination or analysis as a magistrate may direct." Sec. 24 (2). (Samples.)

5. The Principal Act is further amended— Further amendment of Act No. 31, 1908.

(a) by inserting in paragraph (a) of section thirty-eight after the word "Act" the words "or upon demand by an officer or authorised person to state his name and place of abode refuses so to do or states a false name or place of abode"; Sec. 38 (a). (Obstruction to officers.)

(b) by inserting next after section thirty-nine the following new section:— New sec. 39A.

39A. (1) Where any person engaged in the sale of any food, drug or article has been convicted of an offence against this Act the court may, Power to prohibit carrying on of business by persons convicted of offence against Act.

may, on such conviction or at any time thereafter, upon application made as in this section provided, by order, prohibit such person from engaging in the sale of any food, drug or article for such period as the court may determine.

(2) An application for an order under this section shall be made by an officer authorised in that behalf by the Minister.

An authority to make such application, purporting to have been signed by the Minister, shall be evidence of such authority without proof of the Minister's signature.

(3) Any person who engages in the sale of any food, drug or article in contravention of an order made under this section shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding one hundred pounds.

(c) by inserting in section forty-four after the word "analysis" the words "or examination"; Sec. 44. (Evidence.)

(d) by omitting from subsection three of section fifty-one the words "ten pounds" and by inserting in lieu thereof the words "twenty pounds"; Sec. 51 (3). (Refusing information.)

(e) by inserting in section fifty-two after the word "food" wherever occurring the words "or drug"; Sec. 52. (Suggestive names.)

(f) (i) by omitting from subsection one of section fifty-four the words "articles of food, or to packages containing such articles," and by inserting in lieu thereof the words "any food or drug, or to packages containing any food or drug"; Sec. 54. (Regulations.)

(ii) by inserting in the same subsection after the words "payment of analysts" the following new paragraph:—

prohibiting the publication, use or exhibition in any manner whatsoever, of any printed or pictorial matter with respect to any food or drug which is false or misleading or likely to mislead;

(iii)

(iii) by inserting at the end of the same subsection the following new paragraphs:—

prescribing requirements to be observed as to the situation and construction of premises used for the manufacture, preparation, storage or packing of any food, drug or article, and securing the sanitation of such premises, and the provision of satisfactory facilities for protecting such food or drug from contamination;

prohibiting the placing in food for sale or in packages of such food, of any toy, coin or other thing, which, if swallowed or taken into the mouth, might be harmful or injurious to the consumer.

6. (1) The Principal Act is further amended—

Further amendment of Act No. 31, 1908.

(a) by omitting section forty-seven and by inserting in lieu thereof the following section:—

Subst. sec. 47.

Guarantee, when a defence.

47. (1) Where any person is prosecuted under this Act for the sale of any food, or drug, or article which is adulterated or falsely described, or is mixed, coloured, composed, or constituted in contravention of any provision of this Act, he shall be entitled to be discharged from such prosecution upon proving—

(a) that he has received from the person from whom he purchased such food, or drug, or article, or his duly authorised agent, a guarantee in writing that the same is not adulterated or falsely described, or mixed, coloured, composed, or constituted as aforesaid; and

(b) that he had no reason to believe that the same was adulterated or falsely described, or mixed, coloured, composed, or constituted as aforesaid; and

(c)

(c) that he sold it in the same state as when he purchased it,

subject, however, to the following conditions:—

(i) The person giving the guarantee must be resident in New South Wales, or, if a company, must have a registered office in New South Wales, or, if a firm, must have a place of business in New South Wales.

(ii) The guarantee must state the name and the place of business of the guarantor, and the name under which he trades.

(iii) A guarantee may be general or specific.

(iv) A general guarantee shall apply to the sale of the description of goods or classes of goods named therein.

(v) A specific guarantee shall apply to the sale of specific goods and shall refer to a sale note, bill of sale, invoice, bill of lading, or other document describing the goods and the weight, measure, and number of the same.

(vi) A guarantee, general or specific, shall not be available as a defence unless the defendant has, within seven days after service of the summons, sent to the informant a copy of such guarantee with a written notice stating that he intends to rely on the same as a defence, and specifying the name and place of business of the person giving the guarantee, and the name under which he trades, and has also sent a like notice of his intention to the person giving the guarantee.

The person by whom any guarantee is alleged to have been given under this section shall be entitled to offer evidence at the hearing, and the

the court may, if it thinks fit, adjourn the hearing to enable him to do so.

The form of any guarantee under this section may be prescribed.

Penalty on guarantor.

(2) Any person who gives any such guarantee which is false shall, in addition to any penalty for the sale of any food, or drug, or article in contravention of this Act, be guilty of an offence against this Act, unless he proves that when he gave the guarantee he had reasonable grounds for believing and did in fact believe that the statements or descriptions contained therein were true.

A prosecution of any person for an offence against this Act by reason of giving a false guarantee may be commenced at any time after the giving of such guarantee notwithstanding any limit of time prescribed by this or any other Act for instituting prosecutions.

Proceedings for such penalty.

(3) Proceedings under subsection two of this section against the person who has given the guarantee may be taken before a court having jurisdiction in the place where the food, or drug, or article was sold, or before a court having jurisdiction in the place where the guarantee was given.

Existing guarantees.

(4) No person shall, after a date to be appointed by the Governor and notified by proclamation published in the Gazette, place on any package of goods sold by him any serial number allotted to a guarantee in pursuance of paragraph (d) of subsection one of the section which this section replaces, or the words "Guaranteed under the Pure Food Act, 1908", or words of similar import, or any words or expression signifying, suggesting, or implying that the contents of any such package are guaranteed under the provisions of this Act or the regulations, or any other law.

(b) by inserting in section fifty after the words "falsely described" where secondly occurring the words "or was mixed, coloured, composed or constituted in contravention of any provision of this Act".

Sec. 50. (Prosecution of employee for selling adulterated article.)

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(2) Subsection one of this section shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette. The day so appointed shall be a day subsequent to the day appointed pursuant to subsection two of section one of this Act.

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Sydney: Alfred Henry Pettifer, Acting Government Printer—1943.

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