(Reprint No. 1)

SOUTH AUSTRALIA

DRUGS ACT, 1908

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 1 July 1991.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

SUMMARY OF PROVISIONS

PART I

INTRODUCTORY

PART II

ADMINISTRATION

PART III

DESCRIPTION OF OFFENCES

PART IV

ANALYSIS

PART V

PENALTIES AND PROCEDURE

PART VI

REGULATIONS

DRUGS ACT, 1908

being

The Food and Drugs Act, 1908, No. 968 of 1908 [Assented to 23 December 1908][1]

as amended by

Food and Drugs Act Amendment Act, 1916, No. 1252 of 1916 [Assented to 16 November 1916]
Food and Drugs Act Further Amendment Act, 1919, No. 1395 of 1919 [Assented to 27 November 1919]
Food and Drugs Act Further Amendment Act, 1922, No. 1509 of 1922 [Assented to 25 October 1922]
Food and Drugs Act Further Amendment Act, 1924, No. 1628 of 1924 [Assented to 18 December 1924]
Food and Drugs Act Amendment Act, 1926, No. 1764 of 1926 [Assented to 16 December 1926]
Food and Drugs Act Amendment Act, 1934, No. 2195 of 1934 [Assented to 29 November 1934]
Statute Law Revision Act, 1935, No. 2246 of 1935 [Assented to 19 December 1935]
Food and Drugs Act Amendment Act, 1939, No. 8 of 1939 [Assented to 5 October 1939]
Food and Drugs Act Amendment Act, 1943, No. 21 of 1943 [Assented to 16 December 1943]
Food and Drugs Act Amendment Act, 1949, No. 67 of 1949 [Assented to 8 December 1949]
Food and Drugs Act Amendment Act, 1950, No. 10 of 1950 [Assented to 19 October 1950]
Food and Drugs Act Amendment Act, 1953, No. 13 of 1953 [Assented to 22 October 1953]
Food and Drugs Act Amendment Act, 1954, No. 13 of 1954 [Assented to 21 October 1954]
Food and Drugs Act Amendment Act, 1962, No. 12 of 1962 [Assented to 25 October 1962]
Statutes Amendment (Metropolitan Milk Supply, Food and Drugs and Health) Act, 1967, No. 70 of 1967 [Assented to 16 November 1967][2]
Food and Drugs Act Amendment Act, 1972, No. 151 of 1972 [Assented to 7 December 1972][3]
Food and Drugs Act Amendment Act, 1976, No. 1 of 1976 [Assented to 12 February 1976][4]
Food and Drugs Act Amendment Act, 1976, No. 69 of 1976 [Assented to 2 December 1976][5]
Food and Drugs Act Amendment Act, 1981, No. 14 of 1981 [Assented to 19 March 1981]
Food Act, 1985, No. 49 of 1985 [Assented to 2 May 1985][6]
Statutes Amendment (Public and Environmental Health) Act, 1987, No. 37 of 1987 [Assented to 23 April 1987][7]

Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix.

An Act to consolidate and amend the law relating to drugs, and for other purposes.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

INTRODUCTORY

Short title

1. This Act may be cited as the *Drugs Act, 1908*.

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[1] Came into operation 1 June 1909: s. 3.
[2] Came into operation 1 January 1968: *Gaz.* 7 December 1967, p. 2445.
[3] Came into operation 25 January 1973: *Gaz.* 25 January 1973, p. 274.
[4] Came into operation 5 May 1977: *Gaz.* 5 May 1977, p. 1264.
[5] Came into operation 14 July 1977: *Gaz.* 14 July 1977, p. 74.
[6] Came into operation 3 February 1986: *Gaz.* 23 January 1986, p. 124.
[7] Came into operation (except ss. 4-11 and 13-45) 7 December 1989: *Gaz.* 7 December 1989, p. 1700; ss. 4-11, 13-31, 36-45 came into operation 1 July 1991: *Gaz.* 6 June 1991, p. 1776.

Parts

2. This Act is divided into parts, as follows:—

PART I—Introductory:
PART II—Administration:
PART III—Description of Offences:
PART IV—Analysis:
PART V—Penalties and Procedure:
PART VI—Regulations.

Commencement of Act

3. This Act shall commence on the first day of June, 1909.

Repeal

4. The following Acts are hereby repealed:—

The Act, No. 5 of 1862, intituled "An Act to regulate the Sale of certain Poisons":

The Sale of Food and Drugs Act, 1882:

The Food and Drugs Amendment Act, 1890:

The Food and Drugs Further Amendment Act, 1903.

Interpretation

5. In this Act, except where otherwise clearly intended—

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"adulterated drug" shall mean any drug which differs in composition, by reason either of the addition of foreign matter or of the abstraction of any matter, from the drug ordinarily known under the same name as that which the said drug is represented to be, or which differs from the standard (if any) of such drug fixed by regulation under this Act:

"analyst" shall mean an analyst appointed under this Act:

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"controlled therapeutic device" means a device which, pursuant to a proclamation in force under this Act, is for the time being a controlled therapeutic device:

"controlled therapeutic substance" means a drug which, pursuant to any proclamation in force under this Act, is for the time being a controlled therapeutic substance:

"court" shall mean a special magistrate, or two or more justices of the peace sitting to hear and determine any complaint for an offence against this Act:

"drug" means—

(a) any substance capable of being used for any one or more of the purposes mentioned below, namely—

(i) preventing, diagnosing, curing, or alleviating any disease, ailment, defect or injury in man or animals:

(ii) influencing, inhibiting or modifying a physiological process in man or animals:

(iii) testing susceptibility to a disease or ailment in man or animals:

(iv) surgical ligatures, sutures and dressings:

(b) any preservative, antiseptic, disinfectant, deodorant or narcotic;

(c) cosmetics;

(d) laundry and toilet soap intended for sale to the public by retail:

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"Government analyst" means the person for the time being holding the office of Government analyst under appointment by the Governor, or the person so appointed to perform the duties of the Government analyst for the time being:

"the Health Commission" means the *South Australian Health Commission*:

"health surveyor" means a person appointed under this Act to be a health surveyor and includes the Chief Health Surveyor:

"justice" shall mean a justice of the peace for the said State:

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"patent medicines" includes all proprietary and secret medicines and all infant and patent foods:

"person" includes any body of persons, whether corporate or unincorporate:

"poisons" means such articles as the Governor by proclamation published in the *Government Gazette* from time to time declares to be poisons within the meaning of this Act:

"premises" includes a motor vehicle, a mobile unit and any temporary structure:

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"this Act" includes any regulation made under this Act.

Construction of Act

5a. This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act, and so as not to exceed the legislative power of the State, to the intent that where any enactment of this Act would, but for this section, have been construed as being in excess of that power it shall, nevertheless, be a valid enactment to the extent to which it is not in excess of that power.

Declaration of poisons, and controlled therapeutic substances and devices

5b. (1) The Governor may by proclamation from time to time—

(aa) declare that any article specified in the proclamation is a poison, or a poison of a specified class, within the meaning of this Act;

(a) declare that any drug specified in the proclamation shall be a controlled therapeutic substance within the meaning of this Act:

(ab) declare that any device specified in the proclamation shall be a controlled therapeutic device within the meaning of this Act:

(b) vary or revoke any proclamation for the time being in force under this section.

(2) A proclamation made before the commencement of the *Food and Drugs Act Amendment Act, 1981*, that purported to declare an article to be a poison within the meaning of this Act, or a proclamation that purported to vary or revoke any such proclamation, shall for all purposes be deemed to have been validly made.

PART II

ADMINISTRATION

Health Commission to administer Act

6. It shall be the duty of the Health Commission to enforce and administer this Act, and for this purpose it shall have and exercise throughout the whole State all the powers and authorities herein conferred on it.

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Officers to be appointed under this Act

7. (1) The Governor, on the recommendation of the Health Commission, may appoint a Chief Health Surveyor and health surveyors, who shall act under the Health Commission.

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Appointment of analysts

9. (1) The Governor, on the recommendation of the Health Commission, may appoint persons possessing competent knowledge to be analysts, and may pay to them such remuneration and allowances for expenses as may be appropriated by Parliament for the purpose: Provided that no person shall be appointed an analyst who is directly or indirectly engaged or interested in the manufacture or sale of any drug.

(2) Notice shall be published in the *Government Gazette* whenever such appointment is made, stating the business address of the person appointed.

(3) Every analyst shall report quarterly to the Health Commission the number of articles analysed by him under this Act during the preceding three months, and shall specify the result of each analysis.

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Powers of Government analyst

11. The Government analyst shall have and exercise throughout the State all the powers and authorities of an analyst under this Act.

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Advisory committee

17. (1) The Governor shall appoint for the purpose of this Act an advisory committee, consisting of not more than nine members. Such committee shall consist of the persons for the time being holding the following offices, namely—

The chairman of the Health Commission, who shall preside;

The Professor of Chemistry in the University of Adelaide;

The Government analyst;

The officer of health for the City of Adelaide;

The Director of Agriculture;

and a person who is qualified, and has had experience, in microbiology, and three persons conversant with trade requirements.

(2) Such members, when appointed by the Governor, shall act for no longer period than three years from the date of their appointment, but may be re-appointed.

(3) If any of the persons holding the above-mentioned offices decline to act on the committee, the Governor may appoint any other person in his stead.

(4) Any member of the committee may be removed by the Governor.

(5) At all meetings of the committee the chairman shall have a vote, and, in the event of an equality of votes, a second or casting vote.

(6) Any five members of the committee shall constitute a quorum.

(7) The members of the committee, other than those employed in the public service, shall be paid attendance fees of such amount as may be prescribed by regulation.

PART III

DESCRIPTION OF OFFENCES

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Prohibition of the mixing of ingredients rendering drugs injurious

19. (1) No person shall, except for the purpose of compounding as hereinbefore described, mix, colour, stain or powder, or order or permit any other person to mix, colour, stain, or powder, any drug with any ingredient or material so as to render the drug injurious to health, or alter its potency, or conceal its inferior quality, with intent that the same may be sold in that state; and

(2) No person shall sell any such drug so mixed, coloured, stained, or powdered.

Penalty in each case not exceeding four hundred dollars.

Exemption in case of proof of absence of knowledge

20. No person shall be liable to be convicted under section 19 in respect of the sale of any drug, if he shows to the satisfaction of the court before which he is charged that he did not know of the drug sold by him being so mixed, coloured, stained, or powdered, and that he could not by analysis or other adequate test have obtained that knowledge.

Mixed articles for sale or in stock to be labelled

21. No person shall manufacture, expose for sale, or keep or store for the purpose of trade or commerce, any drug that is mixed with or adulterated with any foreign substance, or is not in accordance with the standards of this Act, unless the vessel, tin, bottle, package, or other receptacle containing the same has affixed to it a label distinctly and legibly written or printed as in section 24.

If the defendant satisfies the court that the drug which is the subject matter of the prosecution was contained in an unopened vessel, tin, bottle, package, or other receptacle and was purchased by him from any manufacturer, importer, or wholesale dealer in South Australia named by the defendant, and that the defendant had no reason to believe that such drug was mixed with or adulterated with any foreign substance, or was not in accordance with the standards prescribed by this Act, the complaint shall be dismissed.

Penalty, not exceeding one hundred dollars.

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

22. No person shall sell to the prejudice of the purchaser any drug which is not of the nature, substance, and quality of the article demanded by such purchaser, or any adulterated drug, and no person shall have in his possession, control, or disposition for sale any drug which is not of the nature, substance and quality which he represents it to be or which it purports to be, or any adulterated drug, under a penalty in either case of not less than twenty dollars and not exceeding two hundred dollars: Provided that an offence shall not be deemed to be committed under this section in the following cases, that is to say:—

(1) If the defendant shall prove that any matter or ingredient not injurious to health has been added to the drug because the same is required for the production or preparation thereof as an article of commerce in a state fit for carriage or consumption, and not fraudulently to increase the bulk, weight, or measure or alter the potency of the drug or conceal the inferior quality thereof:

(2) Where the drug is a proprietary medicine, or is the subject of a patent in force, and is supplied in the state required by the specification of the patent:

(3) Where the drug is compounded as in this Act mentioned:

(4) Where the drug is unavoidably mixed with some extraneous matter in the process of collection or preparation:

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It shall be no defence to any prosecution under this section to allege or show—

I. that the purchaser, having bought only for analysis, was not prejudiced by such sale:

II. that the drug in question, though defective in nature, substance, or quality, was not defective in all the three or in more than one of such respects.

And in any such prosecution it shall, until the contrary is proved, be presumed that any drug in the possession, control, or disposition of any person is in such person's possession, control, or disposition for sale.

Offences in connection with the sale of drugs

22a. (1) No person shall sell, expose for sale, or have in his possession for sale, any drug which is not wholly in accordance with any particulars concerning it which are on or attached to any bottle, box, or other container whatever in which the drug is contained at or immediately prior to the time of sale, or at the time of exposure for sale, or whilst in possession, for sale, as the case may be.

Penalty not exceeding two hundred dollars.

In this subsection the term "particulars" includes the name or other description or particulars of the person who manufactured, prepared, bottled, or packed a drug.

(2) Where any person (in this subsection called the "purchaser") demands any drug, specifying the commodity required by reference to the name of the person who manufactured, prepared, bottled, or packed it, or by reference to the brand of any manufacturer, no person shall sell to the purchaser any drug, the whole or any part of which is manufactured, prepared, bottled, or packed (as the case may be) by any person other than the person named by the purchaser, or the whole or any part of which is not manufactured by the person whose brand was named by the purchaser: Provided that it shall be a defence to a charge under this subsection to show that the defendant expressly informed the purchaser at the time of sale that the commodity or part thereof, as the case may be, was manufactured, prepared, bottled, or packed by some person other than the person named by the purchaser or whose brand was named by the purchaser.

Penalty not exceeding two hundred dollars.

(3) This section shall not be held to restrict the meaning of any other provision of this Act, nor any provision of the *Trade Marks Act, 1892*.

Provision for the sale of compounded drugs

23. No person shall sell any compounded drug which is not composed of ingredients in accordance with the demand of the purchaser.

Penalty not less than twenty dollars and not exceeding two hundred dollars.

Protection from offences by giving of label

24. Provided that no person shall be guilty of any such offence under sections 22 and 23 if at the time of delivering the drug he shall supply to the person receiving the same a notice, by a label distinctly and legibly written or printed on or with the drug, to the effect that the same is mixed, and stating the substances and quantities thereof in such mixture.

Such label shall not be deemed to be distinctly and legibly written or printed within the meaning of this section unless it is so written or printed that the notice of mixture given by the label is not obscured, either wholly or in part, by other matter on the label; nor shall a printed announcement on the wrapper be deemed a label within the meaning of this section.

No penalty where article according to Government standard

25. Nothing in this Act shall require the disclosure of any trade secret or formula for the making, preparing or compounding of any drug, a standard for which has been fixed under this Act: Provided that the drug is in accordance with such standards.

Despatch on sale of adulterated drugs

25a. No person shall in or from South Australia tender or despatch or offer to tender or despatch for or on sale any drug which is adulterated contrary to this Act or which is packed or enclosed for sale or labelled, branded or marked in any manner contrary to or not in compliance with this Act, whether the actual sale is effected or is to become effective in South Australia or elsewhere.

Penalty, not exceeding two hundred dollars.

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Sale of drugs by automatic machines

26a. (1) No person shall—

(a) install any automatic machine for the sale or supply of any drug or medicine;

(b) permit or suffer any such automatic machine to be installed;

(c) sell or supply any drug or medicine by means of any automatic machine; or

(d) permit or suffer any person to purchase or to be supplied with or otherwise obtain any drug or medicine by means of any automatic machine.

Penalty, not exceeding two hundred dollars.

(2) "Automatic machine" means any machine or mechanical device used or capable of being used for the purpose of selling or supplying goods without the personal manipulation or attention of the seller or supplier or his servant or agent at the time of the sale or supply.

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Employment of diseased persons in handling drugs

30a. (1) No person who is suffering from any infectious or loathsome disease, or who for any other reason is likely to contaminate any drug shall—

(a) handle any drug which is being sold or which is being offered, exposed, kept, stored, carried, delivered, or produced for sale; or

(b) be employed in connection with the sale or the offering, exposing, keeping, storing, carrying, delivering, or producing for sale of any drug.

Penalty, not exceeding one hundred dollars.

(2) If any health surveyor suspects that any person is committing a breach of subsection (1) the health surveyor may by notice in writing under his hand notify that person of his suspicion.

(3) No person who has received such a notice shall thereafter—

(a) handle any drug which is being sold or which is being offered, exposed, kept, stored, carried, delivered, or produced for sale:

(b) be employed in connection with the sale or the offering, exposing, keeping, storing, carrying, delivering, or producing for sale of any drug,

until he has produced to the health surveyor a certificate signed by a legally qualified medical practitioner that he is not suffering from any infectious, contagious, or loathsome disease, and is not for any other reason likely to contaminate any drug.

Penalty, not exceeding one hundred dollars.

(4) In this section—

"infectious disease" means a controlled notifiable disease under the *Public and Environmental Health Act, 1987*:

"loathsome disease" means a disease proclaimed by the Governor on the advice of the Health Commission as a loathsome disease.

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Power to inspect drugs prepared or offered for sale

34. Any health surveyor may at all reasonable times enter on any land or premises or public place, and—

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II. inspect and examine any drug exposed or offered for sale, or deposited for the purpose of sale or preparation for sale, or that has recently been sold, whether in tins or other closed packages or not.

Diseased or unsound drugs may be seized and destroyed

35. If, on such inspection and examination, it appears to the health surveyor that any drug is unsound or is unfit for human use or consumption, he may cause it to be seized and carried away in order that it may be dealt with in a summary manner, as follows, that is to say:—

I. If the health surveyor is satisfied that the drug is utterly unfit for human use or consumption, and should forthwith be destroyed in order to prevent offensiveness, illness or injury, he may, on the authority in writing of a justice, cause it to be destroyed accordingly:

II. In any other case the drug shall be kept to abide the order of a special magistrate or two justices in proceedings which shall be forthwith taken against the person in whose possession or on whose premises it was when seized:

III. If in such proceedings it appears to the court that the drug so seized is unsound or is unfit for human use or consumption, the court shall by order—

(a) condemn it and direct it to be destroyed or otherwise disposed of, so as to prevent it from being available for human use or consumption, at the expense in all things of the defendant; and also

(b) fix the expenses incurred in seizing and keeping the drug to abide the proceedings, and require the defendant to pay the same; and may also

(c) impose on the defendant a penalty not exceeding two hundred dollars:

IV. For all purposes of this section it shall, until the contrary is proved, be presumed that the drug was intended to be sold or prepared for sale for human consumption.

Search warrant may be granted by a justice

36. On complaint made on oath by any health surveyor or constable, any justice may grant a warrant to such officer to enter any building or part of a building in which such officer has reason for believing that there is kept or concealed any drug, which is intended for sale, and is unsound or is unfit for human use or consumption; and to search for, seize, and carry away any such drug in order to have the same dealt with by a special magistrate or two justices under this Act.

Any person who obstructs any such officer in the performance of his duty under such warrant shall, in addition to any other punishment to which he may be subject, be liable to a penalty not exceeding two hundred dollars.

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PART IV

ANALYSIS

Right of owner or purchaser of a drug to have it analysed

39. Any owner or purchaser of a drug, on payment of a fee according to a scale to be fixed by the Governor by proclamation, shall be entitled to have such article analysed and to receive from the analyst a certificate of the result of his analysis.

Officer or constable obtaining a sample of a drug in course of transit or during delivery to submit for analysis

40. (1) Any health surveyor may procure, without payment, at the place of delivery, or at any railway station or other place during transit, or upon the premises of or elsewhere in the possession of any person for the purpose of carriage, any reasonable quantity as a sample of any drug in course of delivery to the purchaser or consignee in pursuance of any contract or agreement for the sale to such purchaser or consignee of such drug; and such health surveyor may send or deliver the same to an analyst to be analysed; and after analysis proceedings shall be taken in like manner in all respects as if such health surveyor had purchased the same from the seller or consignor and as if the seller or consignor had sold the same to such health surveyor.

Penalty for refusing to give drugs in transit for analysis

(2) If the seller or consignor, or any person entrusted by him, or either of them for the time being, with the charge of such drug, shall refuse to allow any such officer to take the quantity which such officer shall require for the purpose of analysis, he shall be liable to a penalty not exceeding two hundred dollars.

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Inspection and sampling of drugs

41. (1) Any health surveyor, may at any time in the day time or at any time when work or business is being carried on therein, enter any manufactory, warehouse, store, building, or place where drugs are manufactured, exposed for sale, or kept or stored for the purpose of trade or commerce, and may require the owner or occupier, or the agent or servant of either of them, to show and permit the inspection of the vessels or other receptacles in which such drug is at the time kept, and all apparatus and utensils used in the preparation, sale, distribution or delivery of such drug, and may select, demand, and take, for the purpose of examination, or of analysis by an analyst, samples of such drugs on payment or tender of the fixed rate (if any) or the current market or a reasonable price therefor.

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

(2) If any such health surveyor shall apply to purchase any drug exposed or kept for sale, or on sale, on any premises or in any factory, warehouse, workshop, shop, or in any street or open place, or being carried for sale or delivery as may be selected by him, and shall tender not less than the fixed rate (if any) or the current market or a reasonable price for the quantity which he shall require for the purpose of analysis, not being more than shall be reasonably requisite, and the person exposing, keeping, or having the same for or on sale, or carrying the same for sale or delivery, shall refuse to sell the same to such health surveyor, such person shall be liable to a penalty not exceeding two hundred dollars: Provided that where any drug is exposed or kept for sale or on sale, or carried for sale or delivery in an unopened tin or packet, duly labelled, no person shall be required to sell less than the unopened tin or packet of such drug. In any prosecution under this section, if it be proved that the drug charged in the complaint was in the

possession of the defendant it shall be presumed that it was exposed or kept for sale, or was on sale, or was being carried for sale or delivery (as the case may be) unless the defendant prove to the contrary.

(3) If any rates have been fixed by regulation for the payment for samples of any drug it shall not be necessary for any health surveyor to pay or tender any higher price for such sample.

Provision for dealing with the sample when purchased

42. (1) Subject to subsection (4) of this section, the person purchasing any article under the provisions of section 39 or 41 with the intention of having the same analysed and taking proceedings shall, after the purchase shall have been completed, forthwith notify to the seller or his agent selling the article his intention to have the sample analysed, and shall divide the article into three parts, to be then and there separated, and each part to be marked and sealed, or fastened up in such a manner as its nature will permit, and shall, if required to do so, deliver one of the parts to the seller or his agent.

(2) He shall afterwards retain one of the said parts for future reference and send or deliver the third part to an analyst.

(3) The analyst shall with all convenient speed analyse the sample and give a certificate to the person sending or delivering it, wherein he shall specify the results of the analysis.

(4) If the division of any article into three parts as required by subsection (1) of this section—

(a) would so affect or impair the composition or quality of the article as to render the divided parts unsuitable for accurate analysis;

(b) would furnish parts insufficient for accurate analysis;

or

(c) would render the article unsuitable for analysis in accordance with any other provision of this Act,

such additional number of articles shall be purchased as may be prescribed and the total number of articles purchased shall be divided and dealt with in the prescribed manner.

Form of certificate

43. Every certificate of analysis under this Act shall be in the form set forth in the schedule hereto, or to the like effect.

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PART V

PENALTIES AND PROCEDURE

Obstruction of officer in discharge of his duties

45. Any person who wilfully obstructs or impedes any health surveyor in the execution of his duties under this Act, or by any gratuity, bribe, promise, or other inducement prevents, or attempts to prevent, the due execution by such health surveyor of his duty under this Act, shall be liable to a penalty not exceeding two hundred dollars.

Immunity of health surveyors

46. Nothing done *bona fide* by any health surveyor or other person acting in the proper and ordinary course of their duty or under the direction of the Health Commission will subject them or any of them personally to any action, liability, claim, or demand whatsoever.

Penalties for offences

47. (1) In this Act the penalty set forth at the foot or end of or elsewhere in a section indicates that any contravention of such section, whether by act or omission, shall be an offence, punishable, upon conviction, by the penalty so set forth.

(2) Where no minimum penalty is set forth for any offence against any provision of this Act the minimum penalty shall be one-tenth of the maximum penalty.

(3) Where a person guilty of an offence under this Act is liable to a penalty not exceeding two hundred dollars he shall be liable on a second conviction for a second offence to a penalty not exceeding four hundred dollars, and on any third or subsequent conviction to a penalty not exceeding one thousand dollars.

(4) Where, under any provision of this Act a person guilty of an offence is liable to a penalty which may extend to four hundred dollars or more as a maximum, and the offence, in the opinion of the court, was committed by the personal act, default, or culpable negligence of the person accused, that person shall be liable, if the court is of opinion that a fine will not meet the circumstances of the case, to imprisonment, with or without hard labour, for a period not exceeding six months.

On conviction for second offence power to publish name of offender

48. If any person convicted of an offence under this Act shall afterwards commit a like offence, it shall be lawful for the court before which the second conviction shall take place to cause the offender's name, place of abode, and offence, and the penalty imposed to be published at the expense of such offender in such newspapers or in such other manner as the court shall direct.

The expense of such publication shall be deemed part of the costs attending the conviction, and shall be recoverable in the same manner as costs are recoverable.

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Proceedings against offenders

50. When an analyst having analysed any article shall have given his certificate of the result, from which it may appear that an offence against any one of the provisions of this Act has been committed, any person may take proceedings for the recovery of the penalty herein imposed for such offence before a special magistrate or any two justices of the peace.

Recovery of costs of analysis

50a. The costs of any analysis that is conducted for the purposes of any proceedings under this Act and of which evidence is tendered may, if the defendant in those proceedings is convicted of an offence, be recovered from that defendant and all costs so recovered shall be paid into the general revenue.

Prosecution of offences and evidentiary provision

51. (1) * * * * * * * * * *

(2) In any prosecution under this Act the summons shall state particulars of the offence alleged, and also the name of the informant, and, except in proceedings under section 35, shall not be made returnable in less time than fourteen days from the day on which it is served, and there must be served therewith a copy of any analyst's certificate obtained on behalf of the prosecutor.

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(4) At the hearing of any proceedings under this Act the production by the informant or the defendant of a certificate purporting to be signed by an analyst shall be sufficient evidence of the identity of the drug analysed, and of the result of the analysis and of the facts therein stated, without proof of the signature of the person appearing to have signed the same, unless either party shall require that the analyst shall be called as a witness, and the parts of the articles retained by the person who purchased the article shall be produced: Provided that at least three clear days' notice before the return day shall be given to the analyst if he is required to attend as a witness and: Provided that a copy of a certificate to be used by the defendant shall be sent to the informant at least three clear days before the return day, and if it be not so sent the court may, if it thinks fit, adjourn the hearing on such terms as it may deem proper.

Presumption of sale on proof of supply

51a. In any prosecution under this Act for selling any drug if it is proved that the drug was supplied or delivered by any person to another it shall, until the contrary is proved, be presumed that the drug was sold to the person receiving it, by the person supplying or delivering it, and, if that person was a servant or employee, he shall until the contrary is proved be deemed to have sold the drug with the authority of his employer.

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Power of court to have drugs analysed

53. The court before which any proceedings are taken, or the Supreme Court on any appeal, may, upon the request of either party, in its discretion cause any drug to be sent to the Health Commission, who shall thereupon direct an analyst to make an analysis and give a certificate to such court of the result of the analysis; and the expense of such analysis shall be paid by the complainant or the defendant as the court may by order direct.

Proceedings in respect of offences

54. All proceedings in respect of offences against this Act shall be heard and determined in a summary way.

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Onus of defendant to prove exception

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

Warranty upon purchase of drugs

57. (1) Any person who purchases any drug for re-sale may demand from the vendor a warranty in writing that the drug so purchased complies with such requirements of this Act as are applicable thereto.

(2) Any such vendor who refuses to furnish any such purchaser with such a warranty shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

(3) If the defendant in any proceedings under this Act proves to the satisfaction of the court—

(a) that he purchased the drug to which the proceedings relate with a written warranty as aforesaid; and

(b) that he sold the drug in the same state as when he purchased it; and

(c) that at the time when he sold the drug he had no reason to believe that the drug did not comply with the requirements of this Act,

the complaint shall be dismissed but the defendant shall be ordered to pay the costs incurred by the complainant unless the defendant has given due notice to the complainant that he will rely on the defence given by this subsection.

(4) Any warranty such as is referred to in this section may be given in respect of any specified drug or may be given generally in respect of drugs purchased or to be purchased by the purchaser from the person giving the warranty.

Provisions as to use of warranty as defence, and proceedings against the warrantor

58. (1) A warranty shall not be available as a defence to any proceeding under this Act unless the defendant has, within seven days after service of the summons, sent to the purchaser a copy of such warranty with a written notice stating that he intends to rely on the warranty, and specifying the name and address of the person from whom he received it, and has also sent a like notice of his intention to such person.

(2) The person by whom such warranty is alleged to have been given shall be entitled to appear at the hearing and to give evidence, and the court may, if it thinks fit, adjourn the hearing to enable him to do so.

(3) A warranty given by a person resident outside South Australia shall not be available as a defence to any proceeding under this Act.

(4) Where the defendant is a servant of the person who purchased the drug under a warranty, he shall, subject to the provisions of this section, be entitled to rely on section 57, in the same way as his employer or master would have been entitled to do if he had been the defendant: Provided that the servant further proves that he had no reason to believe that the article was otherwise than that demanded by the prosecutor.

(5) Where the defendant in a prosecution under this Act has been discharged under the provisions of section 57, any proceedings under this Act for giving the warranty relied on by the defendant in such prosecution may be taken as well before a court having jurisdiction in the place where the drug to which the warranty relates was purchased for analysis as before a court having jurisdiction in the place where the warranty was given.

(6) Every person who, in respect of a drug sold by him as principal or agent, gives to the purchaser a false warranty in writing shall be liable on summary conviction to a fine not exceeding two hundred dollars.

Punishment for forging certificate or warranty

59. (1) Any person who shall forge, or who shall utter, knowing it to be forged, any certificate or any writing purporting to contain a warranty, shall be guilty of a misdemeanour, and be punishable on conviction by a penalty of not less than five hundred dollars nor more than two thousand dollars, or by imprisonment for a term not exceeding two years with hard labour.

(2) Every person who shall wilfully apply to a drug, in any proceedings under this Act, a certificate of warranty given in relation to any other drug shall be guilty of an offence against this Act, and be liable to a penalty not exceeding two hundred dollars.

(3) Every person who shall wilfully give a label with any article sold by him which shall falsely describe the article sold shall be liable to a penalty not exceeding two hundred dollars.

(4) Any person who shall for any purpose whatever, directly or indirectly, publish or advertise in any way any matter purporting to be a warranty or analysis under this Act, or to be part of any such warranty or analysis, or any matter purporting to be a copy of any such warranty or analysis or part thereof, unless such matter be accurate and true in every particular, shall be liable to a penalty not exceeding two hundred dollars.

(5) Any person who shall in any writing, for trade purposes or any advertisement, refer to any analysis made for the purposes of this Act shall be liable to a penalty not exceeding two hundred dollars.

Proceedings by indictment and contracts not to be affected

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

PART VI

REGULATIONS

Power to make regulations

61. The Governor, acting on the advice of the advisory committee, may from time to time make regulations, which may vary in their application according to time and place or the destination of the article referred to in the regulation prescribing all such things as are necessary or convenient to be prescribed for the purposes of this Act, including, amongst other things, the purposes following:—

(1) The inspection and analysis of drugs, chemicals, patent medicines, and proprietary articles:

(2) Regulating and fixing the standards of drugs that may be sold, and of the several ingredients of any such drug:

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(3) Prescribing what substances and what quantities thereof added to any drug shall render such drug injurious to health within the meaning of this Act:

(4) Prohibiting the sale, and providing for the destruction of such drugs and chemicals as are injurious to health within the meaning of this Act, or not in accordance with regulations under this Act:

(5) Publishing reports of analyses of drugs made by the Government analyst, together with the names and addresses of the dealers and the prices at which such drugs were sold:

(6) Regulating and fixing the wording, lettering, and other contents of labels on any drugs, including patent medicines and proprietary articles:

(7) The regulation and restriction and conditions of the manufacture, sale or other disposal, purchase, transport, storage, ownership, and possession of poisons and controlled therapeutic substances and controlled therapeutic devices:

(7a) Providing for the inspection and analysis of drugs before the selling thereof and prohibiting, regulating, restricting or controlling the sale of drugs unless the same have been so inspected and analysed:

(8) Fixing rates for payment for samples of articles required to be purchased or procured under section 41 of this Act:

(8a) Prescribing the number of articles to be purchased as a sample for the purposes of section 42 of this Act and the manner in which those articles must be divided and dealt with:

(9) Securing the wholesomeness, cleanliness, freedom from contamination and adulteration of any drug, and securing the cleanliness of receptacles, places, vehicles, and vessels used for the manufacture, preparation, storing, packing, delivery, or serving of any drug:

(10) Imposing penalties not exceeding four hundred dollars for any breach of the regulations:

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(11a) The registration of premises where drugs or any specified drugs are prepared or manufactured for sale or sold unless such premises are registered under the *Industrial Code, 1967*, the *Early Closing Act, 1926*, or under any other provision of this Act; the fees to be paid for such registration; and the payment and recovery of such fees:

(12) Prohibiting the use of specified substances or methods in the catching, feeding, or drugging of animals shortly prior to death, such animals being intended for sale as food:

(13) Prescribing the form of advertisements relating to the sale of any drug, including patent medicines and proprietary articles, and prohibiting any advertisements which do not comply with the prescribed requirements. In this paragraph "advertisement", without affecting the generality of the expression, includes broadcast advertisement, price list, circular letter, pamphlet, handbill, poster, placard, label, or other written or printed matter.

Provision as to regulations

61a. (1) Any regulation made under this Act (whether made before or after the passing of the *Food and Drugs Act Amendment Act, 1943*) may provide that any drug shall conform to the description or tests or to the description and tests prescribed in any pharmacopoeia or pharmaceutical codex referred to in the regulation and may provide that any such drug shall conform as aforesaid with any addition or alteration to any such pharmacopoeia or pharmaceutical codex made from time to time and whether made after the making of the regulation.

(2) Any regulation may provide that any plant, machine, receptacle, vehicle or premises shall be of a kind approved by the Health Commission or by a health surveyor.

Application of s. 38 of Acts Interpretation Act to regulations

62. Section 38 of the *Acts Interpretation Act, 1915-1936*, shall apply to regulations made under this Act.

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By-laws and regulations evidence on production of *Government Gazette* containing copy thereof

64. In any prosecution for any offence under any regulations made in pursuance of this Act, the production of the *Government Gazette* containing a copy of the same shall, without any other proof, be received as *prima facie* evidence of the existence thereof in all courts and before all justices and tribunals.

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SCHEDULE

FORM OF CERTIFICATE

I, the undersigned, being an analyst duly appointed under *The Drugs Act, 1908*, do hereby certify that I received, on the day of 19 , from[1] , a sample of sealed and marked[2] , and have analysed the same, and declare the result of my analysis to be as follows:—

I am of opinion that[3]

Observations[4]

As witness my hand this day of , 19 , at , an Analyst under *The Drugs Act, 1908*.

[1] Here insert the name of the person delivering or consigning the sample.

[2] Where the sample was received unsealed the word "sealed" should be struck out. If there were no marks on the sample or wrappings when received, the blank may be left unfilled or the words "and marked" struck out.

[3] Here the analyst may state whether the sample is genuine, or state the proportions of some or all of its ingredients, or the percentages of foreign ingredients (if any).

[4] Here the analyst may insert, at his discretion, his opinion as to whether the mixture (if any) was for the purpose of rendering the article portable or palatable, or of preserving it, or of improving the appearance, or was unavoidable, and may state whether in excess of what is ordinary or otherwise, and whether the ingredients or materials render the article injurious to health or not. In the case of a certificate regarding any article liable to change, the analyst shall specially report any change which, in his opinion, had taken place in the constitution of the article that would interfere with the analysis.

APPENDIX

Legislative History

Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 4 of The Public General Acts of South Australia 1837-1975 at page 261.

Long title:	amended by 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 1:	amended by 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 5:	definition of "adulterated food" repealed by 49, 1985, s. 4(2) (2nd Sched. Pt. II) definition of "animal" repealed by 49, 1985, s. 4(2) (2nd Sched. Pt. II) definition of "Central Board of Health" repealed by 37, 1987, s. 7(a) definition of "food" repealed by 49, 1985, s. 4(2) (2nd Sched. Pt. II) definition of "the Health Commission" inserted by 37, 1987, s. 7(b) definition of "inspector" repealed and definition of "health surveyor" inserted in its place by 69, 1976, s. 3 definition of "local authority" repealed by 49, 1985, s. 4(2) (2nd Sched. Pt. II) definition of "metropolitan area" repealed by 49, 1985, s. 4(2) (2nd Sched. Pt. I) definition of "sell" repealed by 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 5b:	amended and redesignated as s. 5b(1) by 14, 1981, s. 2
Section 5b(2):	inserted by 14, 1981, s. 2(b)
Section 6:	amended by 49, 1985, s. 4(2) (2nd Sched. Pt. II); 37, 1987, s. 8
Section 6a:	repealed by 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 7:	amended and redesignated as s. 7(1) by 69, 1976, s. 4; amended by 49, 1985, s. 4(2) (2nd Sched. Pt. II); 37, 1987, s. 9
Section 7(2):	inserted by 69, 1976, s. 4(c); repealed by 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 8:	repealed by 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 9(1):	amended by 49, 1985, s. 4(2) (2nd Sched. Pt. II); 37, 1987, s. 10(a)
Section 9(3):	amended by 37, 1987, s. 10(b)
Section 10:	amended by 69, 1976, s. 5; repealed by 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 12:	amended by 69, 1976, s. 6; repealed by 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 13:	amended by 69, 1976, s. 7; repealed by 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 14:	repealed by 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 15:	amended by 1, 1976, s. 3; repealed by 49, 1985, s. 4(2) (2nd Sched. Pt. I)
Sections 15a, 15b and 16:	repealed by 49, 1985, s. 4(2) (2nd Sched. Pt. I)
Section 16a:	repealed by 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 17(1):	amended by 37, 1987, s. 11
Section 18:	repealed by 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Sections 20 - 22:	amended by 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 22(5):	repealed by 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 22a(1) and (2):	amended by 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Sections 23 - 25a:	amended by 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 26:	repealed by 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Sections 27 - 30:	repealed by 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 30a(1):	amended by 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 30a(2):	amended by 69, 1976, s. 8(a)
Section 30a(3):	amended by 69, 1976, s. 8(b); 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 30a(4):	substituted by 37, 1987, s. 12
Sections 31 and 32:	repealed by 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 33:	amended by 69, 1976, s. 9; repealed by 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 34:	amended by 69, 1976, s. 10; 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 34l:	repealed by 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 35:	amended by 69, 1976, s. 11; 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 36:	amended by 69, 1976, s. 12; 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Sections 37 and 37a:	repealed by 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 38:	amended by 69, 1976, s. 13; repealed by 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 39:	amended by 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 40(1):	amended by 69, 1976, s. 14; 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 40(2):	amended by 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 40(3):	repealed by 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 41(1):	amended by 69, 1976, s. 15(a); 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 41(2):	amended by 69, 1976, s. 15(b); 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 41(3):	amended by 69, 1976, s. 15(c); 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 42(2) - (4):	amended by 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 44:	repealed by 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 45:	amended by 69, 1976, s. 16; 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 46:	amended by 69, 1976, s. 17; 49, 1985, s. 4(2) (2nd Sched. Pt. II); 37, 1987, s. 13
Section 49:	repealed by 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 51(3):	repealed by 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 51(4):	amended by 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Sections 51a:	amended by 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 52:	amended by 49, 1985, s. 4(2) (2nd Sched. Pt. II); repealed by 37, 1987, s. 14
Section 53:	amended by 49, 1985, s. 4(2) (2nd Sched. Pt. II); 37, 1987, s. 15
Section 54a:	repealed by 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 57(1), (3) and (4):	amended by 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 58(4), (5) and (6):	amended by 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 59(2):	amended by 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Sections 60 and 61:	amended by 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 61(2a):	repealed by 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 61(11):	repealed by 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 61a(2):	amended by 69, 1976, s. 18; 49, 1985, s. 4(2) (2nd Sched. Pt. II); 37, 1987, s. 16
Section 63:	repealed by 49, 1985, s. 4(2) (2nd Sched. Pt. II)

Section 64:	amended by 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Section 65:	amended by 69, 1976, s. 19; repealed by 49, 1985, s. 4(2) (2nd Sched. Pt. II)
Schedule:	amended by 49, 1985, s. 4(2) (2nd Sched. Pt. II)