

ARTICLE 7. PURE FOOD AND DRUGS

- § 1369. [1] Manufacture or sale of adulterated food or drugs prohibited; definition of terms.
1370. [2] What constitutes adulteration.
1371. [3] Inspection and analysis of foods and drugs.
1372. [4] Penalty for adulterating, or selling adulterated food or drugs.
1373. [5] Regulations by public health council as to milk and milk products.
1374. [6] Killing young calves for sale.
- 1374(1). [7] Selling, etc., of meats containing preservatives; penalties.
- 1374(2). [8] Artificial coloring of meat and meat products.
- 1374(3). [9] Enforcement.
- 1374(4). [10] Adulterated articles to be forfeited and destroyed.
- 1374(5). [11] Pending actions.

§ 1369. [1] **Manufacture or Sale of Adulterated Food or Drugs Prohibited; Definition of Terms.**—No person shall, within this State, manufacture for sale, offer for sale, or sell, any drug or article of food which is adulterated within the meaning of this article. The term "drug," as used herein, shall include all medicines for internal or external use, antiseptics, disinfectants and cosmetics. The term "food" as used herein, shall include all articles used for food, drink, confectionery or condiment by man, whether simple, mixed or compound.

§ 1370. [2] **What Constitutes Adulteration.**—Any drug or article of food shall be deemed to be adulterated within the meaning of this article:

(a) In the case of drugs: (1) If, when sold under or by a name recognized in the United States Pharmacopoeia official at that time, it differs from the standard of strength, quality or purity laid down therein; (2) if, when sold under or by a name not recognized in the United States Pharmacopoeia official at the time, but which is found in some other pharmacopoeia or other standard work of materia medica, it differs materially from the standard of strength, quality or purity laid down in such work; (3) if its strength, quality or purity falls below the professed standard under which it is sold; (4) if it be an imitation of, or offered for sale under the name of, another article; (5) if the contents of the package as originally put up shall have been removed in whole or in part, and other contents shall have been placed in such package, or if the package fails to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaïne, chloroform, cannabis indica, chloral hydrate, acetanilide or any derivative or preparation of any such substance contained therein: Provided, that nothing in this paragraph shall be construed to apply to the dispensing of prescriptions written by regular licensed practicing physicians, veterinary surgeons or

dentists, and kept on file by the dispensing pharmacist, nor to such drugs as are recognized in the United States Pharmacopoeia and the National Formulary which are sold under the name by which they are recognized;

(b) In the case of food, drink, confectionery or condiment: (1) If any substance or substances have been mixed with it, so as to lower or depreciate or injuriously affect its quality, strength or purity; (2) if any inferior or cheaper substance or substances have been substituted wholly or in part for it; (3) if any valuable or necessary constituent or ingredient has been wholly or in part abstracted from it; (4) if it is an imitation of, or is sold under the name of, another article; (5) if it consists wholly or in part of diseased, decomposed, putrid, infected, tainted or rotten animal or vegetable substance, whether manufactured or not, or, in the case of milk, if it is the product of a diseased animal; (6) if it is colored, coated, polished or powdered, whereby damage or inferiority is concealed, or if by any means it is made to appear better or of greater value than it really is; (7) if it contains any added substance or ingredients which are poisonous or injurious to the health; (8) if it is sold under a coined name and does not contain some ingredient suggested by such name or contains only an inconsiderable quantity; (9) if the package containing it or any label thereon shall bear any statement regarding it or its composition which shall be false or misleading in any particular: Provided, that the provisions of this article shall not apply to mixtures or compounds recognized as ordinary articles or ingredients of articles of food or drink, if each and every package sold or offered for sale is distinctly labeled in words of the English language as mixtures or compounds, with the name and per cent of each ingredient therein; the word "compound" or "mixture" shall be printed in type not smaller in either height or width than one-half the largest type upon any label on the package, and the formula shall be printed in letters not smaller in either height or width than one-fourth the largest type upon any label on the package, and said compound or mixture must not contain any ingredient injurious to the health.

§ 1371. [3] **Inspection and Analysis of Foods and Drugs.**—Whenever the state board of health, the West Virginia board of pharmacy, or any county or municipal health officer has reason to believe that any food or drug manufactured for sale, offered for sale, or sold, within this State, is adulterated, such board of health or board of pharmacy, by its authorized agents, or such county or municipal health officer, shall have the power, and it shall be his duty, to enter, during the usual hours of business, into any creamery, factory, store, sales room, drug store, laboratory, or other place where he has reason to believe such food or drug is manufactured, prepared, sold, or offered for sale, within the county or municipality, as the same may be, and to open any case, tub, jar, bottle, or package containing, or supposed to contain, any such food or drug, and take a specimen thereof for examination and analysis. If less than a whole package is taken, the specimen shall be sealed and properly prepared for shipment to the person who shall make the analysis hereinafter provided for. No whole or less than a whole package taken and prepared for shipment shall be opened before it has been received by the analyst aforesaid.

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It shall be the duty of a qualified chemist of the state health department to test and analyze any such specimen, to record the results of his analysis among the records of the department, and to certify such findings to the state board of health, the West Virginia board of pharmacy, or to the county or municipal health officers, as the case may be. If the analysis indicates that the said food or drug is adulterated, a certificate of such result, sworn to by the person making the analysis, who shall also state in his certificate the reasonable cost and expense of such analysis, shall be prima facie evidence of such adulteration in any prosecution under this article.

§ 1372. [4] **Penalty for Adulterating, or Selling Adulterated Food or Drugs.**—Whoever, by himself or his agents, knowingly adulterates or causes to be adulterated any article of food or drug, or knowingly manufactures for sale, offers for sale, or sells, within this State, any article of food or drug which is adulterated within the meaning of this article, without making the same known to the buyer, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not exceeding five hundred dollars, or confined in jail not more than one year, or both, in the discretion of the court; and in addition to the penalties hereinbefore provided, he shall be adjudged to pay the cost and expense of analyzing such adulterated food or drug, as set forth in the certificate of the person making the analysis, not exceeding twenty-five dollars in any one case, which shall be included in the costs of such prosecution and taxed in favor of the state department of health or the West Virginia board of pharmacy, as the case may be; and if he be a registered pharmacist or assistant pharmacist, his name shall be stricken from the register. The adulterated article shall be forfeited and destroyed.

§ 1373. [5] **Regulations by Public Health Council as to Milk and Milk Products.**—The public health council shall adopt regulations to provide clean and safe milk and fresh milk products, and, when promulgated, these regulations shall be the minimum requirements to be enforced by local health authorities throughout the State. A copy of such regulations shall be furnished the commissioner of agriculture for his guidance in performing any duties with relation to milk and milk products imposed on him by law.

§ 1374. [6] **Killing Young Calves for Sale.**—Whoever, by himself or his agents, kills, for the purpose of sale, any calf less than four weeks old, or sells, or has in his possession with the intent to sell, the meat of any calf which he knows to have been killed when less than four weeks old, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five nor more than fifteen dollars, or imprisoned not more than sixty days, or both.

§1374(1). [7] **Selling, etc., of Meats Containing Preservatives; Penalties.**—If any person shall sell, ship, consign, offer for sale, expose for sale, or have in possession with intent to sell, as fresh, any meat, poultry, game, or shell fish which contains any substance, article or ingredient possessing a preservative character or action, or which contains any coal-tar dye, or any other substance or ingredient possessing a coloring character or action, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than one hundred dollars and all costs, or shall

be imprisoned in the county jail not less than sixty days nor more than ninety days, or both, at the discretion of the court. Upon a second conviction he shall be fined not less than two hundred dollars nor more than four hundred dollars, or be imprisoned not less than sixty days nor more than four months, or both, at the discretion of the court: Provided, that nothing in this section shall be construed to prohibit the use of ice as a preservative, or the use of refrigeration.

§ 1374(2). [8] **Artificial Coloring of Meat and Meat Products.**—All meats, meat products and meat food products, when manufactured, sold or exposed for sale, for human consumption in this State, shall not be artificially colored with any dye, chemical or other substance, except natural wood smoke, sugar, salt, pepper, saltpeter and borax.

§ 1374(3). [9] **Enforcement.**—The state department of health shall be charged with the enforcement of all the provisions of this act [§§1374(1)-1374(5)] and all penalties which may be recovered shall be paid to the treasurer of the State of West Virginia general fund.

§ 1374(4). [10] **Adulterated Articles to be Forfeited and Destroyed.**—All articles adulterated in violation of the provisions of this act [§§ 1374(1)-1374(5)] shall be forfeited by the owner and destroyed by the state department of health.

§ 1374(5). [11] **Pending Actions.**—The repeal of inconsistent acts shall in no way interfere with or prevent the prosecution to final termination of any action or prosecution now pending, or which may hereafter be commenced for any violation of said act which has already been committed.

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