

force relating to the boards of health of the cities of New York, Brooklyn, Buffalo, Albany and Yonkers, nor the sanitary codes duly adopted and now in force in such cities.

Revised from L. 1885, ch. 270, § 3.

ARTICLE III.

ADULTERATIONS.

SECTION 40. Definitions.

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§ 40. **Definitions.**— The term, food, when used herein, shall include every article of food and every beverage used by man and all confectionery; the term, drug, when so used shall include all medicines for external and internal use.

Revised from L. 1881, ch. 407, § 2, and L. 1886, ch. 477, § 1.

§ 41. **Adulterations.**— No person shall, within the state, manufacture, produce, compound, brew, distill, have, sell or offer for sale any adulterated food or drug. An article shall be deemed to be adulterated within the meaning of this act:

A. In the case of drugs:

1. If when sold under or by a name recognized in the United States pharmacopeia, 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 pharmacopeia, but which is found in some other pharmacopeia or other standard work on materia medica, it differs materially from the standard of strength, quality or purity laid down in such work.

3. If its strength or purity fall below the professed standard under which it is sold.

B. In the case of food:

1. If any substance or substances has or have been mixed with it so as to reduce or lower or injuriously affect its quality or strength.

2. If any inferior or cheaper substance or substances have been substituted wholly or in part for the article.

3. If any valuable constituent of the article has been wholly or in part abstracted.

4. If it be an imitation or be sold under the name of another article.

5. If it consists wholly or in part of diseased or decomposed or putrid or rotten animal or vegetable substance, whether manufactured or not, or in the case of milk, if it is the produce of a diseased animal.

6. If it be colored or coated, or polished, or powdered, whereby damage is concealed, or it is made to appear better than it really is, or of greater value.

7. If it contain any added poisonous ingredient, or any ingredient which may render such article injurious

to the health of the person consuming it. Provided that an article of food which does not contain any ingredient injurious to health, shall not be deemed to have been adulterated, in the case of mixtures or compounds which may be now, or from time to time hereafter, known as articles of food under their own distinctive names, or which shall be labeled so as to plainly indicate that they are mixtures, combinations, compounds or blends, and not included in definition fourth of this section.

C. In the case of spirituous, fermented and malt liquors, if it contain any substance or ingredient not normal or healthful to exist in spirituous, fermented or malt liquors, or which may be deleterious or detrimental to health when such liquors are used as a beverage. In the case of ale or beer, if it contains any substitute for hops, or pure extract of hops, or if any such substitute is used in the manufacture thereof.

D. In the case of confectionery, if it contains terra alba, barytes, talc or other mineral substance or poisonous colors or flavors, or other ingredients deleterious or detrimental to health. If the standard of any article of food or any drug is not established in a national pharmacopeia, the state board of health shall, from time to time, fix the limit for variability permissible therein. The state board of health may, from time to time, with the approval of the governor, declare what articles or preparations shall be exempt from the provisions of this article, and publish a list of such articles which shall

thereafter be so exempt. Every person violating any provision of this section shall forfeit to the people of the state the sum of one hundred dollars for every such violation.

Revised from L. 1881, ch. 407, §§ 1, 3, 4; L. 1885, ch. 176, §§ 1, 4; L. 1886, ch. 467, §§ 1, 2, and L. 1886, ch. 477, § 2.

The mere coloring of coffee does not make its sale illegal under § 41 of the Public Health Law, nor is the intent in coloring it material, but it is within the prohibition of the act if the coloring conceals any damage to the article or makes it appear better than it really is, or of greater value. *Crossman v. Lurman*, 33 App. Div. 422; 54 N. Y. Supp. (88 St. Rep.) 72.

The offense under subdivision 5 is made out by proof of the sale of flesh of an animal which the seller knew to have a disease, the nature and tendency of which are to taint and affect the flesh of the animal in any degree, although the taint was imperceptible to the senses, and the eating of the flesh produced no apparent injury. *Goodrich v. People*, 19 N. Y. 574. See also *People v. Parker*, 38 N. Y. 85.

PENAL CODE PROVISIONS.

§ 408. **Disposing of tainted food.**—A person who, with intention that the same may be used as food, drink, or medicine, sells, or offers or exposes for sale, any article whatever, which to his knowledge, is tainted or spoiled, or for any cause unfit to be used as such food, drink, or medicine, is guilty of a misdemeanor.

§ 430. **Articles in imitation of food.**—A person, who sells or manufactures, exposes or offers for sale as an article of food, any substance in imitation thereof, without disclosing the imitation by a suitable and plainly visible mark or brand, is guilty of a misdemeanor.

See also Penal Code, §§ 407, 407a, 438, 438b, 439.

§ 42. **Duties of state board of health in respect to adulterations.**—The state board of health shall take cognizance of the interests of the public health as affected by the sale or use of food and drugs and the adulterations thereof, and make all necessary inquiries and investigations relating thereto. It shall appoint such public

analysts, chemists, and inspectors as it may deem necessary for that purpose, and revoke any such appointment whenever it shall deem the person appointed incompetent, or his continuance in the service for any reason undesirable. It shall, from time to time, adopt such measures and make such regulations and declarations, in addition to the provisions of this article, as may seem necessary to enforce or facilitate the enforcement of this article, or for the purpose of making an examination or analysis of any food or drug sold or exposed for sale in the state, and all such regulations and declarations made in any year shall be filed in the office of the secretary of state and published in the session laws first published after the expiration of thirty days from such filing.

Revised from L. 1881, ch. 407, §§ 5, 9; L. 1885, ch. 176, § 5, and L. 1886, ch. 467, § 4.

See L. 1901, ch. 29, § 2 (ch. 11, *post*), for meaning of term "State Board of Health."

§ 43. Analysis of spirituous, fermented or malt liquors.—

The state board of health shall at least once in each calendar year cause samples to be procured in the public market or otherwise of the spirituous, fermented or malt liquors, distilled, brewed, manufactured, sold or offered for sale in each brewery and distillery located in this state. Such samples shall be kept in vessels in condition to obtain a proper test and analysis thereof. Such vessels shall be properly labeled and numbered by the secretary of such board, who shall prepare and keep an accurate list of the names of the distillers, brewers and vendors of the liquors from which the samples were

taken, and opposite each name shall appear the number which is written or printed on the label attached to the vessel containing the sample. Such lists, numbers and labels shall be exclusively for the information of such board, and shall not be disclosed or published unless upon discovery of some deleterious substance therein prior to the completion of the analysis or required in evidence in court. When listed and numbered, every such sample shall be delivered to an analyst, chemist, or officer of the board, and shall be designated and known to him only by its number, and by no other mark or designation. A test or analysis of such sample shall be made by such analyst, chemist or officer, which will determine the ingredients or component parts thereof. The result of such test or analysis shall be immediately reported by the person making the same to the secretary of such board, setting forth explicitly the nature of any deleterious substance, compound or adulteration found therein which may be detrimental to public health, and the number of samples in which it was found. Any brewer, distiller, or vendor in whose samples any such substance, compound or adulteration is found upon any such test or analysis, shall be deemed to have violated the provisions of this article, prohibiting the manufacturing, having, selling or offering for sale adulterated food.

Revised from L. 1881, ch. 401, § 5, and L. 1885, ch. 176, § 5.

§ 44. **Samples to be furnished.**— Every person selling, or offering, or exposing for sale or manufacturing or

producing any article of food, or any drug, shall upon tender of the value thereof, furnish any analyst, chemist, officer or agent of the state board of health or of any local board of health, with a sample of any such article or drug, sufficient for the purpose of analysis or test. For every refusal to furnish the same, the person so refusing shall forfeit to the people of the state the sum of one hundred dollars.

Revised from L. 1881, ch. 401, § 6, and L. 1885, ch. 176, § 6.

§ 45. **Seizure of milk.**—When a health officer or other official shall seize or destroy or cause to be seized or destroyed any milk, he shall take a sample of such milk in the presence of at least one witness, and shall, in the presence of such witness, seal such sample and tender it to the vendor or person in charge of such milk, and if accepted, shall also deliver therewith, a statement in writing of the date and cause of such seizure or destruction. Any health officer or other official violating the provisions of this section, shall be liable to a penalty of fifty dollars, to be recovered by the person aggrieved.

Revised from L. 1889, ch. 397, §§ 1, 2.

For punishment for selling skimmed milk, see Penal Code, § 439.

§ 46. **Adulteration of wines.**—All wines containing alcohol, except such as shall be produced by the natural fermentation of pure undried fruit juices or compounded with distilled spirits, whether denominated as wines or by any other name, which may be used as a beverage or compounded with other liquors intended for such

use, and all compounds of the same with pure wine, and all preserved fruit juices compounded with substances not produced from undried fruit in the nature of or intended for use as a beverage, or for use in the fermentation or preparation of liquors intended for such use, and all wines, imitations of wines or other beverages produced from fruit, which shall contain any alum, baryta salts, caustic lime, carbonate of soda, carbonate of potash, carbonic acid, salts of lead, glycerine, salic acid, or any other antiseptic, coloring matter, not produced from undried fruit, artificial flavoring, essence of ether or any other foreign substance injurious to health, shall be known as or deemed to be adulterated wine, and shall not be sold, offered for sale or manufactured with intent to sell within this state; and all such wine and every such beverage shall be deemed a public nuisance and forfeited to the state and shall be summarily seized and destroyed by any health officer within whose jurisdiction it shall be found, and the reasonable expense of such seizure and destruction shall be a county charge.

Revised from L. 1897, ch. 603, § 1.

§ 47. **Pure wine defined.**— For the purpose of this article, pure wine shall be deemed to mean the fermented juice of undried grapes or other undried fruits, but the addition of pure sugar to perfect the wine or of pure distilled spirits to preserve it, not to exceed eighty per cent of its volume, or the use of things necessary to clarify and fine the wine not injurious to health shall not be construed as adulteration, if such pure wine shall

contain at least seventy-five per cent of pure grape or other undried fruit juice.

Revised from L. 1897, ch. 603, § 2.

§ 48. **Half wine and made wine defined; packages how stamped or labeled.**— For the purpose of this article, any wine which contains less than seventy-five and more than fifty per cent of pure grape or other undried fruit juice and is otherwise pure shall be known as half wine, and upon each and every package of such wine manufactured with the intent to sell, or sold or offered for sale by any person within this state, if containing more than three gallons, there shall be stamped on both ends of the package containing the same in black printed letters, at least one inch in height and of proper proportion in width, the words “half wine;” and if containing more than one quart and not more than three gallons, there shall be stamped on each package in plain printed black letters, at least one-half inch high and of proper proportion as to width, the words “half wine;” and if in a package or bottle of one quart or less, there shall be placed a label securely pasted thereon, having the words “half wine” plainly printed in black letters at least one-quarter of an inch high and of proper proportion as to width. If any number of small packages is inclosed in a larger package, as a box, barrel, case or basket, such outside package shall have thereon the stamp “half wine” in letters of a size according to the size of such outer package. Every person who shall sell, offer for sale, or manufacture with the intent to

sell, within the state any wine containing less than fifty per centum of pure grape or other undried fruit juice and otherwise pure, shall cause all the packages containing the same to be stamped, marked and labeled with the words "made wine" in the same manner as "half wine" is required in this section to be stamped, marked and labeled, and all such wine shall be known and sold as "made wine."

Revised from L. 1887, ch. 603, § 3.

For penalty for selling "half wine," not labeled, see Penal Code, § 438a.

§ 49. Penalties.—Every person who manufactures with intent to sell, sells or offers for sale within the state, any wine of a kind or character, the manufacture, sale or offering for sale of which is prohibited by this article, or which is not stamped, marked or labeled as required by this article, shall forfeit to the county wherein such manufacture, sale or offering for sale takes place, the sum of one-half dollar for each gallon thereof so sold or manufactured with the intent to sell. The provisions of the three preceding sections of this article shall not apply to medicated wines which are put up and sold for medical purposes only.

Revised from L. 1887, ch. 603, §§ 4, 5.

§ 50. Report to district-attorney.—Upon discovering any violations of the provisions of the penal code relating to the adulteration of foods and drugs, the state board of health shall immediately communicate the facts

to the district attorney of the county where the violation occurred, who shall thereupon forthwith commence proceedings for the indictment and trial of the person charged with such violation. Nothing in this article shall be construed to in any way repeal or affect any of the provisions of chapter 183 of the laws of 1855, or the acts amendatory thereof or supplemental thereto, or of chapter 515 of the laws of 1889, nor to prohibit the coloring of butter made from milk, the product of the dairy or the cream from the same with coloring matter which is not injurious to health.

Revised from L. 1881, ch. 407, § 7, and L. 1885, ch. 176, § 7.

ARTICLE IV.*

TUBERCULOSIS AND GLANDERS.

SECTION 60. *Repealed by ch. 321 of 1901.*

61. *Repealed by ch. 321 of 1901.*

62. *Amended by ch. 674 of 1894 and repealed by ch. 321 of 1901.*

63. *Amended by ch. 674 of 1894 and repealed by ch. 321 of 1901.*

64. *Repealed by ch. 321 of 1901.*

65. *Added by ch. 1013 of 1895 and repealed by ch. 321 of 1901.*

* The provisions of Article IV were substantially re-enacted by L. 1901, ch. 321, which amends the Agricultural Law.