1943

Title 03: Agricultural Department - 1943

Utah Code Annotated

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CHAPTER 1

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STATE BOARD [DEPARTMENT] OF AGRICULTURE

3-1-1 to 3-1-4. (Repealed.)
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L. 1941, ch. 1; eff. July 1.

DEPARTMENT OF AGRICULTURE

3-1-16. Creating State Department of Agriculture.
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3-1-28. Termination of Present Offices.
3-1-29. Board of Agriculture—Administration of Existing Laws.
3-1-30. Id. Disposition of Fees.
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3-1-32. Laws Repealed.
3-1-33. Effective Date.

3-1-1 to 3-1-4. (Repealed by L. 41, ch. 1, § 17, eff. July 1. See 3-1-32.)

3-1-5. Board to Enforce Humane Laws.

The board shall enforce the laws of this state relating to the inhumane and cruel treatment of livestock. (L. 21, p. 2, § 225.)

Cross-references.
Cruelty to animals, 103-5; cities may regulate, 15-8-59.

3-1-6. Board to Supply Forms for Reports, etc.

The state board of agriculture shall supply blank forms for all applications, reports, certificates, labels and signs required by the provisions of this title. (L. 21, p. 2, § 224.)

3-1-7. Fees—Accounting and Disposition.

All money collected under the provisions of this title shall be deposited without deduction in the state treasury on or before the 15th day of each month next succeeding the month in which the same is received, accompanied by a statement showing the date received, from whom received, on what account the same was received and the amount thereof. A duplicate statement shall be delivered to the state auditor, and the state treasurer shall give his receipt for the moneys received and deliver a duplicate thereof to the state auditor.
(L. 29, p. 8, § 172, Sub. 12.)

3-1-8. Biennial Report.

The state board of agriculture shall make a report biennially to the governor by the 1st of October preceding the regular session of the state legislature, and the secretary of state shall cause the same to be published in pamphlet or book form for distribution as other state publications. (L. 29, p. 8, § 172, Sub. 13.)

Cross-reference.
Reports of state officers generally, 87-10.

3-1-9 to 3-1-11. (Repealed by L. 41, ch. 1, § 17, eff. July 1. See 3-1-32.)

3-1-19 Amended S.L. '47 c. 1 sec. 1 p. 1

3-1-12. Rules of Board—Fees for Special Investigations.

The state board of agriculture may make all necessary rules and regulations to carry this title into effect. It may, when not otherwise provided by law, establish and collect fees for special investigations, inspections and other services which the department of agriculture may be called upon to make and perform. The money so collected shall be deposited with the state treasurer and kept in a separate fund to be known as the contingent fund of the board of agriculture. It shall be expended to pay the costs of such investigations, inspections and services, and contingent expenses of the department of agriculture.
(Code Report.)

3–1–13. Agricultural Exhibits.

The state board of agriculture may have charge of any agricultural exhibit within the state and may provide and award premiums at such exhibit; *provided,* that private persons may conduct agricultural exhibits without supervision by the state board. (L. 23, p. 146, § 1908.)

Cross-reference.
State fair association, 85–4.

3–1–14. Violation of Rules, a Misdemeanor.

Any person who violates any rule of the state board of agriculture is guilty of a misdemeanor. (Code Report.)

3–1–15. Violation of Title, a Misdemeanor.

Whoever violates any of the provisions of this title where no other penalty is provided is guilty of a misdemeanor. (L. 21, p. 38, § 9.)

L. 1941, ch. 1; eff. July 1.

DEPARTMENT OF AGRICULTURE

AN ACT relating to agriculture; the administration of the agricultural functions and program of the state; creating a department of agriculture; providing for a change in membership of the state board of agriculture and appointments, terms of office, qualifications and salaries; powers, duties and functions of the board; making a change in the office of the commissioner of agriculture; creating a department of agriculture advisory council, membership, terms of office, qualifications, duties and functions; terminating the terms of office of the present members of the state board of agriculture and terminating the term of office of the present commissioner of agriculture; and repealing sections 3–1–1, 3–1–2, 3–1–3, 3–1–9, 3–1–10, and 3–1–11, Revised Statutes of Utah, 1933, and section 3–1–4, Revised Statutes of Utah, 1933, as amended by Chapter 3, Laws of Utah, 1937, as amended by Chapter 1, Laws of Utah, 1939.

Be it enacted by the Legislature of the State of Utah:

3–1–16. Creating State Department of Agriculture.

There is created a department to be known as the state department of agriculture which shall be charged with the administration of the agricultural functions and program of this state. (Sec. 1.)

3–1–17. Board of Agriculture—Administration, Appointment, Membership, Terms, Qualifications.

The administration of the department of agriculture shall be under the supervision, direction and control of the state board of agriculture. The board of agriculture shall be composed of three members appointed by the governor by and with the consent of the senate whose terms of office shall be six years except as further provided in this section. The members first appointed, the term of one shall expire March 1, 1943, the term of one shall expire March 1, 1945, and the term of one shall expire March 1, 1947, and their successors shall be appointed for a term of six years. Each commissioner shall hold office until his suc-

cessor is appointed and qualified. Not more than two members of the board shall belong to the same political party. One member of the board shall be designated by the governor as chairman and any two commissioners may constitute a quorum. Any member of the board may be removed for cause by the governor. Vacancies shall be filled for unexpired terms by the governor. One member of the board shall be experienced in agricultural production and shall at the time of his appointment be the legal owner of a farm. One member of the board shall be experienced in the raising and handling of livestock and shall be at the time of his appointment the legal owner of sheep or cattle. One member of the board shall be qualified and experienced in the marketing of agricultural products. Vacancies in the office of members of the board occurring by reason of death, resignation or other cause, or by rejection by the senate, shall be filled by the appointment of another person by the governor. (Sec. 2.)

3-1-18. Id. Oaths, Salaries and Expenses.

Each member of the board shall qualify by taking the constitutional oath of office and shall receive a salary at the rate of $4,000 per annum payable monthly following the date of his qualification. Each member shall be paid his expenses necessarily incurred while actually engaged in the performance of his duties in authorized travel from the office of the board at the state capitol. Each member shall give a bond for the faithful performance of his duties in such form and in such amount as shall be determined by the department of finance. (Sec. 3.)

3-1-18 S.L. '45, c. 126 Secs. 1-3 would appear to conflict with this section.

3-1-19. Id. Members Not to Hold Other Office, Exceptions, No Additional Compensation.

Each member of the board shall devote his full time and attention to the duties of his office and shall not hold any other office under the laws of this state or under the government of the United States or of any other state, but this provision shall not be construed to prevent any member from holding such nominal position or title as may be required by law as a condition to participation by the state in any appropriation or allotment of any money, property or service which may be made or allotted for any of the functions of the board or the institutions or divisions under its supervision, nor shall this provision be construed to prevent any member from acting as head or chief of any of the divisions, departments, bureaus which may be established for the operation of the board in the performance of its duties, but in any such case no additional compensation shall be paid to the member of the board holding such office. (Sec. 4.)

3-1-20. Id. Quorum.

Two members of the board shall constitute a quorum for the transaction of business unless otherwise required by law. (Sec. 5.)

3-1-21. Id. Commissioner.

The chairman of the state board of agriculture shall be the executive officer of the board and shall be the commissioner of agriculture who should be subject to the supervision and control of the board. (Sec. 6.)

3-1-22. Id. Principal Office—May Maintain Branch Offices.

The board shall keep its principal offices at the state capitol, but may with the approval of the commission of the department of finance establish and maintain such branch or division offices within the state as may be necessary for the prompt and efficient performance of its duties. (Sec. 7.)

3-1-23. Id. Official Seal, Authentication of Records, Oaths.

The board shall adopt and use an official seal and file an impression and a description thereof in the office of the secretary of state. Copies of its records and proceedings and copies of documents and papers in its possession may be authenticated with the seal of the board, attested by any member of the board, and when so authenticated shall be received in evidence to the same extent and with the same effect as the originals. Each member of the board shall have the power to administer oaths for all purposes required in the discharge of his duties. (Sec. 8.)

3-1-24 Amended S.L. '45, c. 2 Sec. 1, p. 2

3-1-24. Divisions—Plants and Trees—Livestock—Marketing.

Within the department of agriculture there shall be a division of plants and trees, a division of livestock and a division of marketing; each of which divisions shall be presided over by one of the members of the board. (Sec. 9.)

3-1-25 Amended S.L. '43, c. 1 Sec. 1, p. 1

3-1-25. Creating Advisory Council—Qualifications, Appointment, Expenses, Terms.

In order to more accurately ascertain the needs and wishes of the people of the state in connection with the performance of any of the duties of the commission, there is created a department of agriculture advisory council consisting of six individual taxpayers and electors of the state who are legal owners of farm property or livestock and whose principal business is agriculture, no more than four of whom shall be members of the same political party. The members of the advisory council shall be appointed by the governor by and with the consent of the senate. They shall serve without pay or compensation but shall be paid their actual and necessary expenses incurred in attending meetings of the council. Each member of the advisory council shall be chosen with due regard to his intelligence and ability and his knowledge and interest in the functions and duties of the state board of agriculture or in any of the institutions or divisions under its supervision or control. The term of office of each member of the council shall be six years and until his successor shall have been appointed and have qualified; *provided, however,* that during the year 1941 the governor shall appoint one member for the term expiring March 1, 1942, one for a term expiring March 1, 1943, one for a term expiring March 1, 1944, one for a term expiring March 1, 1945, one for a term expiring March 1, 1946, and one for a term expiring March 1, 1947. In February 1942 and in February of each year thereafter the governor shall appoint a member for the full term of six years commencing on the second day of March next, to succeed the member whose term has then expired. Each appointment shall be submitted for confirmation or rejection by the senate during the session being held at the time of the appointment

or, if none is then being held, at the next session of the senate. Unless rejected at the session to which the appointment is first submitted the appointment shall be deemed confirmed. Vacancies occurring in the membership of the advisory council shall be filled by the governor for the remainder of the term of the vacant membership, subject to the subsequent confirmation or rejection by the senate. Nothing herein shall be construed to disqualify a member for reappointment.

(Sec. 10.)

3-1-26. Id. Meetings, Quorum.

3-1-26 Repealed S.L. '43 c. 1 Sec. 2, p. 1

The members of the advisory council shall meet at the earliest convenient date of the month of March of each year at the office of the commission at the state capitol at the call of the chairman of the commission. At its first meeting the advisory council shall elect a chairman from its membership who shall serve until the next annual meeting of the council and the council may at any time elect such other officer from its membership as it shall deem necessary. The state board of agriculture shall assign one of its employees to act as secretary of the council without additional compensation therefor, and shall supply the council with such stationery, supplies and facilities as may be reasonably necessary. Meetings of the advisory council may be held at any time or place and upon call of the governor, or the board or of the chairman of the council upon notice of the time, place and purpose of the meeting given by mail, telegraph or telephone to each of the members of the council not less than two days prior to the date fixed for such meeting. A majority of the members present at any meeting shall constitute a quorum for the transaction of business. (Sec. 11.)

3-1-27. Id. Duty and Function.

3-1-27 Repealed S.L. '43, c. 1 Sec. 2, p. 1

It shall be the duty and function of the advisory council to make suggestions to and to advise the board with respect to the policies, rules or regulations of the board, the conduct of its business and of its employees, and the needs and wishes of the public with respect to any of the functions of the board or the institutions under its control. It shall be the duty of the board to receive and consider the suggestions and advice of the advisory council but nothing herein contained shall be construed to require the board to adopt the same or to conform its practices thereto. (Sec. 12.)

3-1-28. Termination of Present Offices.

The terms of office of the members of the state board of agriculture appointed pursuant to Sections 3-1-1 and 3-1-2, Revised Statutes of Utah, 1933, and of the commissioner of agriculture appointed pursuant to Section 3-1-9, Revised Statutes of Utah, 1933, shall terminate upon the appointment and qualification of the three appointed members of the state board of agriculture appointed pursuant to this act. (Sec. 13.)

3-1-29. Board of Agriculture—Administration of Existing Laws.

The members of the state board of agriculture appointed pursuant to this act shall succeed to all powers and discharge and perform all the

functions which, by existing and continuing laws, are conferred or required to be discharged or performed by the state board of agriculture. The commissioner of agriculture appointed pursuant to this act shall succeed to all the powers and discharge all the duties and perform all the functions which, by existing and continuing laws, are conferred upon or required to be discharged or performed by the commissioner of agriculture. All rules, regulations and orders heretofore adopted by the state board of agriculture shall continue in effect until new rules and regulations have been adopted, promulgated or made by the state board of agriculture appointed pursuant to this act. (Sec. 14.)

3-1-30. Id. Disposition of Fees.

Except as otherwise specifically provided by law all fees and moneys collected by the state board of agriculture shall be paid over into the state treasury and be credited to the contingent fund of the state board of agriculture. (Sec. 15.)

3-1-31. Id. Powers of Boards.

3-1-31 Sub. sec. 7 New matter S.L. '43, c. 6 Secs. 1-15 pp. 6-11

3-1-31 Amended S.L. '43, c. 2 Sec. 1, p. 2

3-1-31 Rel. matter S.L. '45, c. 1 Sec. 1, p. 1; c. 5, sec. 1, p. 3

The state board of agriculture shall have the following powers:

(1) To execute and enforce all laws of the state pertaining to agriculture, including horticulture, crops, pests and related subjects; livestock, including sheep, swine, poultry, bees and related subjects; weights and measures; commercial feeding stuffs and commercial fertilizers; dairy and food stuffs and related subjects; the marketing, stamping and branding of receptacles; the licensing of produce dealers.

(2) To encourage and promote in every practicable manner the interests of agriculture, horticulture, the livestock industry, forestry and all other allied industries.

(3) To promote methods of conducting these several industries with a view of increasing the production and of facilitating the distribution of the products thereof at the least cost.

(4) To inquire into the cause of contagious, infectious and communicable diseases among domestic animals and the means for the prevention and cure of the same.

(5) To establish standards and grades of vegetables, fruit, hay, grain, seed, livestock products, cheese, ice cream and other dairy food products. To adopt regulations fixing dimensions and standards for containers of all or any of such products when offered or exposed for sale, and to prohibit the shipment, sale or offering for sale, of all such products unless the boxes, bags or other containers of the same are branded or labeled in accordance with the regulations adopted by said board; *provided,* any product may be labeled or tagged and sold as unclassified exclusively in the state of Utah.

(6) To make rules regulating the sale of commercial fertilizers, and to require any person who shall sell or offer for sale within the state any commercial fertilizer to furnish to the purchaser thereof a written or printed statement giving the percentage of all the materials used as ingredients of such fertilizer and to furnish such other information as the board may deem necessary.

(7) To conduct experiments as to the best means and methods for the extermination of predatory wild animals, and to take such meas-

ures as it shall deem necessary for the control of rabies among coyotes and dogs and for the eradication of coyotes, lynx, wolves, panthers, mountain lions and bears, and of prairie dogs, rabbits and other rodents. The board may purchase poisons and other materials in bulk to be used by the employees of the board and under its direction and supervision in the eradication of said animals.

(8) To formulate and prescribe such rules and regulations for the operation of creameries, butter and cheese factories, dairies, slaughterhouses, confectionaries, bakeries, hotels, fruit and vegetable canneries, flour mills, farm dairies, or any other factory, establishment, store or house where dairy or food products of any nature are bought, sold, manufactured, prepared, stored or exposed for sale for public use, as shall be deemed necessary for such board to fully carry out all laws relating to dairy and food products and for the promotion and maintenance of sanitary conditions in connection therewith; and for the prevention of false grades, weights and measures; and also for advancing the value of Utah food and dairy products. Such rules and regulations shall conform as near as may be to the rules and regulations that have been or shall be promulgated by the agricultural department of the United States under and by authority of a law known as the Pure Food and Drug Act of June 30, 1906, as well as an act of congress approved June 30, 1906, governing meat inspection.

(9) To appoint all state inspectors and other employees necessary to carry out the provisions, powers, duties and functions of the state board of agriculture and to fix their salaries or compensations according to the standards adopted by the state department of finance.

(10) To divide the state into as many agricultural districts as the board may deem desirable for the purpose of effectively and economically carrying out the duties and performing the functions of the board, and to appoint an agricultural inspector for each district. The inspectors so appointed shall have jurisdiction and full power and authority to operate in any district in the state when so directed by the board and deemed necessary to carry out the duties and perform the functions of the board.

(11) Subject to the approval of the governor, to make and enter into cooperative agreements with the federal government, states, counties, municipalities, firms, corporations or individuals for the promotion of the welfare of agriculture and industries connected therewith.

(12) To receive gifts, donations and bequests of money or property for the promotion or protection of agricultural interests in Utah and to disburse the same. All moneys so received shall be placed to the credit of the contingent fund of the state board of agriculture and shall be disbursed upon warrants of the state auditor to be drawn only upon the order of a majority of the state board of agriculture when approved by the state department of finance. (Sec. 16.)

Cross-references.

Municipal regulation of canneries, 15-8-66; regulation of poultry, 15-12-4; power to destroy pests, 19-5-28; geological survey to investigate resources, 34-0-2; registration of farm names, 58-3-1; trade marks and trade names, 95-2-14; experimental stations and extension work of agricultural college, 75-5, 75-26 to 75-30; agricultural education, 75-17; powers as to seeds, 3-2-1 et seq.; inspection and quarantine of plants, 3-3-1 et seq.; weeds, 3-3-22 et seq.; livestock regulation, 3-5; bees, 3-6;

eggs, 3–7; feeds, 3–8; fertilizers, 3–8a; licensing produce dealers, 3–9; dairy and food products, 3–10, 3–10a; milk control, 3–10a; agricultural marketing, 3–10b; cold storage, 3–11; transfer of certain duties to state board of health, 35–1–22 et seq.

3–1–32. Laws Repealed.

Sections 3–1–1, 3–1–2, 3–1–3, 3–1–9, 3–1–10 and 3–1–11, Revised Statutes of Utah, 1933, and Sections 3–1–4, Revised Statutes of Utah, 1933, as amended by Chapter 3, Laws of Utah, 1937, as amended by Chapter 1, Laws of Utah, 1939, are repealed. (Sec. 17.)

3–1–33. Effective Date.

This act shall take effect on July 1, 1941, at 12:01 a. m. or upon the proclamation of the governor prior to that date. (Sec. 18.)

Tit. 3, c. 2 Ref. to S.L. '45, c. 142 Item 75, p. 286

CHAPTER 2

SEEDS

Tit. 3 c. 2 Repealed S.L. '47 c. 6 sec. 13 p. 14

Tit. 3 c. 2 New matter S.L. '47 c. 6 secs. 1-14 pp. 9-14

3–2–1. Various Seeds Defined.
3–2–2. Board to Test Seeds.
3–2–3. Seed to Be Labeled.
3–2–4. Weed Seed—Board to Determine.
3–2–5. Agricultural and Vegetable Seed—Identifying Lot Number.
3–2–6. Mixtures to Be Labeled.
3–2–7. Id.
3–2–8. Exemptions from Provisions of Chapter.
3–2–9. Unlawful Sales Enjoined.
3–2–10. Testing Seed — Taking Samples.
3–2–11. Sales Contrary to Chapter Unlawful.
3–2–12. Testing Seed on Request — Charges.
3–2–13. Violation of Chapter, a Misdemeanor.

3-2-1 Repealed S.L. '47 c. 6 sec. 13 p. 14

3-2-1 New matter S.L. '47 c. 6 secs. 1-14 pp. 9-14

3–2–1. Various Seeds Defined.

The term "agricultural seeds" or "agricultural seed" as used in this chapter is defined as the seed of Canada blue grass, Kentucky blue grass, brome grass, fescues, millets, tall meadow oat grass, orchard grass, red top, Italian rye grass, Kaffir corn, perennial rye grass, sorghum, sudan grass, timothy, alfalfa, alsike clover, crimson clover, red clover, sweet clover, white clover, Canada field peas, cow peas, soy beans, vetches, and other grasses and forage plants; buckwheat, flax, rape, barley, field corn, oats, rye, wheat and other cereals; sugar beets and seed potatoes. The term "vegetable seed" as used in this chapter shall include all seeds that are commonly known as vegetable seeds and that are the kinds used for the purpose of raising garden, canning and truck crops. (L. 25, p. 128, §§ 1, 2.)

History.
As amended by L. 39, ch. 2, eff. May 9.

Comparable provisions.
Iowa Code 1939, § 3127, subd. 1 (similar).

Other provisions comparable to those included in Title 3, Ch. 2: Ill. Rev. Stats. 1941, Ch. 5, § 33 et seq.; Mich. Stats. Ann. § 12.181 et seq.; McKinney's N. Y. Consol. Laws, Agriculture and Markets Law, § 136 et seq.; Wis. Stats. § 94.38 et seq.

Cross-reference.
Beet seed districts, 19–5–88.

Decisions from other jurisdictions. — California.
As to an oral disclaimer of warranty, the trial court properly concluded that anything said by defendant's represen-

tative at time of sale in nature of declining to guarantee seed in question referred to its quality, which was admittedly inferior, and not to its variety. Newhall Land & Farming Co. v. Hogue-Kellogg Co., 56 Cal. App. 90, 204 P. 562.

The mere fact that Sonora seed wheat may belong to a general class known to the trade as "club wheat" was not substantial foundation for defendant's argument that any "club wheat" might satisfy the requirements of an order for Sonora seed wheat. Brock v. Newmark Grain Co., Inc., 64 Cal. App. 577, 222 P. 195.

Plaintiff could not recover consequential damages where it appeared that his truck drivers knew from the very beginning that barley being delivered to them by defendant was uncleaned, yet neglected to report this condition to plaintiff and proceeded to plant it, inasmuch as drivers had authority to see that the barley delivered for seeding was recleaned barley or to refuse to plant it, and in so doing to stop work if necessary, notice to the drivers in the discharge of their duties being notice to their principal, plaintiff testifying that he contracted with defendant for delivery of large quantity of recleaned barley for seeding and then went to Imperial Valley, and that on his return to his ranch he found that the drivers were receiving and planting dirty barley. Daley v. Irwin, 75 Cal. App. 732, 243 P. 443.

An express finding that seller absolutely declined to warrant, negatived existence of any implied warranty arising from facts surrounding sale, and mere fact that plaintiffs made their purchase upon the understanding that the seed in question was not an objectionable variety and that plaintiffs never understood that defendant did not intend to warrant, did not alter the rule. Couts v. Sperry Flour Co., 85 Cal. App. 156, 259 P. 108.

— **Iowa.**

In an action for damages for defendant's false representations to plaintiff that corn purchased from defendant by plaintiff was seed corn, held that it was not error as to defendant for the trial court to refuse to instruct the jury on the doctrine of caveat emptor, since an adequate test of seed cannot ordinarily be made by merely looking at the seed, since a sample of the corn would have had to be obtained and some time taken to test it by some method, and since defendant refused to give plaintiff a sample and to reserve some corn for plaintiff until a test could be made for him. Thompson v. Damm, 192 Iowa 501, 185 N. W. 115.

In an action by a grain broker to recover a payment made on a car of timothy seed, which he refused to accept because containing buckhorn, it was prejudicial error to permit plaintiff to testify that a buyer from him refused to accept the seed purchased from defendant because not up to the grade purchased, and that plaintiff had taken a loss on a previous car purchased from defendant because it was not up to grade. Appel v. Carr, 216 Iowa 64, 246 N. W. 608.

A. L. R. note.

Character of contract to raise seed, 29 A. L. R. 647.

3–2–2. Board to Test Seeds.

3-2-2 Repealed S.L. '47 c. 6 sec. 13 p. 14

3-2-2 New matter S.L. '47 c. 6 secs. 1-14 pp. 9-14

The state board of agriculture is hereby authorized to determine, so far as practicable, the purity, viability and trueness to variety of all seed held for planting or distribution within or without this state by the examination, analysis or test of samples of such seeds; and when such seeds are found to be adulterated, misbranded or of poor quality according to standards to be established by the state board of agriculture, the results of such examination, analysis or test may be published, together with the names of persons by whom the seeds were put up or packeted and the names of the persons by whom said seed is held for distribution, along with such other information as may be of interest to the purchasers or to the vendors of such seeds.

(L. 25, p. 128, § 2.)

History.

As amended by L. 39, ch. 2, eff. May 9.

3–2–3. Seed to Be Labeled.

3-2-3 Repealed S.L. '47 c. 6 sec. 13 p. 14

3-2-3 New matter S.L. '47 c. 6 secs. 1-14 pp. 9-14

Every lot of agricultural or vegetable seed, except as herein otherwise provided, when in bulk, packages or other containers shall have

affixed thereto in a conspicuous place on the exterior of the container a plainly written or printed tag or label in the English language stating:

(1) The commonly accepted name of such agricultural seed.

(2) The approximate percentage by weight of purity; meaning, the freedom of such agricultural seed from inert matter and from other seed distinguishable by their appearance.

(3) The approximate total percentage by weight of weed seed, and of all seed not listed in section 3–2–1 as agricultural seeds.

(4) The name and approximate number, per pound, of noxious weed seeds.

(5) The approximate percentage of germination of such agricultural seed, together with the month and year said seed was tested.

(6) The country or state of origin of all imported seeds.

(7) The full name and address of the vendor of such agricultural seed. (L. 25, p. 128, § 3.)

Comparable provisions.

Cal. Agric. Code, § 912 (includes clauses either identical or substantially identical with subds. (1), (2), (3), (4), (5) and (7) herein as to agricultural seeds).

Idaho Code, § 22–502 (similar provision as to "lots of five pounds or more" of agricultural seeds).

Iowa Code 1939, § 3129 (similar provision as to agricultural seed).

Mont. Rev. Codes, § 3594, subds. 1–7 (applicable to one pound or more of agricultural seeds).

A. L. R. notes.

Constitutionality of requirement of disclosure by label of materials or ingredients of articles sold or offered for sale, 57 A. L. R. 686; constitutionality of statutes requiring notice by label or otherwise of the fact that product is imported, or as to the place of production, 83 A. L. R. 1409; warranties and conditions upon sale of seed, nursery stock, etc., 117 A. L. R. 470.

3-2-4 Repealed S.L. '47 c. 6 sec. 13 p. 14

3-2-4 New matter S.L. '47 c. 6 secs. 1-14 pp. 9-14

3–2–4. Weed Seed—Board to Determine.

The state board of agriculture shall designate the names of weeds whose seed shall be considered noxious under this chapter. It shall also determine the tolerance for noxious weed seed and other weed seed permitted to be sold under the provisions of this chapter. (Code Report.)

3-2-5 Repealed S.L. '47 c. 6 sec. 13 p. 14

3-2-5 New matter S.L. '47 c. 6 secs. 1-14 pp. 9-14

3–2–5. Agricultural and Vegetable Seed—Identifying Lot Number.

Each lot of vegetable or agricultural seed, except as herein otherwise provided, must be definitely identified by a lot number or designation. Lots of seed bearing a given lot number or designation must be identical in every respect. (Code Report.)

3–2–6. Mixtures to Be Labeled.

3-2-6 Repealed S.L. '47 c. 6 sec. 13 p. 14

3-2-6 New matter S.L. '47 c. 6 secs. 1-14 pp. 9-14

Mixtures of agricultural seed which contain not more than two kinds of such seed in excess of five per cent by weight of each, when sold, offered or exposed for sale as mixtures, shall have affixed thereto in a conspicuous place on the exterior of the container of such mixture a plainly written or printed tag or label in the English language stating:

(1) That such seed is a mixture.

(2) The name and approximate percentage by weight of each kind of agricultural seed present in such mixture in excess of five per cent by weight of the total mixture.

(3) Approximate percentage by weight of weed seed.

(4) The name and approximate number, per pound, of noxious weed seeds.

(5) Approximate percentage of germination of each kind of agricultural seed present in such mixture in excess of five per cent by weight, together with the month and year said seed was tested.

(6) The country or state of origin of all imported seeds.

(7) The full name and address of the vendor of such mixture.

(L. 25, p. 128, § 4.)

Comparable provisions.

Cal. Agric. Code, § 913 (includes clauses either identical or substantially identical with all subdivisions herein except subd. (6); qualification that section as a whole applies to mixtures "of an amount of five pounds or more").

Iowa Code 1939, § 3130 (similar provision as to lots of ten pounds or more).

Mont. Rev. Codes, § 3594, subd. 8 (applicable to mixtures containing two or more kinds of agricultural seeds).

A. L. R. notes.

Constitutionality of requirement of disclosure by label of materials or ingredients of articles sold or offered for sale, 57 A. L. R. 686; constitutionality of statutes requiring notice by label or otherwise of the fact that product is imported, or as to the place of production, 83 A. L. R. 1409; warranties and conditions upon sale of seed, nursery stock, etc., 117 A. L. R. 470.

3-2-7. Id.

3-2-7 Repealed S.L. '47 c. 6 sec. 13 p. 14

3-2-7 New matter S.L. '47 c. 6 secs. 1-14 pp. 9-14

When special mixtures of agricultural seed, except as specified in section 3-2-6, are sold, offered or exposed for sale as mixtures in bulk, the packages or other containers shall have affixed thereto in a conspicuous place on the exterior of the container of such mixture a plainly written or printed tag or label in the English language stating:

(1) That such seed is a mixture.

(2) The name of each kind of agricultural seed which is present in excess of five per cent by weight of the total mixture.

(3) The approximate total percentage by weight of weed seed.

(4) The approximate percentage by weight of inert matter.

(5) The name and approximate number, per pound, of noxious weed seeds.

(6) The country or state of origin of all imported seeds.

(7) The full name and address of the vendor of such mixtures.

(L. 25, p. 128, § 5.)

Comparable provisions.

Cal. Agric. Code, § 914 (substantially identical except as to subd. (6) herein; qualification that section is applicable to special mixtures "in an amount of eight ounces or more").

Idaho Code, § 22-503 (similar).

Iowa Code 1939, § 3131 (similar provision as to quantities of eight ounces or more).

A. L. R. notes.

Constitutionality of requirement of disclosure by label of materials or ingredients of articles sold or offered for sale, 57 A. L. R. 686; constitutionality of statutes requiring notice by label or otherwise of the fact that product is imported, or as to the place of production, 83 A. L. R. 1409; warranties and conditions upon sale of seed, nursery stock, etc., 117 A. L. R. 470.

3-2-8. Exemptions from Provisions of Chapter.

3-2-8 Repealed S.L. '47 c. 6 sec. 13 p. 14

3-2-8 New matter S.L. '47 c. 6 secs. 1-14 pp. 9-14

Agricultural and vegetable seeds, or mixtures of the same, shall be exempt from the provisions of this chapter:

(1) When possessed on farm where produced for food purposes only.

(2) When sold to merchants to be recleaned subject to rules and regulations to be established by the state board of agriculture before being sold or exposed for sale for seeding purposes. (L. 25, p. 128, § 6.)

History.
As amended by L. 39, ch. 2, eff. May 9, somewhat restricting the former exemptions.

Comparable provisions.
Cal. Agric. Code, § 915 (subd. a, "when possessed or sold for food or manufacturing purposes only;" subd. b similar to subd. (2) herein).
Iowa Code 1939, § 3136, Mont. Rev. Codes, § 3595 (include clauses exempting when possessed, exposed for sale, or sold for food purposes only; or when sold for purpose of recleaning).

3-2-9 Repealed S.L. '47 c. 6 sec. 13 p. 14

3-2-9 New matter S.L. '47 c. 6 secs. 1-14 pp. 9-14

3–2–9. Unlawful Sales Enjoined.

Whenever agricultural seeds or any mixture of the same or any vegetable seeds are being sold, offered for sale or exposed for sale in this state in violation of any of the requirements of this chapter, an injunction shall lie upon complaint of the state board of agriculture against any such person so selling, offering for sale or exposing for sale such seeds. (L. 25, p. 128, § 7.)

Cross-reference.
Injunction generally, 104–17.

3-2-10 Repealed S.L. '47 c. 6 sec. 13 p. 14

3-2-10 New matter S.L. '47 c. 6 secs. 1-14 pp. 9-14

3–2–10. Testing Seed—Taking Samples.

It shall be the duty of the state board of agriculture to inspect, examine, make analysis of and test any agricultural and vegetable seeds held for planting or distribution within this state for seeding purposes within or without this state at such time and place and to such extent as it may determine. The board and its agents shall have free access at all reasonable hours to any premises or structures to make examination of any such agricultural or vegetable seeds, whether such seeds are upon the premises of the owner or consignee or on the premises or in possession of any warehouse, elevator or railway company, and they are hereby given authority upon notice to the dealer, or his agent, or the representative of any warehouse, elevator or railway company, if present, to take for analysis a composite sample of such agricultural or vegetable seeds. Samples should be drawn from the top, center and bottom of each bag when there are not more than five bags in the lot, and from every fifth bag when there are more than five bags. The sample shall be thoroughly mixed, and two official samples taken therefrom, and each official sample shall be securely sealed. One of these official samples shall be furnished to the vendor or party interested in person, if present, and, if not present, shall be promptly forwarded to the shipper or owner, and the other retained by said board or agents for analysis. In case a sample drawn as provided herein upon test or analysis is found to fall below the statement on the tag or label attached to the lot from which said sample was secured, or to violate any of the provisions of this chapter, the vendor or consignee of said lot of seed shall be notified, and a copy of said notice mailed to the person, firm or corporation whose tag or label was found affixed thereto, and said seed shall be declared to be unfit for sale; and it shall be unlawful for any person to sell or to offer the same for sale. (L. 25, p. 128, § 10).

History.
As amended by L. 39, ch. 2, eff. May 9, slightly changing language of first sentence.

Comparable provisions.
Cal. Agric. Code, § 917 (substantially the same).
Idaho Code, § 22-507 (similar).
Mont. Rev. Codes, § 3597 (seed inspection and test provision).

3-2-11. Sales Contrary to Chapter Unlawful.

3-2-11 Repealed S.L. '47 c. 6 sec. 13 p. 14

3-2-11 New matter S.L. '47 c. 6 secs. 1-14 pp. 9-14

It shall be unlawful for any person, firm or corporation to sell, or offer or expose for sale, within this state any agricultural seeds, vegetable seeds or mixtures of agricultural seeds, as defined in this chapter, for seeding purposes within or without this state without complying with the requirements of this chapter, or falsely to mark or label any agricultural or vegetable seeds, or to interfere in any way with the inspectors or assistants in the discharge of the duties herein stated.
(L. 25, p. 128, § 11.)

History.
As amended by L. 39, ch. 2, eff. May 9, adding "or without" in fourth line.

3-2-12. Testing Seed on Request—Charges.

3-2-12 Repealed S.L. '47 c. 6 sec. 13 p. 14

3-2-12 New matter S.L. '47 c. 6 secs. 1-14 pp. 9-14

Any citizen of this state shall have the privilege of submitting to the state board of agriculture samples of agricultural and vegetable seeds for test and analysis subject to such rules and regulations as may be adopted by said board, who may fix the charges for tests of samples submitted. (L. 25, p. 128, § 13.)

Comparable provision.
Iowa Code 1939, § 3135 (similar provision as to any person purchasing agricultural seed in the state).

3-2-13. Violation of Chapter, a Misdemeanor.

3-2-13 Repealed S.L. '47 c. 6 sec. 13 p. 14

3-2-13 New matter S.L. '47 c. 6 secs. 1-14 pp. 9-14

Every violation of the provisions of this chapter is a misdemeanor.
(L. 25, p. 128, § 12.)

History.
As amended by L. 39, ch. 2, eff. May 9, eliminating former specific penalty.

CHAPTER 3

CROP PESTS

Tit. 3, c. 3 Ref. to S.L. '45, c. 142 Item 75, p. 286

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ARTICLE 1

INSPECTION AND QUARANTINE

3-3-1. Quarantine Against Plant Diseases.

The state board of agriculture is hereby vested with authority to enforce quarantine against any county, state or country, or against any infested tract of land, building or place, where any trees, plants, shrubs, vines, scions, seeds, buds, fruits, hay, grain or other articles exist or are located, when the same are in its judgment liable to spread insects, pests and fungi or diseases injurious to crops or plants; and to prescribe the necessary rules and regulations to govern the same when not in conflict with the provisions of this title. (L. 27, p. 67, § 1896.)

Comparable provisions.

Cal. Agric. Code, § 106 (director of agriculture may establish quarantine regulations to protect agricultural industry from pests by establishing quarantine at state boundaries or elsewhere within state).

Idaho Code, § 22-1601 (commissioner of agriculture by and with approval of governor may, after hearings and investigations, establish necessary quarantines to protect articles of horticulture or agriculture against infection by insects, pests, plant diseases or noxious weeds).

Iowa Code 1939, § 4062.11 (state entomologist may promulgate quarantine restrictions covering areas within state affected by pest); § 4062.12 (may promulgate quarantine regulations prohibiting or restricting transportation of plant material or product into state).

Mont. Rev. Codes, § 3627 (commissioner of agriculture may establish quarantine over any orchard or place where fruit infested with disease or pest is grown or kept); § 3631 (governor may prohibit importation from other states so as to guard against insect pests and infection); § 3632 (idem as to preventing movement of designated articles across boundaries of state counties or localities).

Other provisions comparable to those included in Title 3, Ch. 3, Art. 1: Ill. Rev. Stats. 1941, Ch. 5, § 61 et seq.; Mich. Stats. Ann. § 12.201 et seq.; McKinney's N. Y. Consol. Laws, Agriculture and Markets Law, § 161 et seq.; Wis. Stats. § 94.53 et seq.

Cross-references.

Counties to protect from pests, 19-5-28; power of municipalities, 19-5-28.

Decisions from other jurisdictions. — California.

Injunction would not lie against county agricultural commissioner, at instance of petitioning orchard owners, in the commissioner's discharge of his official

duties imposed upon him by statute. Skinner v. Coy, 13 Cal. 2d 407, 90 P.2d 296.

— Iowa.
The harmful barberry bush statute [Code 1939, § 4062.19, governed by applicable provisions of §§ 4062.05–4062.18] is not unconstitutional as taking property without due process of law. Gray v. Thone, 196 Iowa 532, 194 N. W. 961.

A. L. R. note.
Constitutionality of statutes for protection of vegetation against disease or infection, 12 A. L. R. 1136.

3-3-2. Board to Disinfect or Destroy.

The state board of agriculture may establish and enforce such quarantine regulations as it deems necessary to eradicate, and to prevent the introduction into the state and to prevent the spread within the state of, plant and animal diseases, insects, pests and fungus growths; and for this purpose may disinfect or destroy fruits, trees, plants, seeds, hay, straw or other packing, boxes, packages or other containers; *provided,* that any and all expense created or accruing by reason of the exercise of this authority shall be borne by the owner of the property so disinfected or destroyed and that the expense shall become a lien against the real property upon which such articles are located. The procedure for the enforcement of this section or the collection of such expense shall be the same as that provided by article 3 of chapter 3 of this title for the destruction of noxious weeds. (L. 27, p. 67, § 1897.)

Comparable provisions.
Cal. Agric. Code, § 30 (department of agriculture is charged with duty of preventing introduction and spread of injurious insect or animal pests, plant disease and noxious weeds); § 129 (county agricultural commissioner may enter and inspect premises, plant, conveyance, or thing and may notify owner as to pest-infection thereof and require eradication, control or destruction of same); § 136 (if not abated within time specified, the commissioner must cause said nuisance to be abated by eradicating, controlling or destroying said pests).
Iowa Code 1939, § 4062.07 (if owner neglects or refuses to obey requirements of notice that he proceed to control, eradicate or prevent dissemination of insect pest or disease, these requirements must be carried out by state entomologist).

Decisions from other jurisdictions.
— California.
A tree or other plant infected with a communicable disease or diseases amounting to a pest or pests is a nuisance of the description specified in section 135 of the Agricultural Code and subject thereunder to abatement by the commissioner under section 136 of the Code "by eradicating, controlling, or destroying such pests"; and when the only practical method of eradicating, controlling or destroying the pests is to destroy the plant, the power to destroy the pests necessarily includes the power to destroy the plant. Skinner v. Coy, 13 Cal. 2d 407, 90 P.2d 296.

— Iowa.
In an action against assistant state entomologists for trespass in entering on plaintiff's premises, and removing therefrom a barberry bush, held that, under provisions of harmful barberry bush statute it was not error to permit defendants, who qualified as entomologists, to testify to the process by which black stem rust completes its cycle through the harmful barberry in order to determine whether the bush removed from plaintiff's premises was one that came within the provisions of the statute. Gray v. Thone, 196 Iowa 532, 194 N. W. 961. [Code 1939, § 4062.19 as to "harmful barberry" being specifically governed by all applicable provisions of §§ 4062.05–4062.18.]

3-3-3. Appointment of Inspectors—Bond, Badge and Powers.

The board shall appoint inspectors, whose salaries or compensations shall be fixed in accordance with standards adopted by the state department of finance, and who shall qualify by giving a corporate surety bond to the state in such form and in such amount as shall be deter-

mined by the department of finance for the faithful performance of their duties, which bonds shall be filed with the state board of agriculture. The board shall provide such inspectors with an official badge which shall be worn at all times by such inspectors when on official duty. Such badge shall entitle the bearer to enter any premises and to open any container for the purpose of inspection, and to take samples of crops, seeds, insects, insecticides, fungicides, poisons, fertilizers, or of any other material in any way connected with the growing, handling or utilization of crops. (L. 23, p. 146, § 1898.)

History.
As amended by L. 41, ch. 2, eff. July 1, to include salary provision and leave bond amount to department.

1. Former statute.
Former statute, providing for appointment of county inspectors, etc., held unconstitutional. State ex rel. Wright v. Standford, 24 U. 148, 66 P. 1061.

3-3-4. Notice to Owner of Infected Property.

The agricultural inspector in each district shall make such inspections as are necessary to enable him to determine if any crop, land or environment shall be found to be infected or infested with pests injurious to the agricultural interests of the district or state. If any crop, trees, land or environments are found to be infected or infested with pests injurious to the agricultural interests of the district or state, he shall notify the owner or the person in charge or possession of the same of his findings. Such notice may be served upon the owner or upon the person having charge of such crop, trees, land or environments by any inspector or deputy, or by any member of the state board, or it may be mailed to the last known post-office address of the owner of said crop, trees, land or environments. The notice so served shall require that the crop or trees shall be destroyed or that the crop, trees, land or environments shall be disinfected by the application of such treatment as is prescribed by the board and the notice shall specify the time not less than 20 days after notice in which such destruction or treatment is to be done. (L. 23, p. 146, § 1899.)

History.
As amended by L. 39, ch. 3, eff. May 9, changing first sentence and adding 20-day limitation in last sentence.

Comparable provision.
Cal. Agric. Code, § 130 (notice may be served on record owner or person in possession or on agents in same manner as summons in civil action; if no such person can be found in county, the notice may be served by posting copies thereof in three conspicuous places on property or premises and by mailing copy to owner at last known address).

Decisions from other jurisdictions. — California.
Notice given was sufficient which notified petitioners in injunctive proceeding against county agricultural commissioner that petitioners' premises, properly described, were "found and determined to be infected with peach mosaic disease" and that there were "peach trees infected with peach mosaic disease," the evidence showing that W. P. A. workers, after being instructed by experts as to symptoms of the disease, went through defendants' orchard and charted 16 trees as having symptoms of the mosaic, the commissioner and department pathologists then verifying presence of the symptoms and marking the trees with white paint. Skinner v. Coy, 13 Cal. 2d 407, 90 P.2d 296.

3-3-5. Spraying—When Unlawful.

It shall be unlawful for any person to spray with any arsenical or other poisonous material any crop when the same is in bloom, or any

noxious weeds with poisonous chemicals dangerous to the life of domestic animals or to otherwise distribute poison without giving written notice thereof to the property owner or officials in charge of public property in person or by mail. (L. 23, p. 146, § 1899.)

3–3–6. Infected Premises a Nuisance—Abatement—Costs.

If after due notice is served as provided in this article any owner or owners, person or persons in charge or possession of any crop, trees, land or environment infected or infested with pests shall fail to so destroy or disinfect, or control the same, if such control is possible and practicable, such crop, trees, land or environment is hereby declared to be a public nuisance and shall be abated as other public nuisances, or the state board of agriculture shall cause such pests to be eradicated or controlled by such disinfection or extinction, or if in their judgment the same be necessary, they may cause the crop, whether consisting of trees or otherwise, to be destroyed, and the expense incurred shall be charged against the property and collected as provided in this chapter. The costs of such eradication or disinfection, or such destruction, shall be paid by the county in which the same is done; *provided,* that wherever a city shall comprise a district said costs shall be paid by said city and shall be collected as provided in this chapter by the county treasurer of the county in which the said city is located. All moneys so collected shall be repaid to the said city by the county treasurer at the time or times regular tax moneys are paid to said city.

(L. 23, p. 146, § 1899x1.)

History.
As amended by L. 39, ch. 3, eff. May 9, eliminating former provision for preliminary complaint by taxpayers.

Cross-references.
Nuisances, 103–41; abatement of nuisance generally, Title 64.

3–3–7. Charges to Be Included in Tax Notice.

The agricultural inspector shall furnish an itemized certified written statement of the expense incurred in the eradication of any pests, including the names of men employed, the time required and such other information as shall fairly apprise the owner of the cost of cleaning such crops, land or environment. This statement shall be filed with the county clerk of the county in which the inspection is made within ten days after the completion of any such work, and a copy shall be mailed to the owner or person in charge of such crops, land and environment. Any person dissatisfied with the statement so filed by the agricultural inspector may within ten days after the filing of said statement file with the county clerk his objections thereto in writing. The board of county commissioners shall by resolution fix dates to hear and pass upon any objections filed and finally fix and determine the amount of such charges. Any statement not objected to within the time specified shall be conclusive. The county clerk shall certify to the county treasurer the amounts of all such charges on or before the 10th of September of each year. It shall be the duty of the county treasurer to include all such charges on the tax notice sent to the owner of the property, and

such charges shall become a lien on the entire property, any part of which is cleaned, in the same manner and to the same extent as the lien of general taxes on the property of the owner thereof.

(L. 23, p. 146, § 1899x2.)

3-3-8. Sale of Infected Fruit Unlawful, Exceptions.

It shall be unlawful to sell or offer for sale or have in one's possession for sale or barter, any fruit which is or has been infected or infested with California peach blight, San Jose scale or other scale insects, apple scab, codling moth larvae, or peach twig borer, except that such infested fruits may be sold to commercial processing plants under supervision of the state board of agriculture, and the fact that such fruit bears mark of the above named pests shall be deemed conclusive evidence that such fruit is infected or infested within the meaning of this section; and it is hereby made the duty of the agricultural inspectors to prevent the sale of such infected or infested fruit and they may seize and destroy such infected or infested fruit whenever the same has been packed, sold, shipped, or offered for sale, or is held in any warehouse, store, salesroom, or other place for the purpose of being sold, bartered, shipped, or exposed for sale or barter, except as provided in this act. (L. 27, p. 67, § 1900.)

History.
As amended by L. 37, ch. 4, eff. May 11, adding exception as to sales to processing plants.

Comparable provisions.
Idaho Code, § 22-1513 (similar; following quoted words were added by amendment: "or the peach twig borer or other fruit pests of economic importance.")

Mont. Rev. Codes, § 3626 (similar: amended by adding following quoted words: "or other insect pest or disease dangerous to agriculture"; "or shows the effect of disease"; also unlawful to import such infected fruit into state).

3-3-9. Nursery Stock—Sale of—License.

No person shall engage or continue in the business of selling within the state or of importing into the state any nursery stock without first having obtained a license to do business in this state as in this article provided. (L. 23, p. 146, § 1902.)

Cross-reference.
Failure to obtain license generally, 103-26-68.

3-3-10. Id. Annual Fee.

Any person may obtain a license from the state board of agriculture to engage in the business as provided in the preceding section by applying to the state board of agriculture for such license and by paying a registration fee of $10. License granted under this article shall be for one year; *provided, however,* that such license may be revoked at any time for any violation of this article or the rules and regulations of the state board of agriculture at the discretion of the board.

(L. 23, p. 146, § 1903.)

3-3-11. Id. Inspection of.

All nurseries and nursery stock must be inspected at least once each year by a representative of the state board of agriculture and such

other inspections made as are deemed necessary by said board. Nursery stock found to be infested or infected with any dangerous disease or insect pest must be destroyed or otherwise treated as determined by the inspector. The state board of agriculture shall issue to licensed nursery dealers, after their nursery stock has been officially inspected and found to be apparently free from injurious insect or plant disease pests, a certificate stating that such inspection has been made and that the nursery stock in question is apparently free from any dangerous insect or plant disease pest. (L. 23, p. 146, § 1904.)

3-3-12. Id. Unlawful Sales of Imported Stock.

It shall be unlawful for any person to sell, give away, or distribute any imported nursery stock within this state until the same has been inspected by an authorized inspector of the state board of agriculture and found to conform to the regulations of said board.

(L. 23, p. 146, § 1905.)

3-3-13. Id. To Be Labeled.

Every person engaged in the selling or shipping of nursery stock in this state shall attach to the outside of each package, box, bale or carlot shipped or otherwise delivered, a tag or label on which shall appear an exact copy of his certificate and such other information as is required by the state board of agriculture. (Code Report.)

3-3-14. Id. Carriers to Hold for Inspection.

Every common carrier within the state shall upon the arrival of any nursery stock at the station or other place to which such nursery stock is consigned immediately notify the agricultural inspector of such arrival, to whom consigned, with date and place of arrival; and, unless such shipment is covered by Federal quarantine regulations shall hold the shipment until inspected or released by the inspector; *provided,* that where such shipment is accompanied by a certificate of any agricultural inspector within the state the stock may be delivered immediately after said notice is sent. (L. 27, p. 67, § 1906.)

3-3-15. Definitions.

As used in this article the following terms are defined as follows:

"Crops" includes useful plants, plant parts, plant products or plant seeds of whatever name or nature.

"Pests" includes any harmful seeds, weed seeds, rodents, insects or other animals, fungi, bacteria or other plants, or eggs, spores or offspring or any of their products, that may infect or infest crops, lands, premises, animals, containers or other environment of any name or nature.

"Plants" includes trees, shrubs, vines, forage, cereals, cuttings, grafts, scions, buds, fruits, vegetables, roots, bulbs and seed.

"Nursery stock" includes all field-grown florist stock, trees, shrubs, vines, cuttings, grafts, scions, buds, fruit pits, and other seeds of fruit and ornamental trees and shrubs and other plants and plant products for propagation, except field vegetable and flower seeds, bed-

ding plants and other herbaceous plants, bulbs and roots, any or all of which may be included as nursery stock at the option of the state board of agriculture. (L. 23, p. 146, §§ 1899x1, 1909.)

ARTICLE 2

INSECTICIDES AND FUNGICIDES

3-3-16. Definitions.

As used in this article the following terms are defined as follows:

"Insecticide" shall include Paris green, lead arsenate, and any other substance or mixture of substances intended to be used for preventing, destroying, repelling or mitigating any and all insects or other animals that may infest or infect vegetation or animals or households or be present in any environment thereof.

"Paris green" shall include the products sold in commerce as Paris green and chemically known as aceto arsenite of copper.

"Lead arsenate" shall include the product or products sold in commerce as lead arsenate and consisting chemically of products derived from arsenic acid (H_3AsO_4) by replacing one or more hydrogen atoms by lead.

"Fungicide" shall include any substance or mixture of substances intended to be used for preventing, destroying, repelling or mitigating any and all fungi or bacteria that may infest or infect vegetation or be present in any environment whatsoever. (L. 19, p. 267, § 4.)

Comparable provisions.

Iowa Code 1939, § 3182 (substantially identical).

Other provisions comparable with those included in Title 3, Ch. 3, Art. 2: McKinney's N. Y. Consol. Laws, Agriculture and Markets Law, § 148 et seq.; Wis. Stats. § 94.67 et seq.

3-3-17. Adulteration and Misbranding Unlawful.

It shall be unlawful for any person to manufacture, import or sell, offer, keep or expose for sale or distribution within the state of Utah any adulterated or misbranded insecticide or fungicide.

(L. 19, p. 267, § 1.)

3-3-18. When Deemed Adulterated.

For the purpose of this article an insecticide or fungicide shall be deemed to be adulterated—(1) In the case of Paris green: (a) if it does not contain at least fifty per cent of arsenious oxide; (b) if it contains arsenic in water-soluble forms equivalent to more than three and one-half per cent of arsenious oxide; (c) if any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength. (2) In the case of lead arsenate: (a) if it contains more than fifty per cent of water; (b) if it contains total arsenic equivalent to less than twelve and one-half per cent of arsenic oxide (As_2O_5); (c) if it contains arsenic in water-soluble forms equivalent to more than seventy-five one-hundredths of one per cent arsenic oxide (AS_2O_5); (d) if any substance has been mixed or packed with it so as to reduce or lower, or injuriously affect, its quality or strength. (3) In case of any insecticide or any fungicide other

than Paris green and lead arsenate: (a) if its strength or purity falls below the professed standard or quality under which it is sold; (b) if any substance has been substituted wholly or in part for any valuable constituent; (c) if any valuable constituent has been wholly or in part abstracted; (d) if it is intended for use on vegetation and contains any substance or substances injurious to vegetation. (L. 19, p. 267, § 2.)

Comparable provision.
Iowa Code 1939, § 3185 (substantially the same).

3-3-19. When Deemed Misbranded.

Insecticides or fungicides or articles which enter into their composition shall for the purpose of this article be deemed to be misbranded: (1) In all cases: (a) if the package or label shall bear any statement, design or device regarding such article or its ingredients which shall be false in any particular; (b) if sold, offered or exposed for sale in package form and the quantity of the contents is not wholly and correctly marked on the outside of the package in terms of weight, measure or numerical count; (c) if it is labeled or branded so as to deceive or mislead the purchaser; (d) if it is an imitation, or offered for sale under the name of another article; (e) if the contents as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package. (2) In the case of any insecticide or any fungicide other than Paris green and lead arsenate: (a) if it contains arsenic in any of its combinations or in the elemental form and the total amount of the arsenic present, expressed as per cent of metallic arsenic, is not stated on the label; (b) if it contains arsenic in any of its combinations or in the elemental form and the amount of arsenic in water-soluble form, expressed as per cent of metallic arsenic, is not stated on the label; (c) if it consists partly or wholly of an inert substance or substances which do not effectively prevent, destroy, repel or mitigate insects or fungi and does not have the name and percentage amount of each and every one of such inert ingredients and the fact that they are inert plainly and correctly stated on the label; *provided,* that in lieu of naming and stating the percentage amounts of each and every one of such ingredients the producer may at his option state plainly on the label the correct names and percentage amounts of each and every ingredient of the insecticide or fungicide having insecticidal or fungicidal properties and make no mention of the inert ingredients, except in so far as to state the total percentage of inert ingredients present.

(L. 19, p. 267, § 3.)

3-3-20. Spray Solutions to Be Labeled.

All spray solution known as lime and sulphur liquid shall be conspicuously labeled as to the strength of the solution showing a guaranteed strength of lime and sulphur combined in solution as sulphates and sulphides, of which solution not less than seventy per cent by weight shall be sulphur, and such label or labels shall also contain directions giving the proportion of water to be used in any mixture containing a four per cent solution by weight of lime and sulphur combined

as sulphates and sulphides, of which solution not less than seventy per cent by weight shall be sulphur. Every package of such compound or solution sold, offered or exposed for sale shall be plainly labeled, stating the contents of the compound or solution and the gravity test thereof. (L. 19, p. 267, § 5.)

Comparable provision.
Iowa Code 1939, § 3186 (spray solution known as a lime and sulphur liquid shall be not less than 70% by weight of sulphur).

3-3-21. Insecticides and Fungicides to Be Labeled.

Every lot or package of any insecticide or fungicide which is manufactured, sold, distributed or transported, or offered or exposed for sale, within the state shall have affixed in a conspicuous place on the outside thereof a plainly printed or written statement in at least 8-point type clearly and truly stating the number of net ounces or pounds in the package, the name or trademark under which the substance is sold, the name and address of the manufacturer or shipper, and a chemical analysis showing the names and percentages of the ingredients which make up the contents of such package. The label shall contain this information and nothing else. (L. 19, p. 267, § 6.)

Comparable provision.
Iowa Code 1939, § 3183 (insecticides and fungicides must be labeled on package or container as provided in §§ 3037-3039).

ARTICLE 3

Noxious Weeds

3-3-22. Eradication by State and Subdivisions.

The state board of agriculture may designate and declare by regulation the injurious and noxious weeds of the state; and the state road commission, state land board, and every railroad, canal, ditch and water company, and every person or corporation owning, controlling or occupying lands in this state, and every county, municipality, school district, irrigation and drainage district, having supervision and control over streets, alleys, lanes, rights of way, made or natural waterways, or other lands, shall destroy until completely eradicated all weeds declared and designated as noxious and injurious by the state board of agriculture before such weeds shall propagate or spread and whenever required by the state board of agriculture, the commission or any inspector. (L. 27, p. 4, § 2.)

History.
As amended by L. 37, ch. 5, eff. May 11, by adding "or corporation" in fourth line.

Comparable provisions.
Cal. Agric. Code, § 30 (department of agriculture is charged with duty of preventing introduction and spread of noxious weeds); § 911, subds. b and c (enumeration of primary and secondary noxious weeds); § 159 (camel thorn declared a public nuisance); § 159a (idem as to Australian field cress; this and preceding section providing for eradication; one-third of expense borne by state, one-third by county, and one-third by property owner).

Iowa Code 1939, § 4829.16 (in case of substantial failure to comply with order, weed commissioners must cause the weeds to be destroyed; expense thereof to be paid from county general fund and recovered later by assessment against property owner.

Other provisions comparable to those included in Title 3, Ch. 3, Art. 3: Mich.

Stats. Ann. § 9.621 et seq., Wis. Stats. § 94.20 et seq.

Cross-references.
Eradicating in cities of second class, 15-10; cities may control, 15-8-23; county commissioners to control, 19-5-28; eradication under program of state board of agriculture, 3-3-29 et seq.; spreading weeds by farm machinery, 3-3-33 et seq.

Decisions from other jurisdictions.
— California.
City board of trustees acted in judicial capacity in hearing and acting on protest of owner of lots to the report of the street superintendent and his assessment of cost of removing weeds from or in front of the lots. Bayside Land Co. v. Dooley, 103 Cal. App. 253, 284 P. 479.

3-3-23. Eradication by Property Owner—Notice.

It shall be the duty of the agricultural inspectors to make careful examination and investigation in their respective districts of the spread, development and growth of noxious weeds, and upon discovery of such weeds it shall be the further duty of the said inspectors to ascertain the names of the owners of such weed infested streets, alleys, lanes, rights of way, made or natural waterways, or other lands and the description of the land, waterways, or rights of way, where said weeds are found and to serve notice in writing upon the owner or occupant of said land, waterway, or right of way, either in person or by mailing said notice, postage prepaid, addressed to the owner or occupant at the last known post-office address as disclosed by the books and records of the county assessor of the county in which the property is located, or if a canal company, commission, board or corporation, notice shall be served upon the president of the company, or chairman of the commission or board, to cut, eradicate, or destroy said weeds within such time as designated by the inspectors. One notice shall be deemed sufficient for any lot or piece of property for the entire season of weed growth during the year. The inspectors shall make proof of service of said notice under oath, and file the same in the office of the county treasurer.

(L. 25, p. 133, § 4.)

History.
As amended by L. 37, ch. 5, eff. May 11, making designation of infested places more specific and providing for service on boards and corporations.

3-3-24. Id. Failure to Eradicate.

If any owner or occupant of the lands described in the notice served by any inspector or deputy shall fail or neglect to cut, destroy or eradicate the weeds upon the land described in accordance with the requirements of said notice, it shall be the duty of said inspector or deputy at the expense of the county in which notice has been served to employ necessary assistance and to cause such weeds to be removed or destroyed. He shall make in triplicate itemized statements of all expenses incurred in the removal and destruction of the weeds and shall deliver the three copies of said statement to the county treasurer within ten days after the date of the completion of the work of removing or destroying the weeds. (L. 25, p. 133, § 5.)

3-3-25. Id. Costs Included in Tax Notice.

Upon receipt of the itemized statements of the cost of removing or destroying weeds it shall be the duty of the county treasurer forthwith

to mail one copy to the owner of the land, together with a statement that objections may be made to the whole or any part of the statement so filed to the board of county commissioners within thirty days. A hearing may be had upon objections made. The county treasurer shall at the same time deliver a copy of the statement to the clerk of the board of county commissioners. If objections to any statement are filed with the county commissioners, they shall set a date for hearing, giving notice thereof, and upon the hearing fix and determine the actual cost of removing or destroying the weeds, and report their findings to the county treasurer. If no objections to the items of the account so filed are made within thirty days after the date of mailing said itemized statement, it shall be the duty of the county treasurer to enter the amount of such statement upon the tax roll in a column prepared for that purpose, and likewise within ten days from the date of the action of the board of county commissioners upon objections filed to enter the amount found by the board of county commissioners as the cost of removing or destroying the weeds in the prepared column upon the tax rolls. If current tax notices have been mailed, said taxes may be carried over on the rolls to the year next following. Such entry by the county treasurer as herein provided of the costs of removing or destroying said weeds shall have the force and effect of a valid judgment of a court of competent jurisdiction, and shall be a lien upon the land from which the weeds were removed and shall be collected by the county treasurer at the time of the collection of the general taxes; and upon payment thereof receipt shall be acknowledged upon the general tax receipt issued by the treasurer. (L. 25, p. 133, § 6.)

Cross-reference.
Force and effect of judgment, 104-30-15.

3-3-26. Contribution Between Cities and County.

Any expense incurred by the county in the removal of noxious weeds from any property owned or controlled by a municipality shall be repaid to the county from the general fund of the municipality upon receipt of a statement of the expense so incurred; *provided,* that in cities of the first and second class no weed eradication on city streets or other city property at the expense of the municipality shall be undertaken without first giving said municipality an opportunity to clean its own property. (L. 25, p. 133, § 7.)

3-3-27. Weeds Declared Noxious by Petition.

Whenever fifty or more taxpayers within any county, precinct or municipality petition to have any weed declared noxious within said county, precinct or municipality the state board of agriculture may after investigation declare said weeds to be noxious within said county, precinct or municipality. (L. 25, p. 133, § 8.)

3-3-28. Failure to Eradicate, a Misdemeanor.

Any person failing or neglecting to remove or destroy weeds as herein required is guilty of a misdemeanor. (L. 19, p. 342, § 8.)

L. 1941, ch. 3; eff. May 13.

NOXIOUS WEEDS

AN ACT providing for a noxious weed eradication program under the supervision of the state board of agriculture, together with the county commissioners of the respective counties, with the coöperation of counties and landowners, and authorizing the levy of taxes for such purposes, and authority to state board of agriculture to pass rules and regulations to carry out provisions of this act.

Be it enacted by the Legislature of the State of Utah:

3-3-29. Program for Eradication.
The state board of agriculture shall formulate and supervise a program for noxious weed eradication. (Sec. 1.)

3-3-30. Coöperation Between Counties, Landowners and State Board.
The counties and landowners may by coöperative agreements with the state board of agriculture provide for a noxious weed eradication program, said program to be administered by and under the control of the state board of agriculture. (Sec. 2.)

3-3-31. Eradication—Counties May Levy Tax—Maximum.
The counties may by general tax levy raise funds for participation in a noxious weed eradication program, but such levy shall not exceed one-half mill in counties having an assessed valuation in excess of two-hundred million dollars and not to exceed one mill in the other counties of the state for this purpose. (Sec. 3.)

3-3-32. To Provide Rules and Regulations.
The state board of agriculture, together with the county commissioners of the respective counties, shall pass rules and regulations to carry out the provisions of this act. (Sec. 4.) 3-3-32 Amended S.L. '43, c. 3 Sec. 1, p. 4

L. 1939, ch. 4; eff. May 9.

FARM MACHINERY TRANSPORTING NOXIOUS WEED SEEDS

AN ACT to control the spreading of noxious weeds by transporting the seed from farm to farm by the operation of farm machinery.

Be it enacted by the Legislature of the State of Utah:

3-3-33. Person Defined.
The term "person" when used in this act includes any individual, firm, association, partnership or corporation. (Sec. 1.)

3-3-34. Permit to Operate Farm Machinery for Public Service.
It shall be unlawful for any person to operate a self-binder, threshing machine or combine harvesting machine for public service in the cutting, harvesting or threshing of any grain, alfalfa seed or other agricultural seed without first having secured a permit from the nearest agent of, or the Utah state board of agriculture so to do, such permits shall be issued upon application. (Sec. 2.)

3-3-35. Id. Expiry Date.

A permit to operate when issued shall be for a calendar year and shall expire at midnight on December 31 of the year in which issued. (Sec. 3.)

3-3-36. Persons Operating Machinery to Thoroughly Clean.

Any person operating a machine as set forth in section 2 hereof before removing such machine from any noxious weed infested farm onto the public highway or private property shall sweep the exterior of the machine reasonably free from weeds, seeds, grains and refuse with brooms or similarly effective tools. Such person shall speed up the machinery to blow out or remove all foreign particles from the interior of the machine and shall make sure that the gears, pulleys, canvases, screens, elevators, fans, belts and other working parts are reasonably free from weeds, seeds, grains and refuse.

The Utah state board of agriculture is given the power to issue, suspend, or revoke a permit or permits to carry out the intent of this act. (Sec. 4.)

3-3-37. Failure to Secure Permit a Misdemeanor.

Any person is guilty of a misdemeanor who attempts to operate a self-binder, threshing machine or combine harvester for public service as defined in section 2, without first having secured a permit so to do from the nearest agent of, or the state board of agriculture. (Sec. 5.)

Tit. 3, c. 4
Ref. to
S.L. '45, c. 142
Item 75, p. 286

CHAPTER 4

Title 3, c. 4
Regulation
of Poultry
Diseases
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Secs. 1-6
pp. 11, 12

Title 3, c. 4
New matter
S.L. '43, c. 6
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PREDATORY ANIMAL BOUNTIES

3-4-1. Predatory Animal Control Fund—How Created and Allocated.
3-4-2. Predatory Animal Control Fund, How Expended.
3-4-3 to 3-4-12. (Repealed.)

3-4-1
New matter
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3-4-1
Ref. to
S.L. '43, c. 6
Sec. 1, p. 6

3-4-1
Amended
S.L. '47 c. 4
sec. 1 p. 8

3-4-1. Predatory Animal Control Fund—How Created and Allocated.

The boards of county commissioners of each county shall at the time of the annual levy of taxes levy a tax of five mills on the dollar on all sheep and goats, and two mills on the dollar on all range horses and cattle, according to the assessed valuation of the same; said tax to be collected as other taxes and paid into the state treasury. The state treasurer shall keep the same in a separate fund known as the state predatory animal and rodent control fund. He shall pay from such fund $5,000 annually to the state board of agriculture to be used by it for the control of rabbits and rodents in the state of Utah in coöperation with the United States department of agriculture. He shall also pay the balance of the said state predatory animal and rodent control fund, including unexpended balances, together with accrued funds now on hand in said state bounty fund except as provided above to the state board of agriculture, the same to be set aside by the state board of agriculture in a fund known as "The Predatory Animal Control Fund" to be spent in coöperation with the United States department of agri-

culture for the eradication of rabies and the control of predatory animals. The above predatory animal control fund shall be paid to the state board of agriculture. (L. 25, p. 77, § 435.)

History.
As amended by L. 39, ch. 5, eff. Mar. 15, changing all but first sentence.

Cross-reference.
Power of counties to destroy pests, 19-5-28.

3-4-2. Predatory Animal Control Fund, How Expended.

3-4-2 Amended S.L. '43 c. 4 Sec. 1, p. 5

3-4-2 Ref. to S.L. '43, c. 6 Sec. 1, p. 6

Funds set aside for the control of predatory animals shall be used for the control of the following designated predatory animals, to wit: coyotes, lynx or bobcats, mountain lion, black or timber wolf, and predatory bear; and the money accruing from the sale of skins of animals taken during the fur season shall be divided between the state board of agriculture and the federal treasury proportionately according to the amount of money expended by each party. Such money obtained by the state board of agriculture shall revert back to "The Predatory Animal Control Fund" to be used in continuing this act.

History.
As amended by L. 39, ch. 5, eff. Mar. 15. This section prior to amendment related to amount of bounty to be paid for the destruction of certain designated animals.

3-4-3 to 3-4-12. (Repealed by L. 39, ch. 5, § 2, eff. Mar. 15.)

CHAPTER 5

LIVESTOCK

Tit. 3, c. 5 Ref. to S.L. '45, c. 142 Item 75, p. 286

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3-5-45. Contagious Diseases—Duty of Commissioners and Inspectors.

3-5-46. Id. Regulation Against Introduction—Fees.
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L. 1939, ch. 6; eff. May 9.

3–5–182. Permitting Hogs to Trespass After Notice, Misdemeanor.
3–5–183. Conflicting Acts Repealed.

ARTICLE 1

MARKS AND BRANDS

3-5-1 to 3-5-17. (Repealed by L. 39, ch. 7, eff. May 9. For repeal and new provisions, see 3-5-113 et seq.)

ARTICLE 2

INSPECTION AND QUARANTINE

3-5-18. Coöperation with Federal Authorities.

Whenever there shall be an outbreak of any contagious or infectious disease among the domestic animals of the state of such a nature as to imperil the livestock of adjoining states the state board of agriculture shall notify the secretary of the United States Department of Agriculture and seek to coöperate with the Bureau of Animal Industry of that department in preventing the spread of the disease beyond the boundaries of this state and in promptly eradicating the disease within the state. (L. 21, p. 2, § 193.)

Comparable provisions.

Idaho Code, § 24-208 (governor authorized to accept regulations prepared by secretary of agriculture pertaining to suppression and extirpation of contagious diseases among domestic animals; state is required to co-operate with United States bureau of animal industry in regard to quarantine districts).

Iowa Code 1939, § 2643, subd. 9 (department of agriculture authorized to co-operate with and arrange for assistance from United States department of agriculture).

Other provisions comparable to those included in Title 3, Ch. 5, Art. 2: Ill. Rev. Stats. 1941, Ch. 8, § 62 et seq.; Mich. Stats. Ann. § 12.371 et seq.; McKinney's N. Y. Consol. Laws, Agriculture and Markets Law, § 72 et seq.; Wis. Stats. § 95.17 et seq.

Cross-references.

Quarantine by state board of health, 35-4-16, 35-4-20.

A. L. R. notes.

Constitutionality of statute for control of diseases of livestock, 65 A. L. R. 525.

3-5-19. Infected Animals to Be Condemned.

Whenever there exists an outbreak or epidemic of any contagious or infectious disease among domestic animals of this state of such character as to endanger or imperil livestock the state board of agriculture may, upon the approval of the governor, condemn, destroy and dispose of any livestock infected with such contagious or infectious disease, or any livestock which has been exposed to, or is deemed by the board capable of communicating to other domestic animals, such contagious or infectious disease, and may condemn and destroy any barns, sheds, corrals, pens or other property which the said board may determine necessary to be destroyed in order to prevent the spread of such contagion or infection. Such condemnation and destruction shall take place only when in the opinion of the said board and the governor an emergency exists and such action is justified and necessary for the safety and protection of the livestock of this state. (L. 21, p. 2, § 192.)

Comparable provisions.

Iowa Code 1939, § 2652 (department of agriculture may quarantine or condemn any animal infected with contagious or infectious disease; however, cattle infected with tuberculosis shall not be killed without owner's consent unless there are sufficient funds available to pay for such cattle).

Decisions from other jurisdictions. — Iowa.
Cattle diseased with tuberculosis, being nuisances, may be destroyed without compensation, except as statutes provide therefor, and provisions for partial compensation in Bovine Tuberculosis Law are gratuities, so that recipient cannot complain of limitations of his right. Loftus v. Department of Agriculture, 211 Iowa 566, 232 N. W. 412.

A. L. R. notes.
Constitutionality of statute or ordinance providing for destruction of animals, 8 A. L. R. 67; liability of public officers for killing or injuring animals, while acting, or professing to act, under a statute in relation to the inspection or destruction of livestock, 12 A. L. R. 734.

3-5-20. Appraisal Prior to Destruction.

Whenever the state board of agriculture shall find it necessary to condemn and destroy any animals or property within this state because of any contagious or infectious disease as provided herein, such animals or property shall not be destroyed until after a fair appraisement shall have been made of the value of such animals or property by three appraisers, one to be appointed by the state board of agriculture, one by the owner of the property to be destroyed and the third to be selected by these two. Said appraisers shall make a report to the board under oath as to their appraisement, and the board shall forward such appraisement to the governor with its recommendation as to what proportion of such appraisement is considered by it as a just bill against the state of Utah. (L. 21, p. 2, § 194.)

Comparable provision.
Cal. Agric. Code, § 207 (two appraisers determine value of the animals prior to destruction; one appointed by state director of agriculture, the other by chief of bureau of animal industry of United States department of agriculture).

Decisions from other jurisdictions. — California.
Although state officials who wrongfully slaughter animals which do not respond to tuberculin test are guilty of a tort and are responsible to owners of animals illegally killed, the state is not liable for unauthorized acts of its officers unless expressly provided by statute. Lertora v. Riley, 6 Cal. 2d 171, 57 P.2d 140.

A. L. R. note.
Right to and measure of compensation for animals destroyed to prevent spread of disease or infection, 67 A. L. R. 208.

3-5-21. Slaughter for Post-mortem Examination.

Whenever the commissioner of agriculture or any livestock inspector, or any veterinary surgeon acting under the orders of either, shall find indications of any contagious or infectious disease among any domestic animals in this state and is unable to determine positively the actual nature of such disease, the commissioner may order one or more of the animals so suspected slaughtered in order that a post-mortem examination may be made to determine the exact nature of the disease. (L. 21, p. 2, § 195.)

3-5-22. Quarantine May Be Established.

Whenever any member of the state board or the commissioner, or any inspector employed by it or any inspector or agent of the Bureau of Animal Industry of the United States Department of Agriculture, shall find positively or shall have good reason to believe that any disease investigated by him is contagious or infectious and that any ani-

mals are likely to communicate such disease to other animals, he may at once establish a quarantine over such animals and any premises infected and take such action as he may deem necessary to prevent the spread of such contagion or infection in accordance with the rules and regulations of the board, and shall promptly report his actions to the state board. Any violation of such quarantine or sanitary measure or order of a livestock inspector is a misdemeanor. (L. 21, p. 2, § 195.)

Comparable provisions.

Cal. Agric. Code, § 200 (director of agriculture may enter premises and inspect animals and poultry and may establish necessary quarantine, sanitary and police regulations); § 202 (director is required to quarantine diseased animals or poultry on land or premises where they are located).

Idaho Code, § 24-218 (similar provision as to "authority to quarantine temporarily"); § 24-120 (similar provision contained in statute pertaining to control of sheep diseases).

Iowa Code 1939, § 2643 (department of agriculture may quarantine animals affected with infectious or contagious diseases or animals that have been exposed thereto).

Decisions from other jurisdictions.

— Iowa.

Due process of law is not denied by summary quarantine or even destruction of tubercular cattle. Loftus v. Department of Agriculture, 211 Iowa 566, 232 N. W. 412.

3-5-23. Tuberculin Test—Imported Dairy Cattle.

It shall be unlawful for any person to bring into this state any cattle for dairy or breeding purposes, unless said cattle are accompanied by a certificate from a state or federal inspector certifying that they have been examined and subjected to the tuberculin test within forty days prior to their shipment into this state and are free from tuberculosis and every other contagious or infectious disease, and all cattle so brought into this state for dairy or breeding purposes shall be kept and held entirely separate from any and all other cattle for a period of ninety days from date of arrival at destination unless sooner released by the commissioner of agriculture; *provided,* that mature cows may be kept or held on their owner's inclosed premises for a like period of time. The state board of agriculture shall be notified by the owner or consignee of the date of arrival of such cattle and the place where they are being held. The commissioner shall cause such cattle to be tuberculin-tested within the period above named, employing not less than two recognized tests. The owner of said cattle shall pay the cost of such testing, and no indemnity shall be paid by the state of Utah.

(L. 27, p. 65, § 196.)

Comparable provisions.

Cal. Agric. Code, § 212, subd. a, amended by Laws of 1941 (dairy cattle and breeding bulls must be accompanied by certificate of health and tuberculin test record signed by qualified veterinarian or by signed statement issued by official in charge of livestock sanitary work in state from which the animals were transported).

Idaho Code, § 24-220 (exception as to "strictly range cattle"; certificate showing test "within sixty days prior to arrival in this state").

Iowa Code 1939, § 2653 (no animal to be brought into state for work, breeding or dairy purposes unless it has been examined and "found free from all contagious diseases").

Decisions from other jurisdictions.

— Iowa.

Under statute making it a misdemeanor for carriers to bring cattle infected with contagious disease into state and rendering carrier liable for damages resulting from violation of statute, held that liability was not absolute but arose only on proof of negligence. Furley v. Chicago, M. & St. P. Ry. Co. 90 Iowa 146, 57 N. W. 719, 23 L. R. A. 73.

— Federal.

Statute prohibiting transportation of diseased cattle is not unconstitutional as

an attempted regulation of interstate commerce, nor is it open to the objection that it denies any rights and privileges to citizens of other states. Kimmish v. Ball, 129 U. S. 217, 32 L. Ed. 695, 9 S. Ct. 277.

3-5-24. Id. Exceptions.

Every person owning or keeping any cattle for dairy purposes shall upon notice from the commissioner or his representative or the United States Bureau of Animal Industry assemble such cattle at the time and place designated in such notice for the purpose of testing the same for tuberculosis. The provisions of this and the next preceding section shall not apply to what is known as range cattle or branded cattle raised in pasture or open range, nor to cattle imported for exhibition purposes or resale on commission; *provided,* that such exception shall not apply for a longer time than the exhibition period or in case of resale on commission for a longer period than ten days; *and provided further,* that the state board of agriculture shall be notified of arrival by the importer as provided in the next preceding section. (L. 27, p. 65, § 197.)

Comparable provision.
Cal. Agric. Code, § 213 (exemption as to animals brought into state for exhibition or theatrical purposes; but when such are sold to remain in state they must be subjected to tuberculin test).

3-5-25. Imported Range Cattle—Certificate.

It shall be unlawful for any person to bring or cause to be brought into this state strictly range cattle unless they are accompanied by a health certificate showing the said cattle to be free from contagious, infectious or communicable disease or exposure thereto; the certificate to be made in the form and manner prescribed by the state board of agriculture. (L. 21, p. 2, § 198.)

Comparable provision.
Idaho Code, § 24-221 (substantially identical).

3-5-26. Claims for Indemnity for Condemned Animals.

Whenever animals other than tubercular cattle are condemned and slaughtered or property is destroyed as provided in this article the owner thereof must present his claim to the state board of agriculture within ninety days from the date on which such animals were killed or property destroyed, and the said board shall within a reasonable time thereafter pass upon the claim and transmit the same to the state board of examiners with a recommendation as to the sum, if any, which should be paid upon such claim, and, if in the opinion of the board of examiners the owner is entitled to compensation, such claim shall be transmitted by the governor to the next session of the legislature with his recommendation as to the payment thereof. (L. 21, p. 2, § 199.)

3-5-27. Tuberculosis and Bangs Disease Control Fund.

3-5-27 Amended S.L. '43, c. 5 Sec. 1, p. 5

The board of county commissioners of each county shall at the time of the annual levy of taxes, levy a tax of three mills on the dollar on all cattle other than range cattle and one and one-half mills on range cattle, said tax to be collected as other taxes and paid into the state treasury. The state treasurer shall keep the same in a separate fund known as the

tuberculosis and Bangs disease control fund and pay the same out upon the state auditor's warrant upon the order of the state board of agriculture. Said fund is hereby appropriated for use and expenditure by the state board of agriculture in payment of operating expenses for conducting tests and indemnities for slaughtered tuberculosis and Bang reacting cattle. Said fund is hereby declared to be a continuing fund; *provided, however,* that any unexpended balance in the old tubercular indemnity fund shall become a part of the tuberculosis and Bangs disease control fund and shall be expended solely for the payment of indemnities for slaughtered tubercular cattle; *and provided further,* that the payments herein provided for shall not be in excess of the actual market value of the livestock condemned. (L. 23, p. 142, § 1.)

History.
As amended by L. 39, ch. 8, eff. May 9, adding tax on range cattle and the provisos in last sentence.

3–5–28. Imported Swine—Certificate.

It shall be unlawful for any person to import swine into the state, for any purpose other than immediate slaughter, unless they are accompanied by a health certificate of inspection issued by a state or federal inspector, showing them to be free from all contagious, infectious or communicable diseases, and that hog cholera or swine plague was not known to exist in the immediate neighborhood from which the shipment originated within a period of six months prior to the date of shipment. (L. 21, p. 2, § 200.)

Comparable provision.
Cal. Agric. Code, § 215 (similar provision as to importing swine except for immediate slaughter "or for exhibition or theatrical purposes").

3–5–29. Infected Swine—Not to Be Moved.

It shall be unlawful to ship, trail, drive or otherwise move, or allow to stray or drift, any hogs from a quarantined area established under this article, except in accordance with rules and regulations of the board, and it shall be unlawful to ship, trail, drive or otherwise move or allow to drift from one point in the state to another point in the state any hogs affected with or exposed to hog cholera or swine plague or other contagious or infectious disease, except in accordance with the rules and regulations of the board. (L. 21, p. 2, § 201.)

3–5–30. Transporting Hogs—Cars to Be Disinfected.

It shall be unlawful for any person to load or cause to be loaded into any car any hogs for shipment into or within the state, except those for immediate slaughter, until such car shall have been cleaned and disinfected in accordance with the rules and regulations of the board. (L. 21, p. 2, § 202.)

Comparable provision.
Cal. Agric. Code, § 215.5 (for purposes other than for immediate slaughter "or for exhibition or theatrical purposes"; crates, cars, trucks or other vehicles must be cleaned in conformity with standards prescribed by bureau of animal industry of United States department of agriculture).

3-5-31. Coöperation with Federal Authorities.

The state board may make and enforce such rules and regulations as shall be deemed necessary to coöperate with the United States Bureau of Animal Industry in order to control or eradicate hog cholera or any other contagious or infectious disease among swine or other livestock. (L. 21, p. 2, § 203.)

3-5-32. Stockyards—Disinfection.

All railroad stockyards shall be considered as infectious territory, and all hogs, except those for immediate slaughter, shall be unloaded in chutes in some section of the yards which has been thoroughly cleaned and disinfected in accordance with the rules and regulations of the board and kept clean and disinfected for the reception of all hogs other than those for immediate slaughter. (L. 21, p. 2, § 204.)

3-5-33. Id.

All stockyards at market centers shall be considered as infectious territory, and at all points of destination for all hogs and other livestock, except those for immediate slaughter, there shall be provided for the unloading of such hogs and other livestock a portion or section of the yards and chutes which shall be kept clean and disinfected in accordance with the rules and regulations of the board. (L. 21, p. 2, § 205.)

3-5-34. Id. Interstate and Intrastate Shipments.

All hogs and other livestock, except those for immediate slaughter, which are being shipped from one point to another in this state when passing through public stockyards or market centers shall be treated and handled as in this article specified for interstate shipments. (L. 21, p. 2, § 206.)

3-5-35. Carcass of Infected Swine to Be Burned.

Any person owning or having charge of any swine which have died of hog cholera or other contagious, infectious or communicable disease shall within twenty-four hours from the death of such animal dispose of the carcass of such animal by burying or burning or in such other manner as may be provided in the rules and regulations of the state board. (L. 21, p. 2, § 207.)

Comparable provisions.

Idaho Code, § 24-227 (substantially identical, but "burying" is not specifically mentioned).

Mont. Rev. Codes, § 3287 (duty of owner or agent or person in charge of animals dying from infectious, contagious, communicable, or dangerous disease to properly bury or burn same).

3-5-36. Imported Swine Kept in Detention.

All hogs, except those for immediate slaughter, upon arrival at destination shall be by the consignee kept in some clean or disinfected place away from all other hogs for a period of eighteen days from the date of arrival at destination, and the commissioner of agriculture shall be notified by the owner or consignee of such date of arrival and the date of releasing such hogs from confinement. (L. 21, p. 2, § 208.)

3–5–37. Transportation in Violation of Quarantine Forbidden.

It shall be unlawful for any railroad company or other common carrier to receive for transportation or to transport from any quarantined area of this state into or through an unquarantined area thereof, or receive for transportation or transport within any quarantined area of this state, any animals subject to such quarantine; or as a connecting carrier knowingly to receive without the quarantined area any such animals from any quarantined area and to transport the same within this state. Nor shall any person deliver to any railway company or common carrier any such animals for any such transportation, nor shall any person drive on foot or cause to be driven, or transport or cause to be transported in any manner, any animal subject to quarantine from any quarantined area of this state into or through any unquarantined area thereof, nor permit any such animal to go, stray or drift from any such quarantined area; *provided,* that the state board may, if considered necessary by it, temporarily suspend the enforcement of this section. (L. 21, p. 2, § 219.)

3–5–38. Report of Foot-and-Mouth Disease.

Every owner of livestock, and every breeder or dealer in livestock, and every one bringing livestock into the state, shall on perceiving the appearance of symptoms of aphthous fever or foot-and-mouth disease among the livestock owned by him or under his care give immediate notice to the state board of agriculture of the facts discovered by him as aforesaid; and any owner of livestock who shall fail to make report as herein provided shall forfeit all claim for indemnity for animals slaughtered in accordance with the provisions of this article and no such indemnity shall be granted to him. Every veterinarian registered to practice in the state in accordance with chapter 13 of the Title Registration Department shall immediately upon discovering symptoms of aphthous fever or foot-and-mouth disease in any livestock report the facts so discovered to the state board; and failure to make such report without delay shall be cause for revocation of his right to practice as a veterinarian in the state. (L. 21, p. 2, § 220.)

Comparable provision.
Mont. Rev. Codes, § 3286 (any person, including owner or custodian, having reason to suspect existence of dangerous, contagious or communicable disease in livestock or presence of exposed animals to such disease within state must give notice to state veterinary surgeon).

3–5–39. Federal Rules and Regulations Accepted.

The governor is hereby authorized to accept on behalf of the state the rules and regulations prepared by the Secretary of Agriculture under and in pursuance of the acts of Congress for the establishment of the Bureau of Animal Industry for the prevention and regulation of the exportation of diseased cattle, for the suppression and extirpation of pleuro-pneumonia and other contagious diseases in domestic animals, for establishing or maintaining quarantine districts, or any other acts of Congress relating to the diseases, movement, quarantine or other regulations of cattle, sheep, hogs, horses or other domestic animals. (L. 21, p. 2, § 222.)

Comparable provision.
Idaho Code, § 24–208 (similar).

3-5-40. Rights of Federal Authorities—Peace Officers to Assist.

The inspectors for the Bureau of Animal Industry for the United States Department of Agriculture under the joint supervision of the state board of agriculture and the chief of the Bureau of Animal Industry of the United States government shall have the right of disinfection, inspection, immunizing, testing, quarantine and condemnation, slaughter and disposal, of animals affected or infected with any contagious, infectious or communicable disease, or suspected to be so affected, or that have been exposed to any such disease; and for this purpose said inspectors and all inspectors of the state board may enter upon all grounds and premises in this state where animals are kept. Said inspectors, state or federal, may call on sheriffs, constables and peace officers to assist them in the discharge of their duties in carrying out the provisions of the said acts of Congress referred to in section 3-5-39 and the rules of the Department of Agriculture made thereunder, and the provisions of this article and the rules of the state board, and it is hereby made the duty of sheriffs, constables and peace officers to assist said inspectors when so requested, and the said inspectors shall have the same powers and protection as peace officers while so engaged in this state in the discharge of their duties under this article and under the said acts of Congress. (L. 21, p. 2, § 223.)

Comparable provision.
Idaho Code, § 24-209 (officers, agents and employees of United States bureau of animal industry have power and authority of state veterinarian when governor has requested through the United States secretary of agriculture and has accepted the co-operation of that bureau).

3-5-41. Duties of State Chemist.

The state chemist shall make examinations of all tissues, grasses and water, and samples of any substances, which are submitted to him by the board, and do anything of a pathological nature necessary to make a diagnosis of diseases among livestock. (L. 21, p. 2, § 226.)

3-5-41 Amended S.L. '47 c. 5 sec. 1 p. 9

Cross-reference.
State chemist generally, 87-7.

3-5-42. Inspections by Sheriff—Pay for.

There shall be annually paid to each county a reasonable amount for the services of the sheriff in making the inspections required by this article; such amount to be determined by the state board according to the number of inspections made and the distances traveled.
(L. 21, p. 2, § 228.)

3-5-43. Penalty for Violation of Article, by Natural Person.

If any natural person shall violate any of the provisions of this article or the rules or regulations of the state board of agriculture and no punishment for such violation is herein specifically prescribed, he shall be punished by a fine of not less than $100 nor more than $1000 or by imprisonment in the county jail not to exceed six months or by both such fine and imprisonment. (L. 21, p. 2, § 230.)

3-5-44. Id. By Corporation.

If any corporation violates any of the provisions of this article or the rules and regulations of the board and no punishment for such violation

is herein specifically prescribed, it shall be punished by a fine of not less than $100 nor more than $5000. (L. 21, p. 2, § 231.)

3-5-45. Contagious Diseases—Duty of Commissioners and Inspectors.

It shall be the duty of the commissioner of agriculture and inspectors to investigate any and all cases of contagious or infectious diseases among the domestic animals of this state or any epidemic or instance of poisoning affecting such animals which may come to their knowledge, and for that purpose they shall visit at once any locality within the state where any such diseases, epidemic or poisoning may be reported to exist, and shall make prompt, full and careful examination of all such matters. They shall prescribe the proper quarantine, care and necessary remedies, inaugurate and direct the necessary sanitary measures to prevent the spread of such disease and report the same to the state board of agriculture, and shall perform such other and further duties as may be prescribed by law or by the rules of the board.

(L. 21, p. 2, § 176.)

Comparable provisions.
Cal. Agric. Code, § 200 (similar).
Mont. Rev. Codes, § 3256 (duty of livestock commission to protect livestock interests from disease).

3-5-46. Id. Regulation Against Introduction—Fees.

The state board may make and adopt such quarantine and sanitary regulations affecting the protection and movement of livestock into and out of the state and within its borders as may from time to time be necessary to prevent the introduction or spread of any contagious or infectious disease; and to compensate the state for the expense of carrying out such regulations the board may collect a fee of three cents per head on all cattle and horses and one and one-half cents per head on all sheep entering the state from any quarantined or infected territory.

(L. 21, p. 2, § 177.)

3-5-47. Id. Proclamation by Governor.

Whenever the state board of agriculture or any member thereof, or the commissioner or any inspector, shall know or have good reason to believe that any contagious or infectious disease exists in any locality in any other state, or that there are conditions which render domestic animals of said infected districts likely to bring disease into this state, he shall report the same to the governor, who thereupon may issue a proclamation prohibiting the importation or entry of any such livestock into this state unless accompanied by a certificate of health given by the commissioner or special inspectors appointed by the state board of agriculture, who shall carefully examine all such livestock previous to the giving of such certificates. All costs connected with such examinations or inspections shall be paid by the owner or owners of such stock so examined; *provided,* that no sanitary inspection shall be necessary and no fees collected from the owner of any animals to which a clean bill of health has been previously granted by the Federal authorities within ten days prior to the day of entry into the state or such other time prior thereto as the board may determine in its rules and regula-

tions, and that no fee shall be collected from the owner of any animals entering this state by railroad shipment in direct route to other states or territories and such animals do not remain in this state for a longer period than is required for watering, feeding or transferring in transit. (L. 21, p. 2, § 177.)

Comparable provisions.
Cal. Agric. Code, § 211 (similar).
Mont. Rev. Codes, § 3295.1 (governor may prohibit importation into state of livestock likely to convey disease when he has good reason to believe such disease has become epidemic in localities outside of state).

3-5-48. Id. Regulations to Prevent Spread.

The state board of agriculture shall make and enforce quarantine and sanitary regulations necessary to prevent the introduction or spread of southern or splenetic fever, contagious pleuro-pneumonia, hog cholera or any other contagious or infectious diseases of livestock.
(L. 21, p. 2, § 178.)

3-5-49. Id. Exposure to, a Misdemeanor.

Any person owning or having in charge any domestic animal or animals infected with or exposed to any contagious or infectious disease knowing such animal or animals to be so infected or so exposed or after having received notice from any officer or inspector of the state board of agriculture that such animal or animals are so infected who shall permit such animal or animals to run at large, or shall keep it or them where other domestic animals can be infected by such disease or may be exposed to its contagion or infection, or who shall sell, ship, trade or give away such diseased or exposed animal or animals without fully disclosing the fact of such diseased or exposed condition to the purchaser, is guilty of a misdemeanor. (L. 21, p. 2, § 178.)

3-5-50. Exposing Diseased Sheep—Liability.

Every person owning or keeping any sheep, known to be diseased or exposed to the scabies or any other contagious or infectious disease to which sheep are subject, shall be liable in the full amount of damage occasioned to other sheep owners or holders by reason of any diseased or exposed sheep being moved or allowed to stray from his premises or range. (L. 21, p. 2, § 179.)

Comparable provision.
Idaho Code, § 24-124 (substantially the same).

3-5-51. Dipping and Immunizing—Costs—Seizure and Sale.

Whenever it shall become known to the state board of agriculture that the diseases known as mange, itch or hog cholera, or any other infectious or contagious disease or parasitic infestation, exists among the cattle, sheep, horses, hogs or domestic animals of any county, district or section of the state it shall be the duty of said board to take such steps as will prevent the spread of such disease within the state, and said board may as a sanitary measure inspect and compel the dipping, spraying, testing or immunizing, or the giving of other treatments determined by it, of all such animals within the state under such rules

and regulations as the said board may adopt, and the board may order and compel the owner or the person in charge of such animals to dip, spray or otherwise treat all or any part of such animals as the board may find to be infected with, or to have been exposed to, such diseases. If the owner or person in charge of such animals so ordered treated shall after notice fail to dip, spray or otherwise treat, test or immunize such animals as ordered, then the board is hereby authorized to seize or cause to be seized, dipped, sprayed or otherwise treated, tested or immunized any such animals, and to hold and sell the same or such part thereof as may be necessary to pay all cost of such inspection, seizing, caring for, dipping, spraying or other treatment, testing or immunizing, together with costs of sale. Such sale shall be made at such time and place and in such manner as may be prescribed by the board after not less than three nor more than fifteen days notice of the time, place and purpose of such sale has been given to the owner or person in charge of said animals, and in case personal service of such notice cannot be had within the county in which the animals are being held by the board, then such notice shall be given either by personal service outside of said county or by advertisement in a newspaper of general circulation published within the county where said animals are treated, and, if no such newspaper is published therein, then in the nearest newspaper of general circulation; *provided however,* that the owner of such animals so seized and held may at any time prior to said sale recover possession of the same upon payment to the board of the amount of the total costs and charges incurred against said animals; *and provided further,* that any sum realized from the sale of any such animals over and above the total of such costs and charges shall be paid by the board to the owner of the animals sold, if such owner is known or can by reasonable diligence be found; otherwise said surplus shall be placed in the general fund. (L. 21, p. 2, § 180.)

Comparable provisions.

Cal. Agric. Code, § 187 (director notifies owner of infected cattle or sheep in writing to dip or treat same); § 188 (after ten days the director takes possession of cattle or sheep and dips or otherwise treats them if owner has failed to do so); § 192 (expenses and costs constitute lien on cattle or sheep).

Idaho Code, § 24–121 (similar provision as to inspecting and dipping sheep).

3–5–52. (Repealed by L. 33, ch. 2, § 1, eff. June 26.)

3–5–53. Enforcement of Quarantine.

The state board of agriculture may quarantine any county, district or section of the state for the purpose of preventing the spread of any infectious or contagious disease among the domestic animals within the state. The said board shall have the authority through its members, officers or inspectors to call on all sheriffs, constables or other peace or police officers of any town, precinct or county within the state to assist in maintaining such quarantine and to arrest anyone who may violate such quarantine or the rules or regulations made by said board for the purpose of maintaining it, and it shall be the duty of all sheriffs, constables, peace or police officers to act when so called upon, and they shall be allowed their fees and necessary expenses in so doing.

(L. 21, p. 2, § 181.)

Comparable provisions.
Cal. Agric. Code, § 204 (establishing quarantine boundaries when animals or poultry are "liable" to transmit an infectious or contagious disease); § 205 (similar provision when animal diseases are "discovered" in the state); § 206 (enumeration of powers of director as to enforcement of quarantine).

3–5–54. Violation of Quarantine, a Misdemeanor.

Any person who violates any quarantine provision of this article, or any sanitary or quarantine rule, regulation or order of the state board of agriculture made in pursuance of its official duties is guilty of a misdemeanor. (L. 21, p. 2, § 182.)

1. Civil liability of officer.
Under former statute, in action against state sheep inspector to recover damages alleged to have been sustained through negligence of defendant in quarantining sheep belonging to plaintiff, held, acts of inspecting and quarantining sheep, and defining place and limits of quarantine involve such discretionary powers as to make their exercise judicial in their nature, and officer performing them is not liable in civil action, in absence of averments and proof that he acted with malice or through fraud or corruption. Garff v. Smith, 31 U. 102, 86 P. 772, 120 Am. St. Rep. 924.

3–5–55. Subpoena of Witnesses.

Each member of the state board of agriculture and the commissioner is authorized to subpoena and examine witnesses and to administer oaths for the purpose of eliciting information to be used in the furtherance of the quarantine, sanitary and other regulations.
(L. 21, p. 2, § 182.)

ARTICLE 3

Certification of Stallions and Jacks

3–5–56. Board to Pass on Qualifications.

The state board of agriculture shall:
(1) Examine and pass upon all stallions and jacks and pass upon all documents as provided for in this article.
(2) Examine as to the merits of pedigrees.
(3) Issue certificates as specified in this article.
(4) Employ one or more licensed veterinarians or other accredited inspectors to make examinations of such stallions and jacks as are referred to herein.
(5) Make all rules and regulations necessary to carry out the provisions of this article. (L. 21, p. 20, § 2919.)

A. L. R. note.
Constitutionality, construction and application of statutes designed to regulate breeding of animals in order to improve or prevent deterioration of stock, 116 A. L. R. 1315.

3–5–57. To Be Enrolled.

Every person standing, traveling or offering for sale for breeding purposes any stallion or jack in this state shall cause the name, description and pedigree of such animal to be enrolled by the said board, and procure a certificate of such enrollment from said board.
(L. 21, p. 20, § 2920.)

Comparable provisions.
Idaho Code, § 24–701 (similar).
Iowa Code 1939, § 2618 (similar provision as to stallion); § 2619 (idem as to jack).
Mont. Rev. Codes, § 3357 (substantially the same).
Other provisions comparable to those included in Title 3, Ch. 5, Art. 3: Ill. Rev. Stats. 1941, Ch. 8, § 38 et seq.; Mich.

Stats. Ann. § 12.551 et seq.; McKinney's N. Y. Consol. Laws, Agriculture and Markets Law, § 97 et seq.; Wis. Stats. § 95.01 et seq.

Decisions from other jurisdictions. — Iowa.

A certificate of registration of pure-bred horses issued by association formed for that purpose is not mere recital as such of representations made to association by breeder of horses, but is statement of facts by association and as such may be basis for action for damages by one who purchased registered animals relying on certificate. Howard v. National French Draft Horse Ass'n, 169 Iowa 719, 151 N. W. 1056.

Statute forbidding any stallion or jack to be offered for public service as registered until it has been enrolled by state board of agriculture and certificate of enrollment has been obtained, without exacting enrollment of other domestic animals, does not violate constitutional inhibition against class legislation. State v. McGuire, 183 Iowa 927, 167 N. W. 592.

3-5-58. Proceedings for Enrollment.

In order to obtain the certificate herein provided for, the owner of such stallion or jack shall have the same examined by a licensed veterinarian named by said board or by some other inspector appointed by it, procure from such veterinarian or inspector a certificate of examination of such animal and shall forward the same to the board. In case of pure breeds, with said certificate so forwarded shall be transmitted the stud book certificate of registry of the pedigree of the animal, and in all cases, the other necessary papers relating to the breeding and ownership of the animal. (L. 21, p. 20, § 2921.)

3-5-59. Unsound or Diseased—Enrollment Denied.

No certificate shall be issued by any veterinarian or inspector, and no certificate of enrollment shall be issued by said board, for any animal referred to in this article that has any of the following diseases, or is unsound in any of the following respects: cataract; amaurosis; periodic ophthalmia (moon blindness); laryngeal hemiplegia (roaring or whistling); pulmonary emphysema; chorea (St. Vitus dance, crampiness, shivering, stringhalt); bone spavin; ringbone; enlarged sidebone; navicular disease; hog spavin; curby formation of hock; glanders; farcy; maladie du coit; urethral gleet; mange; melanosis; or any markedly faulty or weak conformation which is likely to be transmitted.

(L. 21, p. 20, § 2922.)

3-5-60. Identity to Be Established.

In all cases of doubt or suspicion as to the genuineness of the certificate of registration of any stallion or jack the board shall withhold its enrollment as a pure-bred until it has investigated, and has been furnished proof that said stallion or jack is the animal described in said certificate of registration. (L. 21, p. 20, § 2923.)

3-5-61. Authentic Studbooks Recognized.

The board, or its representatives whose duty it shall be to examine and pass upon the merits of pedigrees submitted shall use as their standard of action studbooks and signatures of the duly authorized officers of the various American horse or jack pedigree associations, societies or companies recognized by the United States Department of Agriculture, and shall enroll as pure-bred each stallion and jack for which a pedigree registry certificate is furnished, bearing the signature

of the authorized officers of a government-recognized and approved American studbook. (L. 21, p. 20, § 2924.)

3-5-62. Certificate to Be Recorded and Posted.

The owner of any stallion or jack standing for public service shall cause the certificate of enrollment to be recorded with the recorder of deeds of the county in which said stallion or jack is used for public service in this state, and shall post and keep affixed during the entire breeding season a copy of the certificate of said stallion or jack issued under the provisions of this article in a conspicuous place where said stallion or jack stands for public service. (L. 21, p. 20, § 2925.)

Comparable provisions.
Idaho Code, § 24-712 (license certificate must be recorded); § 24-714 (copy of certificate must be posted).
Iowa Code 1939, § 2629 (certificate of soundness must be posted).
Mont. Rev. Codes, § 3364 (similar).

3-5-63. Form of Certificate—For Pure-bred.

The certificate issued for a pure-bred stallion or jack shall be in the following form:

State Board of Agriculture

Certificate of pure-bred stallion or jack. No.....The pedigree of the stallion or jack..... (Name) .....Owned by.....
Described as follows:
Color.....Breed.....Foaled in the year..... has been examined by the state board of agriculture of Utah, and it is hereby certified that the said stallion or jack is of pure breeding, and is registered in a studbook recognized by the United States Department of Agriculture.
(Signature).....
Commissioner of Agriculture.
(L. 21, p. 20, § 2926.)

3-5-64. Id. For Nonstandard-bred.

The certificate of a nonstandard-bred stallion shall be in the following form:

State Board of Agriculture

Certificate of nonstandard-bred stallion. No..... The pedigree of the stallion..... (Name)..... Owned by.....
Described as follows:
Color.....Foaled in the year..... has been examined by the state board of agriculture of Utah, and it is found that the said stallion is not eligible to registration as standard-bred, and for the purpose of this certificate is not pure-bred, although recorded in the nonstandard department of the American Trotting Register.
(Signature).....
Commissioner of Agriculture.
(L. 21, p. 20, § 2927.)

3-5-65. Id. For Mongrel.

A certificate for a mongrel stallion or jack shall be in the following form:

State Board of Agriculture

Certificate of grade or [of] mongrel. No. ..... The pedigree of the stallion or jack ..... (Name) ..... Owned by..... Described as follows:
Color.....Foaled in the year..... has been examined by the state board of agriculture of Utah, and it is found that the stallion or jack is not of pure breeding, and is therefore not eligible for registration in any studbook recognized by the United States Department of Agriculture.

(Signature).....
Commissioner of Agriculture.
(L. 21, p. 20, § 2928.)

3-5-66. Advertisement to Contain Copy of Certificate.

Every bill, poster or advertisement issued or used by the owner of any stallion or jack for advertising such stallion or jack shall contain a copy of its certificate of enrollment. (L. 21, p. 20, § 2929.)

Comparable provisions. Iowa Code 1939, § 2629 (includes similar provision). Mont. Rev. Codes, § 3366 (includes similar provision).

3-5-67. Fees for Certificate and Renewal.

A fee of $10 shall be paid the inspector for making an examination, which he shall forward to the state board of agriculture within five days, and the certificate which he issues shall be made in triplicate, describing the animal fully, and containing a receipt for the fee. One of the triplicates shall be given to the owner, one forwarded at once to the state board of agriculture and one retained in the book. A fee of $2 shall be paid annually to the commissioner of agriculture for the renewal of this certificate on or before March 1st of each year following its issuance, and failure to pay this fee forfeits the certificate.
(L. 21, p. 20, § 2930.)

3-5-68. Death or Sale of Animal—Lost or Destroyed Certificate.

All owners of stallions and jacks registered under this article on the death of any stallion or jack must report such death to the commissioner of agriculture, and return the certificate of said animal for cancellation. Upon transfer of the ownership of any animal certificated under the provisions of this article the certificate shall be transferred by the commissioner to the buyer on proof of such transfer and upon payment of a fee of $2. In case a certificate is lost or destroyed and satisfactory proof of the same is furnished, a new one shall be issued by the commissioner on payment of a fee of $1.
(L. 21, p. 20, §§ 2930, 2931.)

3-5-69. Lien on Mare and Foal.

Every person in this state complying with the provisions of this article and having obtained the certificate for a pure-bred stallion or jack registered in a government-approved studbook shall have a lien on the mare served and a first lien upon the offspring resulting from such service to the agreed amount for a period of eighteen months after service, and it shall not be necessary in order to secure and fix

said lien to secure, file or register any contract or statement thereof with any officer; nor shall it be necessary that the owner of such mare or foal execute any contract whatever. Such liens may be foreclosed in the same manner that a mortgage upon personal property is foreclosed. (L. 21, p. 20, § 2933.)

Comparable provision.
Idaho Code § 24–720 (lien on mare and offspring for 18 months from birth of the get provided owner, within 20 months of sire's rendition of service, files for record a statement of account).

A. L. R. note.
Liability of owner of male animal who furnishes its service for breeding purposes, for damage inflicted during such service, 106 A. L. R. 1418.

Cross-reference.
Feeder's lien, 52–2–1.

3–5–70. Violation of Article, a Misdemeanor.

Any person who violates any of the provisions of this article is guilty of a misdemeanor. (L. 21, p. 20, § 2934.)

ARTICLE 4

Estrays and Trespassing Animals

3–5–71. Constable Ex Officio Poundkeeper.

The constable in each precinct shall be ex officio the poundkeeper in such precinct and shall be the custodian of all books and records pertaining thereto, which shall at all reasonable hours and without charge be open to public inspection. (C. L. 17, § 50.)

Cross-reference.
Constable as a precinct officer, 19–13–5.

3–5–72. Estrays Defined.

All unbranded horses, asses, mules and neat cattle found running at large, except sucking animals running with their mothers; and all said animals that are branded, whose owner cannot after reasonable search be found and that have been running at large on any range within the state for two years or more; and all hogs found running at large upon the premises of any person other than their owner, are hereby declared to be estrays and forfeited to the state. (C. L. 17, § 51.)

1. Running at large defined.
The phrase "running at large" as applied to animals means strolling about without restraint or confinement, roving or rambling at will. Bountiful City v. De Luca, 77 U. 107, 219, 292 P. 194, 72 A. L. R. 657.

3–5–73. Poundkeeper to Take Into Possession.

The poundkeeper shall take into his possession and impound all estrays running within his precinct, and shall dispose of the same as hereinafter provided. He shall in person or by deputy attend all general roundups in his precinct and take into his possession all estrays found thereat. (C. L. 17, § 52.)

3–5–74. Notice of Taking and of Sale.

Within three days after any estrays shall come into the possession of the poundkeeper he shall advertise the same in a newspaper pub-

lished in the county, if there is one having general circulation in the county, by publishing a notice in at least one issue of such paper at least five days before the sale and by posting notices for a period of ten days in three of the most public places in the precinct, one of which places shall be at or near the post office, if there is one in the precinct. He shall immediately deliver a copy of such notice to the county clerk or mail the same to him by registered letter. The county clerk shall upon receipt of said notice file and preserve the same in his office for a period of six months thereafter, and shall immediately post a copy thereof at the front door of the county courthouse. The notice so filed with the clerk shall be open during reasonable hours for inspection by the public free of charge. The notice herein provided for shall contain a description of the animals, including all marks and brands, the time when taken, and the day, hour and place of sale; and may be substantially in the following form:

Notice

State of Utah, County of.....

In the.....precinct of said county.

I have in my possession the following described estray animals which, if not claimed and taken away, will be sold at public auction to the highest cash bidder at....., in ..... precinct, on....., the.....day of....., 19...., at the hour of.....

(Description of Animals)

Said estrays were taken up by me in said precinct on the..... day of....., 19.....

.....

Poundkeeper for.....precinct.

(C. L. 17, § 53.)

1. **Trespass ab initio.**
In action for replevin of horses which defendant found trespassing on his land, held failure of defendant, on discovering horses, to comply with this section, made him wrongdoer from beginning and plaintiff was not required to make demand for horses before bringing action. Nielsen v. Hyland, 51 U. 334, 170 P. 778.

3-5-75. Return to Owner on Payment of Costs—Sale.

If at any time before the sale such animals shall be claimed and proved to be the property of any person, the poundkeeper shall deliver them to the owner upon receiving from him the cost of impounding, keeping and advertising the same. If the animals are not so claimed and taken away, he shall at the time and place mentioned in the notice proceed to sell the same, one at a time, to the highest cash bidder, and shall execute and deliver a bill of sale to the purchaser substantially in the following form:

I hereby certify that in pursuance of the law regulating the disposal of estrays and trespassing animals I have this day sold to..... for the sum of $....., he being the highest bidder, ...head of ....., branded with the state estray brand and otherwise described as follows, to wit:

(Description of Animals)

Witness my hand this.....day of....., 19.....

.....

Poundkeeper of.....precinct,

.....county, state of Utah.

The poundkeeper shall immediately file a copy of such bill of sale with the county clerk or forward the same to him by registered mail. The copy so filed with the clerk shall be preserved for a period of two years and shall be open to inspection during all reasonable hours without charge. Such bill of sale shall transfer and vest in such purchaser the full title to the animals thus sold. (C. L. 17, § 54.)

3-5-76. Poundkeeper to Keep Record.

The poundkeeper shall keep an accurate record of all estrays received by him, their age, color, sex, marks and brands, the time and place of taking, and the expense of keeping and selling the same; of all animals claimed and taken away; of all animals sold and to whom sold and the amount paid; of all moneys paid to owners after sale; of all moneys paid into the county treasury; and of all other matters necessary for compliance with the provisions of this article. The board of county commissioners of each county shall provide the poundkeeper of each precinct with a suitable book in which shall be entered the records required by law to be kept by the poundkeeper. Such records shall be open to the inspection of the public at all reasonable hours, and shall be deposited by the poundkeeper with his successor in office.

(C. L. 17, § 55.)

3-5-77. Local Fence Laws.

Any county or precinct thereof at any general or special election called for that purpose by the board of county commissioners may by a vote of the majority of all the legal voters of such county or precinct declare in favor of fencing farms and allowing domestic animals to run at large; and in such cases the provisions of this article authorizing the detention and sale of animals for damages shall be inoperative.

(C. L. 17, § 56.)

History.

This section is practically identical with Comp. Laws 1907, § 18. Peterson v. Peterson, 42 U. 270, 130 P. 241.

This section has continued in force in this state in substantially the same language since Laws 1890, Ch. 55.

1. Validity.

This section was held constitutional, and objections to it on the ground that it lacked uniformity in operation, that it was a delegation of legislative power, and that it was local or special legislation, were overruled. Peterson v. Peterson, 42 U. 270, 130 P. 241, applying identical provision in Comp. Laws 1907.

A. L. R. notes.

Constitutionality of fencing and stock laws, 18 A. L. R. 67; injunction to restrain repeated or continuing trespass by interference with fences, 32 A. L. R. 522, 92 A. L. R. 585; interlocutory mandatory injunction in connection with line fence contest to compel surrender of possession, 32 A. L. R. 916; waiver of breach of covenant or condition as to maintenance of fence, 43 A. L. R. 1054.

3-5-78. Lawful Fence.

It shall be the duty of the board of county commissioners to declare by ordinance what shall constitute a lawful fence for that county.

(C. L. 17, § 57.)

3-5-79. Trespassing Animals—Damages for.

If any neat cattle, horses, asses, mules, sheep, goats or swine shall trespass or do damage upon the premises of any person, except in cases where such premises are not inclosed by a lawful fence in counties where a fence is required by law, the party aggrieved, whether he is the owner or the occupant of such premises, may recover damages by a civil action against the owner of the trespassing animals or by distraining and impounding such animals in the manner provided herein; *provided,* that in cases where an action is brought for the recovery of such damages none of the animals trespassing shall be exempt from execution, and the fees in such cases shall be but one-half the fees in other civil actions. (C. L. 17, § 58.)

History.

This section down to the proviso has continued in force in this state in substantially the same language since the Territorial Laws of 1890, Ch. 55.

Former analogous statute, see Rev. Stats. 1898, § 20; Comp. Laws 1907, § 20.

Cross-reference.

Fees generally, Title 28.

1. Validity and construction.

There can be no question as to the constitutionality of this section. Furthermore, the section is not open to construction, because there is no uncertainty as to its purpose and intent. Winters v. Turner, 74 U. 222, 234, 278 P. 816.

2. Former rule.

Formerly the supreme court held that this section did not apply to arid, uninclosed and uncultivated lands, even though such lands had passed into private ownership, and that it was only when animals were driven onto or kept thereon against the owner's consent that he had any legal cause for complaint. The court repudiated the common-law rule, giving specious reasons amounting to judicial legislation. Thomas v. Blythe, 44 U. 1, 8, 137 P. 396, applying Comp. Laws 1907, § 20, which is identical with the present section, but overruled in Winters v. Turner, 74 U. 222, 278 P. 816; explaining and distinguishing Buford v. Houtz, 5 U. 591, 18 P. 633, aff'd 133 U. S. 320, 33 L. Ed. 618, 10 S. Ct. 305, but re-affirming Jones v. Blythe, 33 U. 362, 93 P. 994.

No damages may be recovered under this section unless trespass was wilfully permitted by owner of trespassing animals or permitted with knowledge of location of lands owned by aggrieved party. Hall v. Bartholomew, 51 U. 279, 169 P. 943.

Sheep owner is not liable for damages caused by inadvertant intrusion of his sheep on uninclosed lands where there is fence law in force, but is liable where he wilfully drives his sheep onto such land. Jones v. Blythe, 33 U. 362, 93 P. 994.

Permitting cattle to run at large upon open range near uninclosed private lands, and with full knowledge that springs or watering places are found thereon, would charge owner of cattle with notice that in very nature of things his stock would trespass upon such land. Hall v. Bartholomew, 51 U. 279, 169 P. 943.

Under this section, where a party knowingly, deliberately and intentionally drives or permits his animals to go upon the lands of another, against his will and regardless of his protests, for the purpose of deriving the benefit of his pasturage, it becomes such a trespass as the law will require him to answer for in damages. Mower v. Olsen, 49 U. 373, 164 P. 482, reviewing all prior Utah cases.

3. Present rule.

But there is a complete review of all prior cases in Winters v. Turner, 74 U. 222, 278 P. 816. Thomas v. Blythe, 44 U. 1, 137 P. 396, is expressly overruled, and the rule in this state stated to be that in the absence of a local fence law the owner of cattle, turning them loose on his own lands, knowing that they would drift and graze upon unimproved and uninclosed public lands, as well as upon uninclosed lands in private ownership, is liable in trespass for the consequent damages. This restores the common-law rule respecting liability of the owner for his trespassing animals. It is unnecessary to show a wilful or intentional trespass. Winters v. Turner, 74 U. 222, 278 P. 816. This case was expressly re-affirmed in Livingston v. Thornley, 74 U. 516, 524, 280 P. 1042.

The plain purpose of this section was to adopt the common-law rule of liability against the owners of trespassing animals, but to permit such

localities as might desire a different rule to adopt the same in the manner prescribed by 3–5–77. Winters v. Turner, 74 U. 222, 232, 278 P. 816.

It will be observed that this section is in conformity with the common law, requiring every owner to restrain his animals within his own lands. Mower v. Olsen, 49 U. 373, 164 P. 482.

4. Who is "occupant."

One who purchased lucern seed from owner of lands and left it in inclosed field to dry held "occupant" of premises as to entitle him to recover damages for injury done to seed by trespassing animals, without alleging and proving negligence. Peterson v. Petterson, 39 U. 354, 117 P. 70.

5. Rights of one in unlawful possession.

One in unlawful possession of land cannot claim damages under estray law for trespassing animals. Therefore if one unlawfully fences in government land with his own, he cannot impound cattle which have been turned inside of his inclosure by the owners. Taylor v. Buford, 8 U. 113, 29 P. 880, applying Session Laws 1890, p. 82.

6. Pleadings.

A complaint under this section which does not expressly allege that trespass complained of was a wilful and intentional one, is not bad on general demurrer, where the term "trespass" is used, for that implies as much. Mower v. Olsen, 49 U. 373, 164 P. 482.

7. Measure of damages.

The measure of damages in action under this section is not limited to value of forage eaten and destroyed, but may include reasonable rental value of land upon which trespass committed. And enhanced value of land because of its adaptability for "lambing sheep" is not in nature of special damages, which must be specially pleaded to admit proof thereof. Anderson v. Jensen, 71 U. 295, 265 P. 745.

In action for damages caused by cattle trespassing on growing crops, held measure of damages adopted by trial court in instruction complained of was proper. Kendall v. Samuel McIntyre Inv. Co., 59 U. 228, 203 P. 653.

In action for damages to wheat caused by trespassing sheep, held measure of damages adopted by trial court in instruction complained of was not prejudicial to defendant. Naylor v. Floor, 51 U. 382, 170 P. 971.

8. Injunction.

The court will hesitate to grant injunction to plaintiff, in addition to judgment in his favor for damages for the trespasses sued for, at least where the injunction would be likely to reach further than the protection of the plaintiff's lands. Winters v. Turner, 74 U. 222, 236, 278 P. 816.

9. Fees and costs.

The proviso to this section limiting the fees to one-half the fees in other civil cases must be applied, where plaintiff's judgment stands as one at law for the recovery of damages, no equitable relief being granted. Winters v. Turner, 74 U. 222, 238, 278 P. 816.

Under former analogous statute, held that, in taxing costs in action for damages caused by trespass of sheep, it was prejudicial error not to apply statutory provision that fees in action for trespass by certain animals should be one-half of fees in other civil cases. Smith v. Valentine, 23 U. 539, 66 P. 295.

A. L. R. notes.

Constitutionality of fencing and stock laws, 18 A. L. R. 67.

Fowls, liability for trespass or damage by, 14 A. L. R. 745.

Joint liability of several independent owners of trespassing animals, 9 A. L. R. 945, 35 A. L. R. 411, 91 A. L. R. 763.

Liability for damage to vehicle or passenger due to animal at large, 49 A. L. R. 913.

Scienter as condition of liability for damage by trespassing animals other than dogs, 33 A. L. R. 1305.

Tenant's liability for trespass by animals leased with farm, 32 A. L. R. 859.

3–5–80. Id. Distraint—Appraisal of Damages.

The owner or occupant of any property may distrain any of such animals trespassing or doing damage thereon. He shall within twenty-four hours thereafter deliver such animals to the poundkeeper of the precinct, together with a certificate of the appraisement of the damage done by them. Such appraisement must be made by some disinterested citizen, a freeholder over twenty-one years of age. It must state the amount of the damage, the time when committed, the name of the person damaged, the name of the owner of the animals, if known, and,

if not known, it must state that fact, together with a description of the animals, including all visible marks and brands. If the animals appear to be owned by different parties, a separate appraisement and a separate certificate shall be made of the damage done by the lot or group of animals appearing to belong to each of the different owners. In such cases the owners shall be notified separately, and each lot or group of animals shall be advertised for sale and sold separately in the same manner as if the damage had been done by different animals at different times. (C. L. 17, § 59.)

1. Proceeding summary.
The authority granted to owner or occupant of premises to distrain animals trespassing upon or doing damage to such premises and to deliver same to poundkeeper to be sold by such officer in satisfaction of claim of distrainer is summary means of enforcing legal right; it is in contravention of, and an exception to, accepted rule of law that owner of private property cannot be disturbed in, or deprived of use and enjoyment of, such property against his will, except upon judicial proceedings regularly had in court of justice. Watkins v. Jensen, 58 U. 13, 197 P. 222.

2. Construction.
The words "the poundkeeper of the precinct," in this section mean the poundkeeper of the precinct in which the trespass was committed. Hess v. Udy, 55 U. 248, 185 P. 367.

3. Compliance with section.
Laws providing for restraint, sale, or disposal of animals for trespass and damage must be strictly followed. Hess v. Udy, 55 U. 248, 185 P. 367.
Where animal was trespassing upon premises of defendant, giving him right to distrain it and to deliver it to poundkeeper, unless other provisions of statute respecting amount of damages were complied with, the possession of poundkeeper and his attempted sale of animals to satisfy damages claimed constituted trespass, and rendered such possession wrongful, not only as to him, but as to purchaser at sale. Watkins v. Jensen, 58 U. 13, 197 P. 222.

3-5-81. Id. Owner to Be Notified.

The person distraining the animals must, if the owner of the same is known to him and if he resides within ten miles of the place of the trespass, immediately deliver to such owner or leave at his place of residence, if he cannot be found, a copy of such certificate of appraisement; but, if the owner does not live within ten miles of the place of trespass, the party distraining the animals shall at his option deliver a copy of such certificate to the owner in person or deposit the same in the nearest post office as a registered letter addressed to said owner. He shall be entitled to charge ten cents a mile one way for the first ten miles necessarily traveled in delivering such certificate and five cents for each additional mile, to be taxed as costs against the animals. (C. L. 17, § 60.)

3-5-82. Failure to Notify Waives Damages.

If the party distraining any animals shall fail to deliver them or the certificate of appraisement to the poundkeeper within forty-eight hours or shall fail to deliver to the owner of the animals, if known, a copy of the certificate of appraisement within twenty-four hours after he receives the same or to deposit the same in the post office as herein provided, he shall not be entitled to recover damages under the provisions of this article. (C. L. 17, § 61.)

3-5-83. When Owner Unknown—Procedure.

Whenever any animals are delivered to the poundkeeper and the certificate of appraisement is filed with him as herein provided and

such certificate states that the owner is unknown, the poundkeeper shall immediately examine all brand books or brand sheets in his possession, and if the owner is ascertained thereby, or if the owner is already known to the poundkeeper, he shall, if the owner lives within ten miles, immediately deliver a copy of such certificate of appraisement to such owner or leave the same at his residence, if he cannot be found. If the owner does not live within ten miles, the poundkeeper shall at his option deliver such copy personally to the owner or deposit the same in the nearest post office as a registered letter addressed to such owner. Whenever personal service of a copy of any paper is required by this article service by agent shall be sufficient. (C. L. 17, § 62.)

3-5-84. Notice of Sale.

When any such animals are delivered to the poundkeeper he shall immediately proceed to advertise the same as hereinafter provided, except when the owner is known and has been notified, in which case he shall hold said animals forty-eight hours before advertising the same. He shall advertise in a newspaper published in the county, if there is one having general circulation in the county, by publishing a notice in at least one issue of such paper, and by posting notices in three of the most public places in the precinct, one of which shall be at or near the post office, if there is one, and shall deliver a copy of the same to the county clerk at his office or send the same by registered mail. The clerk shall preserve such notice and post a copy thereof as provided in section 3-5-74. The notice herein provided for shall state the time when the damage was done and the amount thereof, the name of the party damaged, a description of the animals including all visible marks and brands, and the day, hour and place at which such animals will be sold, which shall be not less than ten nor more than twenty days from the time of posting and publishing such notice. Said notices shall be substantially in the following form:

Sale of Animals for Damages

State of Utah, County of.....
In the.....precinct of said county.
I have in my possession the following described animals, which, if not claimed and taken away, will be sold at public auction to the highest cash bidder at.....in.....precinct on the.....day of....., 19...., at the hour of.....

(Description of Animals)

Said animals are held by me to secure the payment of $.....damages done by said animals upon the premises of.....on the.....day of....., 19.....

.....
Poundkeeper of.....precinct.

(C. L. 17, § 63.)

3-5-85. Owner May Pay Damages and Retake—Disputed Appraisal.

The owner of any trespassing animals taken up under the provisions of this article may at any time before the sale thereof claim and take such animals away upon paying the amount of damages set forth in the

certificate of appraisement and the accrued costs; and, if such animals are included in a lot or group of animals belonging to other parties against which the damages and costs are assessed as a whole, he shall pay his proportion of the total amount of damages and costs assessed against such animals according to the number of animals he owns compared with the number of the entire lot or group. If he deems the appraisal too high, he may choose another appraiser having the qualifications herein provided, who with the first shall make a new appraisal, and, if they cannot agree, they shall choose a third, and the three shall proceed to make another appraisal and the decision of the majority shall be final. (C. L. 17, § 64.)

3–5–86. Id. Sale.

If such animals are not claimed and taken away by the owner, the poundkeeper shall at the time and place set forth in the notice of sale proceed to sell such animals, one at a time, to the highest cash bidder. If the owner of any lot of animals to be sold is known, the poundkeeper shall sell only enough of them to pay the damages and costs, and the remainder may be turned over to the owner at any time thereafter; but if the owner is not known, the poundkeeper shall proceed to sell all of the animals so advertised for sale. He shall execute and deliver a bill of sale therefor and file a copy with the county clerk as hereinbefore provided. Said copy shall be preserved for a period of two years and shall be open for public inspection at all reasonable hours without charge. (C. L. 17, § 65.)

3–5–87. Redemption by Owner.

The owner of any trespassing animals sold under the provisions of this article may at any time within ninety days from the date of such sale redeem such animals from the purchaser, or his assignee having the same in possession, upon paying to such purchaser or assignee the sum for which such animals were originally sold, together with 10 per cent additional and a reasonable compensation for the care and keeping of the same. If such purchaser or assignee refuses to give up such animals on the owner's proving his title to the same and on his tendering the amount due as herein provided, such owner may maintain an action at law to recover the same; *provided,* that the purchaser or any assignee who has disposed of such animals shall not be liable to such owner in any amount. If no redemption of such animals is made within ninety days after the date of such sale, then such sale shall be absolute and shall vest the title to such animals in the purchaser or his assignee. Any person selling or disposing of any such animal within ninety days after its sale under the provisions of this article shall notify the purchaser of the same of the date of the original sale and the amount paid for such animal at that time, and, if he fails to do so, he shall be liable for any loss that may accrue to such purchaser by reason of such animal's being redeemed for a less amount than he paid therefor. (C. L. 17, § 66.)

3-5-88. Moneys Collected on Sale—Disposition of.

If any estrays or trespassing animals sold under the provisions of this article shall within a period of six months immediately ensuing after the date of the sale thereof be claimed and proved to be the property of any person, it shall be the duty of the poundkeeper at the expiration of such time to forthwith pay the money received for such animals to the owner thereof, less the amount of damages and the expense of taking, keeping and selling the same; but in the event such animals are not claimed as aforesaid, then such money shall become the property of the county, and the poundkeeper shall immediately pay the same into the county treasury; *provided,* that in case there is a contest between two or more persons claiming to be the owners of any such animals, the poundkeeper shall deposit such money with the county treasurer to be by him paid to the party who shall establish by action his right to the same. (C. L. 17, § 67.)

3-5-89. Poundkeeper to Keep Record of Trespassing Animals.

The poundkeeper shall keep an accurate record of all trespassing animals received by him, which shall contain all the items required by section 3-5-76, together with the name of the injured party and of the owner of the animals, the amount of the damages claimed, and all other matters necessary to a complete account of the transaction. Such record shall be open for inspection at all reasonable hours without charge. (C. L. 17, § 68.)

3-5-90. State Estray Brand.

There shall be a state estray brand to consist of the letters S U, which letters shall be three inches in length. The board of county commissioners shall furnish the poundkeeper of each precinct with the proper branding iron, and the poundkeeper shall place such estray brand upon the left side of the neck of all animals sold by him, excepting hogs, sheep and goats. (C. L. 17, § 69.)

3-5-91. Fees of Poundkeeper.

The poundkeeper shall be entitled to the following fees: For taking into his possession any animal, or animals if found together, 50 cents; for driving the same, 10 cents a mile; for traveling in delivering copy of certificate of appraisement, 10 cents a mile, one way, for the first ten miles, and 5 cents for each mile thereafter; for advertising, including posting and mailing notices, $1; for each bill of sale, including filing a copy with the clerk, 50 cents; *provided,* that all animals sold to one person shall be included in one bill of sale; for branding, 25 cents for the first, and 10 cents for each additional animal; for selling, 5 per cent of the amount of the sale; for keeping, a reasonable sum to be determined by the market price of forage and pasturage at the time and place where the animals are kept. Appraisers shall be allowed 20 cents an hour for the time employed, and 10 cents a mile, one way, for going to places of trespass. (C. L. 17, § 70.)

3–5–92. Interference with Enforcement of Article, a Misdemeanor.

Any person who shall take any animal out of the possession of anyone lawfully holding the same under the provisions of this article, either by stealth, force or fraud, or who shall intercept or hinder any person lawfully taking up or attempting to take up such animals, is guilty of a misdemeanor. (C. L. 17, § 72.)

3–5–93. Powers of Cities and Towns Not Affected.

The provisions of this article shall in no way interfere with the powers of incorporated cities and towns in relation to animals running at large. (C. L. 17, § 73.)

Cross-references.
Distraint and impounding by cities, 15–8–64; by towns, 15–12–4.

ARTICLE 5

Driving and Herding

3–5–94. Unauthorized Removal of Animals from Range, a Misdemeanor.

Any person, other than the owner or his agent, who drives any horses, mules, cattle or sheep from their usual or customary ranges or from any field, yard or street farther than to the nearest or most convenient corral and neglects to return such horses, mules, cattle or sheep immediately to their accustomed range or place from which they were driven is guilty of a misdemeanor. (C. L. 17, § 90.)

3–5–95. Commingling—Trespass—Damages.

Every person having charge of, or engaged in driving, any drove of cattle, horses, mules or sheep shall use due diligence to prevent the same from mixing with the cattle, horses, mules or sheep belonging to actual settlers; and shall also prevent such drove from trespassing on the land of an actual settler used by him for grazing animals or growing hay, grain or timber, and from doing injury to irrigating ditches. If any person in charge of, or engaged in driving, any herd injures any resident in the state by driving or herding the same on lands or ditches owned or leased by settlers, the owner or lessee of such herd shall be liable to such owners or lessees for all damages done; and, if such injury is willfully committed, the person driving such animals is guilty of a misdemeanor, and may be fined in any sum not exceeding $100. (C. L. 17, § 91.)

Cross-references.
Livestock highways, 36–7; driving over hillside highways, 36–1–21; limited highways, 36–1–6; in cities, 15–8–15.

ARTICLE 6

Bulls and Rams, etc.

3–5–96. Not to Run at Large—Local Option.

Every person owning or having in charge a stallion, jack or ridgeling over eighteen months old, or a ram over three months old, who permits the same to run at large within the limits of or on the summer range of any town or settlement is guilty of a misdemeanor, and may be fined in

any sum not exceeding $25 for each offense; *provided,* that if two-thirds of the voters of any county or isolated part of a county shall desire and the board of county commissioners shall so decide, then the provisions of this section shall be inoperative in such county or part of the county during such time as the board may determine.

(C. L. 17, § 94.)

Comparable provisions.
Cal. Agric. Code, § 381 (includes similar provision except as to the proviso).

3-5-97. On Ranges—Bulls to Accompany Herd.

3-5-97 Amended S.L. '45, c. 4 Sec. 1, p. 3

It shall be unlawful to turn loose or range any cattle upon the public domain, ranges or forest reserves of this state without keeping therewith during the breeding season of each year one bull for every forty head or fraction thereof of female breeding cattle so ranged; *provided,* that any person so ranging any portion of forty head of female breeding cattle may provide and arrange for an interest in a bull running at large on the public domain, range or forest reserve where such cattle are ranged. (C. L. 17, § 95.)

Comparable provisions.
Cal. Agric. Code, § 384 (one bull for every 30 head of cows).
Idaho Code, § 24–1816 (registered bull of beef breed 15 months to 8 years of age for every 25 head of female breeding cattle).
Mont. Rev. Codes, § 3404 (one pure-bred bull of recognized beef type 15 months to 8 years of age for every 30 head of female breeding cattle).

Cross-references.
Constitutional authority for provision, Const. Art. XVIII.

3-5-98. Id. Bulls to Be Pure-bred.

3-5-98 Amended S.L. '45, c. 3 Sec. 1, p. 2

It shall be unlawful to own and turn loose or allow to run at large upon the public domain, ranges or forest reserves of this state any other than a pure-bred bull of some recognized beef breed. A pure-bred bull as contemplated by this section must be a bull having a registration certificate from the breeding association of its particular breed, or one whose breeder has issued a certificate under oath stating therein that the bull is pure-bred and stating the breed to which it belongs; such certificate to be recorded in a book provided for that purpose in the county clerk's office of the county in which the bull is to be ranged on or before the day any such bull is permitted to run at large.

(C. L. 17, § 96.)

Comparable provisions.
Cal. Agric. Code, § 383 (similar provision as to bull over 8 months of age that is not pure-bred); § 382 ("pure-bred bull" means bull bred in herd of recognized beef breed, whose ancestral sires have been registered bulls of same breed for at least four generations, the dams being cows of same breed of good quality).
Mont. Rev. Codes, § 3403 (unlawful to turn upon or allow to run at large on public highways, open range, or national forest reserve within state any bull other than pure-bred bull of recognized beef type).

A. L. R. notes.
Constitutionality, construction and application of statutes designed to regulate breeding of animals in order to improve or prevent deterioration of stock, 116 A. L. R. 1315.

ARTICLE 7

DISEASED ANIMALS

3-5-99. Importing a Misdemeanor.

Any person owning or having in charge any domestic animal afflicted with a contagious or infectious disease who, knowing such ani-

mal to be diseased, brings or drives the same into this state is guilty of a misdemeanor. (C. L. 17, § 100.)

3–5–100. To Be Killed.

Any person owning or having in charge any animal afflicted with glanders or farcy shall upon discovery of its condition at once kill the same; and any peace officer may kill such animal on the omission or refusal so to do by the owner or person in charge. Any such owner or person in charge omitting or refusing to comply with the provisions of this section is guilty of a misdemeanor. (C. L. 17, § 101.)

A. L. R. notes.
Constitutionality of statute or ordinance providing for destruction of animals, 8 A. L. R. 67; liability of public officers for killing or injuring animals while acting, or professing to act, under a statute in relation to the inspection or destruction of livestock, 12 A. L. R. 734.

3–5–101. To Be Confined—Sale, a Misdemeanor.

Any person owning or having in charge any domestic animal afflicted with a contagious or infectious disease who, knowing such animal to be diseased, allows it to run at large upon any uninclosed land, common or highway, or who sells or disposes of such animal without fully disclosing its condition to the purchaser is guilty of a misdemeanor. (C. L. 17, § 102.)

1. Necessity for wilfulness.
A complaint in an action for damages need not allege or prove that the diseased sheep were "wilfully" intermingled with others, but it is sufficient if such intermingling was done or permitted after the person who is charged with the wrong knew that his sheep were "afflicted with a contagious or infectious disease." Accordingly, allegations as to wilfulness will be disregarded as surplusage. Lindsay Land & Livestock Co. v. Smart Land & Livestock Co., 43 U. 554, 137 P. 837.

A. L. R. notes.
Extent of liability of seller of livestock infected with communicable disease, 51 A. L. R. 498.

3–5–102. To Be Quarantined.

Every person owning or having in charge any domestic animal afflicted with a contagious or infectious disease shall immediately remove the same to some place where it cannot endanger the health of other domestic animals. (C. L. 17, § 103.)

3–5–103. Violation of Article, a Misdemeanor—Damages.

Any person violating any of the provisions of this article, in addition to the penalties herein provided, shall be liable for all damages that may accrue to any party damaged by reason of the animal's imparting disease. (C. L. 17, § 104.)

ARTICLE 8

Removal and Burial

3–5–104. Duty of Owner—Expense How Borne.

Any domestic animal which may die within the limits of any town or settlement, or near any main-traveled state or county road, shall be removed or buried within two days from the death of such animal

by the owner thereof or the person having it in charge. If such person cannot be found, then such animal shall be removed or buried at the expense of the county in which it is found. If any such animal shall die within the limits of any incorporated city and the owner thereof or the person having it in charge cannot be found, it shall be removed or buried at the expense of the city. (C. L. 17, § 106.)

A. L. R. note.
Validity, construction, and applicability of statutes, ordinances and other regulations relating to transportation or disposal of carcasses of dead animals not slaughtered for food, 121 A. L. R. 732.

3-5-105. Id. Neglect to Bury—Expense How Borne.

If the owner or the person in charge of any such animal at the time of its death fails to remove or bury the same as in this article provided, any citizen may bury or remove such animal and collect pay therefor from the owner, if known, or from the county when the owner is unknown. (C. L. 17, § 109.)

3-5-106. Depositing on Another's Land, a Misdemeanor.

No such animal shall be left unburied within one-half mile of any town or settlement, or one-quarter mile of any main-traveled state or county road or residence, or twenty rods of any spring, running stream or water ditch. Any person who deposits any such animal on the land of another without his consent and fails to remove it therefrom upon two days' notice by the owner or possessor of such land is guilty of a misdemeanor. (C. L. 17, § 107.)

3-5-107. Duty of Peace Officers.

It shall be the duty of all sheriffs, constables, city marshals and police to enforce the provisions of this article. (C. L. 17, § 109.)

3-5-108. Penalty.

Any person refusing or neglecting to comply with any of the requirements of this article shall be fined in any sum not exceeding $10 and the expense of removing or burying the animal and costs of suit. (C. L. 17, § 108.)

ARTICLE 9

FENCES

3-5-109. Failure to Close Gates, etc., a Misdemeanor—Damages.

Any person who willfully throws down a fence or opens bars or gates into any inclosure other than his own or into any inclosure owned or occupied by himself and another and leaves the same open is guilty of a misdemeanor, and he shall also be liable for all damages thereby sustained. (C. L. 17, § 114.)

3-5-110. Adjoining Land Owners—Division Fences—Contribution.

When two or more persons shall agree to fence a joint inclosure or to build a division fence or fences each party shall be required to build his portion of lawful fence according to the amount of land inclosed and keep the same in repair; and, if either party shall neglect or refuse so to do, he shall be liable for all damage done in consequence of such

neglect. In all cases where a person has inclosed his land with a fence and the owner of adjoining land desires to inclose such adjoining land with a fence so that the first fence or any part thereof will be made a partition fence between such tracts of land, the owner of such adjoining land must before making such inclosure pay to the owner of such fence one-half of the value of all that part of such fence as will become a partition fence between such adjoining tracts of land; and when one party ceases to improve or cultivate his land or opens his inclosure he must not take away any part of the partition fence belonging to him, if the owner or occupant of such adjoining inclosure shall within thirty days after notice pay therefor the value of such fence; nor shall such partition fence be removed when by so doing the crops inclosed by it will be exposed to injury. (C. L. 17, § 115.)

Cross-references.

Railroad fencing, 15–8–35, 77–0–13; fencing shafts, 55–4–1, 103–20–2; criminal use of barbed wire, 103–20–1.

1.. Operation and effect of section.

Under this section the middle of the fence must be held to be the true boundary line in absence of any proof to the contrary. Rich v. Stephens, 79 U. 411, 420, 11 P.2d 295.

This section applies to land occupied by the boundary fence as well as to the material which is used in its construction. Rich v. Stephens, 79 U. 411, 419, 11 P.2d 295.

2. Boundary line trees.

Trees standing on a boundary line between adjoining owners are the common property of both owners who are tenants in common as to the trees. Robins v. Roberts, 80 U. 409, 417, 15 P.2d 340.

3. Action for damages.

Under this section an action may be brought to recover damages for a failure to keep in repair a partition fence. Lindley v. Bradshaw, 45 U. 83, 141 P. 300, applying Comp. Laws 1907, § 73.

Under a somewhat similar statute in Idaho, it was held that if either party fails to obtain or maintain a lawful partition fence, he must be held to his common law obligation of keeping his cattle upon his own premises, and will be liable for damages resulting from their trespass. Allen v. Allen, 47 U. 145, 151 P. 982.

ARTICLE 10

Salting Animals on Range

3–5–111. Users to Salt Public Range.

Every person who turns loose or grazes upon any public range of this state any cattle, horses or sheep shall at the time or within thirty days thereafter provide or place at or near one or more watering places on the range and where the cattle, horses or sheep can have easy access thereto at least five pounds of salt for each animal, except sheep for which it shall be one pound per head per annum, he turns upon the range not counting calves, colts and lambs under six months old; *provided,* when such stock remains on any range continuously the owner or owners shall be required to renew the said amount of salt once in six months; *provided further,* that this article shall not apply to any one turning cattle, horses or sheep upon any range where salt naturally exists in sufficient quantities for the use of stock. (C. L. 17, § 125.)

7. "Slaughterhouse" means any building, plant or establishment where meat food animals are killed or dressed, the meat or meat products of which are to be offered for sale for human consumption.

8. "Hides" includes hides and wool removed from any cattle, horses or mules, sheep or goats.

9. "Brands" means any recorded identification mark applied to any position on hide of animal by means of heat, acid or chemicals.

10. "Mark" means cutting and shaping of ears of animal.

11. "Inspector" means all inspectors appointed by state board of agriculture to carry out the provisions of this act.

12. "Livestock sales ring" means a place or establishment conducted or operated for compensation or profit as a public market consisting of pens or other enclosures and their appurtenances in which live cattle, sheep, swine, horses, mules or goats are received, held or kept for sale and where any such livestock is sold or offered for sale at either public auction or private sale; except, that the provisions of this act shall not apply to:

Any place used solely for a dispersal sale of the livestock of a farmer, dairyman, livestock breeder or feeder who is discontinuing said business.

(a) The premises of any butcher, packer or processor who receives animals exclusively for immediate slaughter.

(b) Any place where an association of breeders of livestock of any class assembles and offers for sale and sells under its own management registered livestock or breeding sires; *provided,* said association assumes all responsibility of such sale and guarantees title of said livestock and arranges with the board for the proper inspection of all animals sold. (Sec. 2.)

Comparable provisions.

Cal. Agric. Code, § 331.1 (this section, added in 1939, defines "brand" to be design, pattern or insignia permanently impressed on or into hide of animal by burning with acid, a chemical compound, or a hot iron for purposes of identifying cattle; a mark, otherwise applied, may be added to assist in such identification, but mark alone is not to be construed as a brand; canceling all brand recordations consisting of earmarks, including tattoo earmarks).

Idaho Code, § 24-1001 (cattle, horses, mules, asses and sheep are deemed livestock; every person, association or corporation owning cattle, horses, mules, asses or sheep in the state and engaged in business of breeding, growing or raising same for profit or otherwise is deemed a stock grower).

3-5-115. Brands—Recording.

Every livestock owner who allows his livestock over six months of age to range upon the open range or without an enclosure, shall have and adopt a brand and shall brand his livestock with such brand, which brand must be recorded in the office of the state board of agriculture. (Sec. 3.)

History.

As amended by L. 41, ch. 6, eff. May 13, eliminating prior references to "mark".

Comparable provisions.

Cal. Agric. Code, § 333 (brands, or brands and marks, must be recorded with director of agriculture).

Idaho Code, § 24-1002 (stock grower must use one, and only one, brand for cattle; one, and only one, brand for horses, mules and asses).

Mont. Rev. Codes, § 3301 (unlawful to artificially brand domestic animal or livestock running at large upon public domain or open range unless such

artificial brand or mark has been recorded or re-recorded within period of ten years immediately preceding such branding or marking).

Decisions from other jurisdictions.

— Idaho.

The statute is a reasonable and salutary provision prohibiting different persons using the same brand on their animals, which practice prior to this statute led to interminable litigation and conflicts between owners of livestock. State v. Dunn, 13 Idaho 9, 88 P. 235.

Without a compliance with the Branding Law a man may still prove ownership of an animal marked with an unrecorded brand; but he may not be heard in court to say that he is the owner of such brand or that he has any property right therein. State v. Dunn, 13 Idaho 9, 88 P. 235; State v. Basinger, 46 Idaho 775, 271 P. 325.

3–5–116. Unlawful to Use Unrecorded Brand, or to Disfigure or Remove Brand.

It is unlawful to brand and mark any livestock in this state with a brand and mark unless such brand and mark is recorded.

It is unlawful for any person to obliterate, disfigure, extend, add to, deface or remove a recorded brand or mark. (Sec. 4.)

Comparable provisions.

Cal. Agric. Code, § 332 (unlawful to brand cattle with brand unless brand is recorded and not forfeited); § 377 (imprisonment for one to five years for marking, branding, altering, or defacing mark with intent to steal animal or to prevent identification thereof by owner, known or unknown).

Idaho Code, § 24–1002 (unlawful to use brand unless designated in application for recording and brand be recorded with department of agriculture); § 24–1015 (misdemeanor to change, conceal, deface, disfigure or obliterate brand or mark previously branded).

Cross-reference.

Alteration or defacing brand as larceny, 103–34–8.

Decisions from other jurisdictions.

— California.

Where larceny of cattle was completed on one day by driving them out of a pasture where they were kept by the owner with intent to steal them, and on the following day the marks and brands were changed to prevent identification, there were two separate and distinct criminal acts committed on different dates, each of which constituted a crime in fact as well as in law, each crime being entirely distinct in name and statutory definition and neither crime constituting a necessary incident to or part of the other. People v. Kerrick, 144 Cal. 47, 77 P. 711.

It is the placing of any mark on an animal such as is mentioned in the statute with intent thereby to prevent identification by the true owner that constitutes the crime; that one who slits the ears of a horse or colt thereby "marks" the same, within the ordinary meaning of the word, is clear, for he thereby places some visible sign or impression on the animal which to some extent changes its natural appearance, attracts the attention, and conveys some information or intimation; that such a mark might tend to impede the owner of the animal in the identification thereof is likewise clear. People v. Strombeck, 145 Cal. 110, 78 P. 472.

It is a matter of common knowledge that bovine cattle are more generally allowed to run at large on a range, without herders, than are other animals, and that therefore they may more easily be stolen and driven away than other animals; "cattle rustling" is a well understood term and is usually understood to apply to the stealing of bovine cattle. Galeppi v. C. Swanston & Son, 107 Cal. App. 30, 290 P. 116.

3–5–117. Recording of Brands and Marks.

Recording of a brand and mark shall consist of depicting in the brand records a facsimile of the design of the brand adopted, a diagram denoting the manner of earmarking adopted, an entry of the name and address of person adopting the same, the date of recordation, the position upon the animal where the brand is to be placed and location of the range whereon such animals customarily range. No brand shall be recorded in the state which, in the opinion of the state board of agriculture, is identical with or similar to any brand previously re-

corded; *provided,* the board shall designate districts for the recording of marks on livestock, sheep, and goats. No such mark shall be recorded within a district which in the opinion of the board is identical with or similar to any mark previously recorded in the same district; *provided further,* said board is hereby authorized to establish rules and regulations governing the recordation of marks of identification on fur bearing animals, poultry, swine or any other kind of domestic animals. (Sec. 5.)

Comparable provisions.
Cal. Agric. Code, § 333 (substantially the same except that "a mark may be recorded only with a brand"); § 335 (director of agriculture may divide the state into branding districts and may change such districts to avoid recordation of a brand or brand and mark in any two contiguous districts).

3-5-118. Id. Duplicates Recorded—Cancellation.

Whenever the brand and mark records on file with the department disclose that the same brand and mark has been recorded by two or more persons, the person having made the first recordation shall be deemed to have the rights of prior ownership in such brand and mark and the board shall cause the cancellation of the duplicated recording of the brand and mark and shall refund the recording fee paid on such cancelled brand and mark. (Sec. 6.)

3-5-119. Earmarks.

Any stock grower in this state may adopt and use an earmark as provided for in this chapter providing that such earmark shall be made by cutting the ear or ears of the animal so marked, but in no case shall the person so marking an animal cut off more than one-half of the ear nor shall anyone mark by cutting an ear on both sides from near the head of the animal to a point. (Sec. 7.)

Comparable provisions.
Cal. Agric. Code, § 339 (unlawful to mark animal by cutting off more than one-half of ear or by cutting ear on both sides to a point).
Idaho Code, § 24-1015 (no person shall cut to a point, or cut off or remove, more than one-half of one ear of any head of livestock).

Decisions from other jurisdictions. — California.
The statute recognizes that a mark such as is made by slitting the ears of a horse or colt might be legally adopted as a mark to indicate ownership, for it expressly provides that no person must use a mark "by cutting off the ear or by cutting the ear on both sides to a point." People v. Strombeck, 145 Cal. 110, 78 P. 472.

3-5-120. Application for Recordation.

Any person desiring to adopt any brand and mark to be used for the branding and marking of livestock, sheep or goats in this state shall before using same secure from the state board of agriculture or county clerk a certified application form for brand and mark recording as provided by the state board of agriculture, give full information as specified on certified application form and forward to the state board of agriculture together with the proper fees for recording of brand and mark. (Sec. 8.)

3-5-121. Board May Designate Place to Be Used on Livestock.

The state board of agriculture is authorized to designate positions on livestock, at which brands to be recorded under this act should be placed. (Sec. 9.)

3-5-122. Owner to Procure Certified Copy of Recording.

Upon the recording of such brand and mark as provided in this chapter the owner shall procure from the state board of agriculture a certified copy of recording such brand and mark. (Sec. 10.)

3-5-123. Id. Evidence of Ownership of Branded Animals.

The certified copy of recordation thus secured in the foregoing section shall be prima facie evidence of the ownership of such animal or animals by the party whose brand and mark it might be and shall be taken as evidence of ownership in all courts of law or equity or in any criminal proceedings when the title to the animal is involved or property to be proved. (Sec. 11.)

Comparable provisions.

Idaho Code, § 24-1011 (brand, earmark or eartag is prima facie evidence provided same has been duly recorded; proof is made by certified copy of record; parole evidence inadmissible).

Mont. Rev. Codes, § 3304 (includes provision similar in purport).

1. Effect of recordation.

Recording of sheep brand under former statute, held, not prima facie evidence of ownership in one who obtained record. Smith v. Cummings, 39 U. 306, 117 P. 38, Ann. Cas. 1913 E 129.

Decisions from other jurisdictions.

— Idaho.

Formerly the statute forbade the use of evidence of an unrecorded brand, earmark or eartag for purposes of identification, but by amendment the prohibition against use of such evidence for purposes of identification was omitted. State v. Grimmett, 33 Idaho 203, 193 P. 380.

— Montana.

Ownership of livestock in a larceny case can be shown otherwise than by the recorded brand; and brands other than the one alleged in the information which were on the mare that was the subject of the larceny were merely descriptive marks, the same as any other identifying marks. State v. Akers, 106 Mont. 43, 74 P.2d 1138.

In a prosecution for grand larceny, the subject matter of the larceny being a gray saddle mare branded V-Lazy 8 on the left thigh, belonging to one Kenneth Olson, motion by defendant for new trial based on ground that the state had wholly failed to prove the identity of the horse as alleged was properly denied, the owner's description of the horse conforming to the description in the information; and the circumstance that there were other brands on the horse than the one alleged in the information was immaterial. State v. Akers, 106 Mont. 43, 74 P.2d 1138.

3-5-124. Brands and Marks Considered Property of Person Recording.

Any brand and mark recorded in accordance with the requirements of this article shall be considered as the property of the person causing such record to be made and shall be subject to sale, assignment, transfer, device and descent the same as other personal property. (Sec. 12.)

Comparable provisions.

Idaho Code, § 24-1008 (any brand or eartag when recorded is the property of the stock grower in whose name it is recorded, and it is subject to sale, assignment, transfer, devise and descent, the same as personal property).

Mont. Rev. Codes, § 3304 (person, firm or corporation in whose name mark or brand is of record is entitled to the right to exclusive use thereof on species of animal and in position designated in record).

3-5-125. Transfer.

A duly recorded brand and mark may be sold, transferred or assigned by an instrument in writing duly acknowledged by one witness. Such sale, transfer or assignment shall not become effective until the same is recorded with the state board of agriculture. (Sec. 13.)

Comparable provisions.
Idaho Code, § 24-1008 (instruments of writing evidencing such sale, assignment or transfer must be acknowledged as deeds to real estate are required to be; must be recorded in office of department of agriculture and in office of county recorder).

3-5-126. Publication of Brand Book and Supplement—Distribution.

It shall be the duty of the state board of agriculture from time to time as it may be necessary to cause to be published in book form a list of all brands and marks on record at the time of the publication.

The state board of agriculture may at its discretion cause to be issued a supplement to the brand book heretofore issued containing the additional brands and marks or changes in ownership of brands and marks between the time of the last publication and the issuing of such supplement. Such brand book shall contain the facsimile of all brands and marks recorded together with the owners' names and post-office addresses. It shall be the duty of the said board to send one copy of the brand book or supplement free of charge to each brand inspector, county clerk, county sheriff, any public official, person or livestock organization, whose possession of the same will, in the opinion of the board serve to promote the general welfare.

Said books and supplements may be sold to the general public at the cost of printing and distribution. (Sec. 14.)

Comparable provisions.
Idaho Code, § 24-1010 (similar, requiring publication in book form of list of all brands or eartags on record).

3-5-127. Renewal of Brands and Marks.

The boards shall give notice in writing to all persons who are owners of recorded brands and marks six months prior to the date of expiration of recordation as provided in this act.

All persons who are owners of recorded brands and marks on record with the state board of agriculture during the calendar year 1940 and every tenth year thereafter, during said tenth year thereafter, shall file in the office of the board an application for renewal of brands and marks recorded and used by them. Upon receipt of application and fee the said board shall give a renewal certificate which shall give the owner the exclusive right to use said brand and mark. All brands and marks not renewed as in this section provided shall become forfeited and no longer carried in said records.

Any other person shall be at liberty to adopt and use any brand and mark so abandoned; *provided*, that no person shall be at liberty to use such abandoned brand and mark until same shall have been recorded in his own name in the manner prescribed in this act. (Sec. 15.)

3-5-128. Certificates from Other States as Evidence of Ownership.

When animals are brought into this state from another state a certified copy of the certificate of recordation, or other evidence of owner-

ship proving ownership in the state of origin shall be received in evidence with like force and effect for a period of six months as a brand duly recorded in this state. (Sec. 16.)

3-5-129. Bills of Sale.

Upon the sale, consignment, alienation or transfer of title [of] any livestock, sheep or goats by any person in this state, the actual delivery of such animals shall be accompanied by a written bill of sale from the vendor or the party selling to the party purchasing giving the number, sex, brands and marks of each animal, date and place of purchase, signature and address of both seller and purchaser; *provided,* that any person so selling or transferring title to said livestock which are branded and marked with any brand and mark not the recorded brand and mark of person selling, shall show from whom said animals were received together with post-office address of same. (Sec. 17.)

Comparable provisions.

Cal. Agric. Code, § 363, as amended by Laws of 1941 (no person shall buy or sell bovine animal, carcass and hide, or hide, without seller giving and buyer receiving written bill of sale giving number, kind and brand or brand and marks of hide, carcass or animal).

Decisions from other jurisdictions.

— California.

Failure on part of defendant to take a bill of sale of cattle at the time they were delivered, or at the time payment of the purchase price thereof was made, or thereafter until it was discovered that seller was not the owner of the cattle, constituted such a violation of the statute as was clearly a misdemeanor. Galeppi v. C. Swanston & Son, 107 Cal. App. 30, 290 P. 116.

3-5-130. Persons Transporting Animals to Have Evidence of Ownership.

It shall be unlawful for any driver or operator of any truck or automobile or motor driven or horse drawn vehicle or driver of stock or any other person in charge or control thereof to drive, transport, or carry therein any livestock or hides from said animals including hides and wool from sheep and goats upon any public street or highway within this state or over or across lands within this state, without having in his possession a properly executed bill of sale as provided in the above section or in lieu thereof give satisfactory evidence of being the bona fide producer of stock in his possession. (Sec. 18.)

3-5-131. Id. Evidence of Illegal Possession.

Upon the trial of any person charged with theft, unlawful possession, the handling, or control of driving or killing of any livestock, sheep or goats, and the possession of such animals by the accused without his having a duly written and executed bill of sale thereof, such as is required by the provisions of above sections, shall be prima facie evidence against the accused that such possession was illegal. (Sec. 19.)

3-5-132. Live Animal Inspection.

Live animal inspection consists of the examination of livestock, during daylight for brands and marks and in case of unbranded livestock, for natural marks and the issuance of a certificate showing said brand and marks or natural marks. If any livestock bears a brand and mark other than the recorded brand and mark of the person presenting the

same for inspection, the inspector may demand that he be shown a bill of sale, certificate of inspection, or other proof of ownership to said livestock. The inspector shall make a record showing the number, sex, breed, brand and marks of each animal inspected, name of owner or claimant, consignor and consignee. It is unlawful to remove any animal and substitute another therefor, or add other animals or take animals away from any lot of livestock for which the inspector has issued a certificate for shipment or slaughter except as provided for by regulation of the board. (Sec. 20.)

Comparable provisions.
Cal. Agric. Code, § 341 (substantially identical).

3–5–133. Authority to Ship.

It shall be unlawful for any person to offer and for any railroad company to receive for transportation any or all livestock until the same shall have been duly inspected or authority given by the state board of agriculture or by one of its authorized inspectors to ship subject to inspection at some station enroute as hereinafter required by this act and until such railroad company or person shall have been authorized by said board or its authorized inspectors to ship or shall have been furnished with a certificate by a duly authorized brand inspector showing that livestock have been duly inspected as required by this act. (Sec. 21.)

3–5–134. Inspection of Livestock Transported by Rail.

Whenever livestock is to be transported by rail from any point within this state to any point within or without this state, it shall be the duty of the shipper to make application to the state board of agriculture or of some duly authorized inspector of said board to inspect the brands and marks of any livestock, stating in such application the time and place, when and where such animals will be ready for inspection.

It shall then be the duty of such brand inspector so notified or designated by the board upon at least twenty-four hours' notice to appear at the place designated in such application and inspect such livestock, make the necessary record and give the necessary certificate required by the provisions of this act.

In all cases of livestock transported by rail, the place of inspection shall be at some stockyard at the proposed point of shipment of such animals; *provided,* that the state board of agriculture shall have the power to designate some station enroute at which the stock shipped shall be inspected and such inspection shall be in lieu of an inspection at the initial shipping point. (Sec. 22.)

3–5–135. Service of Warrant of Arrest Upon Corporations.

In case of violation of this act by a railroad company or corporation the warrant of arrest may be read to the president, secretary or manager in this state, or any general or local agent thereof in the county where the action is pending and upon return of such warrant so served the railroad company or corporation shall be deemed in court and subject to

the jurisdiction thereof and any fine imposed may be collected by execution against the property of such corporation, but this section shall not be deemed to exempt any agent or employee from prosecution. (Sec. 23.)

3-5-136. Inspection of Livestock Driven Beyond State Boundaries.

It shall be unlawful for any person to drive livestock from any point within this state beyond the boundaries of this state until the same have been duly inspected as hereinafter provided; this section shall not apply to cattle whose accustomed range adjoins both sides of state line and which are being moved from one portion of their accustomed range to another portion merely for the purpose of pasturing or feeding same.

All livestock destined to be driven beyond the boundaries of this state shall be held for inspection at some point within this state designated by the drover, not more than 5 miles from the state line. (Sec. 24.)

3-5-137. Id.

Whenever livestock are to be driven across the boundaries of this state it shall be the duty of the owner or person in charge to make application to the state board of agriculture or some duly authorized inspector of said board, to inspect the brands and marks of any such livestock stating in such application the time and place, when or where said animals will be ready for inspection. It shall be the duty of such inspector so notified or designated by said board, within a reasonable time not to exceed twenty-four hours after being notified, to appear at the place designated in such application and inspect such livestock, make the necessary record, and give the necessary certificate required by the provisions of this act. (Sec. 25.)

3-5-138. Brand Inspection Districts.

It shall be the duty of the state board of agriculture to divide this state into brand inspection districts, prescribe and define the boundaries thereof and file a description covering the same with all county clerks and sheriffs in the state. Such districts may be changed as often as may be necessary to facilitate or improve the brand inspection. (Sec. 26.)

3-5-139. Inspection Stations.

The board is empowered to establish and designate brand inspection stations within the brand inspection districts established and locate, equip, officer and supervise the same, which in the opinion of the board will assist in carrying out the intent of this act. (Sec. 27.)

3-5-140. Inspection of Livestock Transported by Truck from Inspection Districts.

It shall be unlawful for any person to transport by truck any livestock originating at any point within a district to a point beyond the boundaries of said district until the same shall have been duly inspected or written authority given by the board or by one of its authorized

inspectors, to transport subject to inspection at some station enroute as hereinafter required by this act. (Sec. 28.)

3-5-141. Id.

Whenever livestock are to be transported by truck from any point within a district to any point without said district, it shall be the duty of the person in charge of said stock to make application to state board of agriculture or its duly authorized inspector to inspect the brand and mark of such livestock, stating the time and place the animals will be ready for inspection.

It shall be the duty of such brand inspector so notified or designated by the board within a reasonable time to appear at the place designated in such application and inspect such livestock, make the necessary record and give the necessary certificate required by the provisions of this act.

In all cases of livestock transported by truck the place of inspection shall be at a brand inspection station designated by the board within the brand inspection district where the livestock originate; *provided,* the board shall have the power to designate some brand inspection station enroute at which the stock transported shall be inspected and such inspection shall be in lieu of an inspection at the brand inspection station within the brand inspection district where the livestock originate. (Sec. 29.)

3-5-142. Vehicles Transporting Stolen Livestock—Forfeiture.

The use of any vehicle for the transportation of any stolen livestock, sheep or goats or the products thereof is unlawful. Any such vehicle so used in transporting such stolen livestock, sheep or goats, shall be seized without warrant by the sheriff of the county where such vehicle is found and sold by him at public auction in the same manner as personal property is sold under execution and the proceeds of such sale paid to the county treasurer to be deposited in the general fund of the county; *provided,* that no such sale shall be made until ten days' written notice thereof shall have been given the person in whose custody such vehicle is found, or in any event, if within such period the owner of such vehicle or the person entitled to the possession thereof shall commence an action in prohibition or injunction against the sheriff to restrain such sale until after the termination of such proceedings; *and provided further,* that such vehicle shall not be confiscated or subject to forfeiture if the same be a stolen vehicle at the time it is used for such unlawful transportation and the owner thereof is not in collusion with the party or parties guilty of the theft. (Sec. 30.)

3-5-143. Livestock Held Contrary to Provisions of Act Deemed Estrays.

If any brand inspector when acting by authority and under the provisions of this act in making inspection of any livestock, shall find any or all livestock bearing marks and brands contrary to the provisions of this act or if said owner or shipper shall fail to exhibit a bill of sale or other authority for the possession of said animals in said shipment as

herein provided, the brand inspector shall forthwith declare them to be estrays and shall take possession of the same for the state board of agriculture and handle same as set forth herein. (Sec. 31.)

3–5–144. Id. Subject to Estray Laws.

Any animals declared to be estrays as herein set forth by an inspector at the railroad loading point, brand inspection station, or place designated for inspection of drovers stock shall be turned over to the pound keeper in the precinct where inspection is made. Pound keepers shall handle such stock as provided for under the estray laws of this state; *provided,* that, when in the judgment of the state board of agriculture or its inspector, the cost of feeding and returning of estray animals to the precinct of origin would be impracticable and excessive compared to the value of such animals, said board may retain possession thereof and dispose of as herein provided in this act. (Sec. 32.)

3–5–145. Disposition of Animals—Estray Fund.

The Board may set up regulations governing the disposition of any animals declared to be estrays by its inspectors, at any slaughter house and federally regulated stock yards, livestock sales ring, or point of inspection as provided in this act, *provided,* all moneys received from the sale of estray animals shall constitute the estray fund and shall be deposited with the state treasurer and kept as a separate account. Any person establishing to the satisfaction of the state board of agriculture, ownership of any estray animal which shall have been sold by the board, shall forthwith be paid the amount for which said animal or animals were sold, less the cost of sale.

All claims for moneys from the estray fund made by the owners of animals sold shall be made within two years from the date of sale of the same or be forever barred. The proceeds of the sale of any animal or animals unclaimed after two years from date of sale shall be transferred to the brand inspection fund upon order of the board and notice to the state treasurer and state auditor. (Sec. 33.)

History.
As amended by L. 41, ch. 6, eff. May 13, substituting "governing" in first line for "covering" and adding matter beginning with "provided" in first paragraph.

3–5–146. Unlawful Destruction of Hides.

Every person who wilfully or maliciously mutilates, destroys or conceals any hide of any livestock, sheep or goats, with the intent to, or for the purpose of, removing evidence of ownership of such hide or animal from which said hide was removed, is guilty of a misdemeanor. (Sec. 34.)

Comparable provisions.
Cal. Agric. Code, § 338 (no person shall obliterate or alter or remove brand or brand and mark on hide, or burn or destroy hide of bovine animal until hide has been inspected and tagged).

3–5–147. Prosecutions, Complaint, Allegation of Ownership.

In any prosecution for the violation of the provisions of this chapter, it shall not be necessary for the state to allege in the complaint or information, the ownership of the hide or the animal from which said

hide was removed, but it shall be sufficient to allege in the complaint or information that the owner of said hide, or of the animal from which said hide was removed is unknown and that said hide or animal is not the property of the defendant. (Sec. 35.)

3-5-148. Persons Buying Hides to Procure Bill of Sale.

Any person buying hides or pelts shall procure from the person selling the same a bill of sale of said hides and pelts which bill of sale shall be executed in duplicate and one copy thereof shall be retained by the seller and the other copy shall be kept by said hide buyer and shall be exhibited upon demand of any official for inspection. Said bill of sale shall describe by brand and mark the hide or hides and pelts so sold and shall contain the date of such sale. (Sec. 36.)

Comparable provisions.
Cal. Agric. Code, § 363, as amended by Laws of 1941 (no person shall buy or sell bovine animal, carcass and hide, or hide, without seller giving and buyer receiving written bill of sale giving number, kind and brand or brand and marks of hide, carcass or animal).

3-5-149. Id. To Keep Records.

It shall be the duty of every hide buyer within this state to keep a true and correct record in a book kept for that purpose of all hides and pelts purchased by him, which record shall show the name of the person or corporation from which such hides or pelts were purchased, the date of purchase and all brands and other identification marks, if any, on said hides and pelts. The hides and record shall be subject to examination and inspection by any or all county or state officials. (Sec. 37.)

3-5-150. Livestock Sales Ring—Application for License.

It shall be unlawful for any person to engage in the operation of a livestock sales ring within the state of Utah unless he has a livestock sales ring license issued by the state board of agriculture.

Application for license to establish and operate a livestock sales ring shall be in writing upon a form to be furnished by the board together with a written statement satisfactory to said board of financial responsibility and of ownership or control of adequate facilities for the care, sorting, feeding, unloading and shipping of livestock for the operation of a livestock sales ring. (Sec. 38.)

3-5-151. Id. Fee.

A fee of $50 shall be paid annually to establish and operate a livestock sales ring and must accompany the application. (Sec. 39.)

3-5-152. Certified Copy of and Posting of License.

A certificate of an issued license may be procured by the holder of the original upon payment of a fee of $1 therefor, and the original or certified copy of said license shall be posted during sale periods in a conspicuous place on the premises where the livestock sales ring is conducted. (Sec. 40.)

3-5-153. Operators of Sales Rings to Keep Records.

Operators of all livestock sales rings shall keep on file an accurate record of the date on which each consignment of animals was received

and sold, together with the name and address of the buyer and seller, the number and species of the animals received and sold and the marks and brands on each animal. Said records, together with the gross selling prices, commission and other proper care, handling and sales charges on each consignment shall be available for inspection by the board or its authorized inspector, and a copy thereof shall be supplied to the owner of said livestock. All records of sales during the two preceding years shall be kept readily accessible for immediate examination. (Sec. 41.)

3-5-154. Inspection Upon Entering Sales Ring.

All livestock upon entering a livestock sales ring shall be inspected for brands and marks by an authorized inspector of the state board of agriculture before being offered for sale. (Sec. 42.)

3-5-155. License to Slaughter.

3-5-155 New matter S.L. '43, c. 8 Secs. 1-5 pp. 13, 14

It shall be unlawful for any person to slaughter cattle and veal, or request or hire any other person to slaughter said animals and offer for sale the meat thereof, unless he has a slaughterer license, issued in accordance with the provisions of this act, *provided,* the above shall not apply to any bona fide producer slaughtering his own animals as provided for in Section 51. (Sec. 43.)

History.
As amended by L. 41, ch. 6, eff. May 13, practically rewriting section.

3-5-156. Unlawful Slaughtering.

3-5-156 New matter S.L. '43, c. 8 Secs. 1-5 pp. 13, 14

It shall be unlawful for any person to kill or slaughter livestock with the intent of using the meat thereof for sale or consumption on any property in this state not owned or controlled as shown by written legal evidence by the person so slaughtering such animals except by written permission from the department of agriculture. (Sec. 44.)

History.
As amended by L. 41, ch. 6, eff. May 13, materially changing section following "animals" in next to last line.

3-5-157. Licensed Slaughterer to Hold Inspection Certificate and Bill of Sale.

3-5-157 New matter S.L. '43, c. 8 Secs. 1-5 pp. 13, 14

It is unlawful for any licensed slaughterer to slaughter any livestock which has not been brand inspected, certificate of inspection issued, and inspection certificate and bill of sale in his possession; *provided,* that the board may issue special regulations, covering inspections of class slaughterhouses as defined in this act. (Sec. 45.)

3-5-158. Slaughterhouses—License.

Every person slaughtering cattle as a business shall do so in a designated slaughterhouse. Before beginning business he must procure from the board a license to carry on such a business; conditioned that such person shall not slaughter or expose for sale any livestock, or the meat thereof, without first being the owner thereof, or being authorized so to do by such owner; *provided,* the failure of any such person to comply with the laws of this state and the rules or regulations of the

state board of agriculture relative to slaughterhouses and sanitation shall be just cause for revoking such license. However, no license shall be revoked except after a hearing by the board and upon 5 days' written notice to the license holder. (Sec. 46.)

Comparable provisions.
Cal. Agric. Code, § 347, as amended by Laws of 1941 (similar; must execute bond to the state in sum of $1,000).

Cross-references.
City licenses, 15-8-66, 15-12-6.

3-5-159. Id. Classification and Fees.

The board shall grant to every applicant, who complies with the provisions of this chapter, a license to slaughter livestock and sell the meat thereof. Licenses granted under this act expire December 31, of each current calendar year. Applicants for such license shall pay to said board the following annual fee in advance: applicants who slaughter less than 10 head per month, $1, and shall be classed as C class slaughterhouses; applicants who slaughter 10 or more and less than 50 head per month, $20, and shall be classed as B class slaughterhouses; applicants who slaughter 50 or more head per month, $75, and shall be classed as A class slaughterhouses. Above classification shall be based upon yearly average. (Sec. 47.)

3-5-160. Id. Location.

The applicant shall state in his application where the slaughterhouse in which he is to operate is located and to whom it belongs, and he shall not slaughter cattle at any other place. If a licensee desires to change to another location he shall apply to the board to have his license transferred and the board may reissue the license without additional cost. It is unlawful for a licensed slaughterer, excepting on a strictly commission basis, to slaughter for any other person. It is unlawful to allow anyone to slaughter for himself at the licensee's plant unless he is licensed to slaughter there. (Sec. 48.)

3-5-161. Stamping Carcass.

3-5-161
New matter
S.L. '43, c. 8
Secs. 1-5
pp. 13, 14

It shall be the duty of all persons licensed to slaughter in the state as provided for in this act, to stamp the carcass, or some part thereof, of cattle or horses before selling or offering same for sale, on at least 3 places on the outside of each quarter of said carcass, in a legible manner at about an equal distance apart; *provided,* that the provisions of this section shall not apply to carcasses or parts of carcasses of cattle sold or offered for sale which bear the inspected and passed stamp of the United States department of agriculture. (Sec. 49.)

3-5-162. Stamps.

It shall be the duty of the state board of agriculture to furnish each licensed slaughterhouse and each inspector appointed by it and each sheriff with stamps of suitable material and design. The imprint of said stamp shall be made with a non-deleterious compound. (Sec. 50.)

3-5-163. Veal and Beef Tags.

Any bona fide producer before slaughtering and offering for sale dressed veal and beef, must secure a dressed meat tag from the sheriff

in the county of applicant's residence. Applicant must properly fill out tag giving all information required and attach one tag to the neck of the hide of each animal offered for sale.

Animals weighing less than 200 pounds dressed shall be designated as veal and shall be marketed by whole carcass with the hide attached. Animals weighing over 200 pounds dressed shall be designated as beef and may be marketed by quarters; *providing,* the hide removed from said beef shall accompany the quarters and bear a properly filled out dressed meat tag attached to the hide. (Sec. 51.)

History.
As amended by L. 41, ch. 6, eff. May 13, changing wording of first paragraph and adding second paragraph.

3-5-164. Id.

It shall be the duty of the board to issue each sheriff in each county of the state sufficient number of tags, of design and material deemed suitable by the board, to carry out the provisions of this chapter. (Sec. 52.)

3-5-165. Id. Duties of Sheriffs.

It shall be the duty of each sheriff to issue upon request of a duly qualified, bona fide producer as set forth in this act, sufficient tags necessary to comply with this chapter, to keep all records and make such reports as may be deemed necessary by the board. (Sec. 53.)

3-5-166. Purchase of Unstamped Carcass Unlawful.

It shall be unlawful for any butcher, hotel keeper, marketman, retail dealer in meats or other person to purchase from any person the carcass, or any part thereof, of any cattle or horses unless said carcass or part thereof purchased is stamped or tagged as provided in sections 46 [49]* and 48 [51]* of this act. (Sec. 54.)

Note.
*Section numbers apparently in error. Numbers in brackets inserted for clarification only.

3-5-167. Purchasers for Resale to Keep Records.

It shall be the duty of any butcher, hotel keeper, marketman, retail dealer in meats or any other person purchasing the carcass or any part thereof for resale of any cattle or horses to keep a record in a book maintained solely for that purpose. Record of stamped meat shall consist of: date of purchase, from whom purchased, pieces and weight. Record of tagged veal shall consist of: date of purchase, from whom purchased, number of animals, breed of animals, color and weight, and shall file all tags accompanying veal in the manner as prescribed by the board. Hide of the veal shall be kept in the place of business by the purchaser until the meat of the animal is entirely disposed of before selling said hide. (Sec. 55.)

3-5-168. State Brand Inspection Fund.

Any unexpended balance remaining in the present brand inspection fund, together with all moneys received by license, fees or taxes or otherwise collected by reason of the provisions of this act, shall constitute the state brand inspection fund of the state board of agriculture

and shall be deposited with the state treasurer and used by said board in carrying out the provisions of this act. (Sec. 56.)

3–5–169. Fees.

A fee of $1 shall be collected for recording each and every brand in each and every position. A fee of $1 shall be collected for recording each and every mark.

Additional certified copies of recordation may be obtained by any person upon the payment of $1.

A fee of $1 shall be charged for each transfer of brand and the same amount for each transfer of mark.

A fee of $1 shall be charged for renewing a brand and the same amount for renewing each mark. (Sec. 57.)

3–5–170. Inspection Tax.

There shall be levied and assessed upon the assessed value of all horses and mules, three mills; all cattle, three mills; and all sheep and goats, one-half mill; in the state each year beginning with the year 1940. This tax is to be known as the inspection tax. Said tax to be assessed and collected in the same manner and at the same time as it is now, or may be, prescribed by law, for the assessment and collection of state revenue. (Sec. 58.)

3–5–171. (This number was assigned to section 59 of this law which was repealed by L. 41, ch. 2, § 2, eff. July 1.)

3–5–172. Board of Agriculture to Administer—Rules and Regulations.

The power and duty to enforce and carry out the provisions of this act is invested in the Utah state board of agriculture. Said board is hereby authorized to make and promulgate any or all rules and regulations for the enforcement of this act which shall be consistent with the provisions herein prescribed; *provided,* said board shall establish an office of livestock inspection and appoint as herein provided a supervisor whose duties shall be to supervise stock inspectors and administer under the direction of the board the provision of the act. (Sec. 60.)

3–5–173. State Supervisor and Stock Inspectors.

The state board of agriculture before making the appointment of the state supervisor shall request recommendations from a committee consisting of the presidents of the Utah state cattle and horse growers association, the state wool growers association, and the Utah dairy associations and from such recommendations shall appoint said supervisor, and fix the salary or compensation of such supervisor in accordance with standards adopted by the department of finance. *Further,* the state board of agriculture is authorized to appoint, from the membership of local livestock associations, other such stock inspectors as it may deem necessary to carry out the provisions of this act, distribute them at such points or places within or without the state as will in their judgment most effectively prevent violations of this act and to fix the salary or compensation of such inspectors in accordance with

standards adopted by the department of finance, outline their duties and set the terms of appointments. (Sec. 61.)

History.
As amended by L. 41, ch. 2, eff. July 1, by authorizing fixing of salary of state supervisor and qualifying authority to fix salary of stock inspectors.

3-5-174. Id. Duties of Inspectors.

Duly appointed and authorized inspectors shall be under the control and direction of the state board of agriculture and subject to its rules and regulations, and shall be responsible under the direction of said board to carry out all and any of the provisions of this act. (Sec. 62.)

3-5-175. Id. Arrests.

Said inspectors so appointed shall have the power and authority to make arrests of violators of this act. (Sec. 63.)

3-5-176. Id. Vehicles Carrying Livestock.

Any authorized brand inspector shall have the power to stop at any time or place any truck, automobile or other motor or horse-drawn vehicle, carrying any livestock or carcasses thereof, for the purpose of examining the animals for brands and marks and for examining bills of sale, brand inspection certificates and all credentials necessary, as set forth in this act. (Sec. 64.)

Comparable provisions.
Cal. Agric. Code, § 370 (agent of agricultural department may stop truck transporting cattle, carcasses of same with hide, or hides thereof on public thoroughfare, to make investigation, take possession, and hold same for 30 days pending investigation).

Idaho Code, § 24-1209 (any brand inspector or peace officer or other person as hereinafter provided may inspect livestock in transit whether by truck, trailer or other conveyance); § 24-1210 (owner of duly recorded brand may make inspection of livestock in transit).

3-5-177. Board to Coöperate with Officials—May Construct Pens, etc.

Said board is authorized to coöperate with all or any city, county, state and federal officials in carrying out the provisions of this act. Furthermore, said board is empowered to construct stray pens, inspection stations, corrals and loading chutes, which in the opinion of the board will aid in the prevention of theft of livestock. (Sec. 65.)

3-5-178. Coöperative Agreements with Adjoining States.

Said board is empowered to enter into coöperative agreements with adjoining states providing for inspection of interstate movements of livestock, and where necessary in lieu of inspections made in this state, may approve inspections made beyond the state boundary, where within its judgment such agreements will offer greater protection to the livestock producers of this state. (Sec. 66.)

3-5-179. Violating Provisions an Indictable Misdemeanor.

Any person who violates any of the provisions of this act shall be guilty of an indictable misdemeanor and upon conviction thereof shall be fined not less than $25 nor more than $1,000 or imprisonment in the county jail not less than sixty days, nor more than one year, or both. (Sec. 67.)

3-5-180. Inspectors Making False Records—Receiving Bribes—Felony.

Any inspector who shall knowingly make any false certificate under the provisions of this act and who shall knowingly swear falsely as to the truth of any report made by him to the state board of agriculture or who shall accept any bribe or compensation for the performance or failure to perform the duties prescribed by this act shall, upon conviction thereof, be deemed guilty of felony and be fined in a sum not exceeding $1,000 or imprisoned in the state penitentiary not exceeding 5 years, or both, in the discretion of the court. (Sec. 68.)

3-5-181. Conflicting Acts Repealed.

All acts or parts of acts in conflict herewith are repealed. (Sec. 69.)

[ARTICLE 12]

TRESPASSING ANIMALS

L. 1939, ch. 6; eff. May 9.

AN ACT making it a misdemeanor to permit certain livestock to trespass upon the property of another after receiving notice to refrain.

Be it enacted by the Legislature of the State of Utah:

3-5-182. Permitting Hogs to Trespass After Notice, Misdemeanor.

The owner of or the person in control of any hogs, who permits the same to trespass upon the improved private property of another person or corporation within 3 days after having received written notice from such other person demanding such owner or person in control to prevent such trespass is guilty of a misdemeanor. (Sec. 1.)

3-5-183. Conflicting Acts Repealed.

All acts or parts of acts in conflict herewith are repealed. (Sec. 2.)

CHAPTER 5a

TAYLOR GRAZING FUNDS—DISTRIBUTION

L. 1937, ch. 153; eff. Feb. 9.

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L. 1937, ch. 153; eff. Feb. 9.

AN ACT pertaining to agriculture, relating to livestock, and concerning the distribution of Taylor grazing funds.

Be it enacted by the Legislature of the State of Utah:

3-5a-1. Definitions—Taylor Grazing Act to Clarify Provisions.

Definitions as used in this act, unless the context clearly requires otherwise, are as follows:

(a) "Public lands" are vacant, unappropriated, unreserved federal lands.

(b) "Grazing districts" are convenient administrative units of public lands designated valuable for grazing and raising of forage crops bounded and established by the secretary of the interior.

(c) "Advisory boards" consist of local stockmen duly elected by the owners of livestock within the district, appointed by the secretary of the interior to act under oath as advisors in the administration of the Taylor Grazing Act within the district elected.

(d) "Sales" and "leases" are the selling or leasing by the secretary of the interior of isolated or disconnected tracts of public domain.

(e) "Fees" are the money collected by the secretary of the interior from assessments on livestock using the public domain.

It is the intent of the legislature, if any terms or provisions of this act are found to be ambiguous, that the Taylor Grazing Act shall be the primary aid to clarify such provisions. (Sec. 1.)

A. L. R. notes.
Constitutionality and construction of state farm aid laws, 92 A. L. R. 768; federal and state agricultural adjustment acts, 92 A. L. R. 1482, 98 A. L. R. 1195.

3-5a-2. Funds.

All funds received by the state of Utah as its distributive share of the amounts collected by the United States government under the provisions of the act of congress, June 28, 1934 (48 Stats. 1269), as amended by the act of congress, June 26, 1936 (Public 827, 74 Cong.), known as the Taylor Grazing Act, and any act amendatory thereof, shall be deposited with the state treasurer. The state treasurer shall ascertain from the United States officers having the record of receipts from Taylor grazing permits or licenses and leases and sale of public lands the amounts received from each grazing district within this state. (Sec. 2.)

Comparable provisions.
Idaho Code, § 24-2110 (funds received by state as its distributive share of amounts collected by United States government under provisions of Taylor Grazing Act are deposited with state treasurer).

Mont. Rev. Codes, § 191.1 (state treasurer designated as custodian of moneys transferred to state by United States under terms of Taylor Grazing Act).

3-5a-3. Distribution of Funds from Lease, Sale.

The distributive share of all funds received from the lease and sale of public lands, as mentioned in section 2, shall be prorated to each school district according to the amount paid the federal government from the lands producing such funds embraced within such school district and placed in the general school fund to the credit of said district. (Sec. 3.)

3–5a–4. Distribution of Funds from Grazing Fees.

The distributive share of all funds received from grazing fees as mentioned in section 2 shall be prorated to each grazing district, according to the amount said district has paid to the federal government. (Sec. 4.)

3–5a–5. Expenditure of Funds.

The funds received by each grazing district shall be prorated by the said district to each county in proportion to the amount of public lands within the county. The Taylor grazing advisory board of each grazing district shall direct the expenditure of said funds as follows: for range improvement and maintenance, the control of predatory animals, the control of rodents and pests, the control and extermination of poisonous and noxious weeds, the purchase or rental of lands which will benefit such grazing districts and for the general livestock grazing welfare of the grazing district. (Sec. 5.)

Comparable provisions.

Idaho Code, § 24–2110 (state auditor distributes these funds to counties in which grazing districts, or lands producing such moneys are located); § 24–2111 (the funds are used for substantially the same purposes as herein specified).

Mont. Rev. Codes, § 191.2 (state treasurer apportions and allocates moneys received from treasurer of United States to county treasurers; the county treasurer in turn allocates these funds; these funds are expended only for range improvements approved by district advisory board).

3–5a–6. Bond of Treasurer of Advisory Board.

The treasurer of each Taylor grazing advisory board shall be bonded either with a corporation surety bond in the sum of $5,000 or a person surety bond in the sum of $10,000, premium on said bonds to be paid by the advisory board out of the grazing district allotment, and said bond to be approved by and filed with the state treasurer. (Sec. 6.)

3–5a–7. Distribution to Treasurers of Grazing Districts.

As soon as the state treasurer has ascertained the amount of money available and has approved the bonds of the treasurers of the Taylor grazing advisory boards, he shall notify the auditor who shall draw warrants on the state treasurer for the amount to be distributed to each grazing district and deliver the same to the treasurer of such grazing district for deposit. (Sec. 7.)

3–5a–8. State Auditor to Audit Books of Advisory Boards.

The state auditor shall have authority to coördinate with the federal government to audit the books of the Taylor grazing advisory boards. (Sec. 8.)

3–5a–9. Effective Date.

This act shall take effect upon approval.

Approved February 9, 1937. (Sec. 9.)

CHAPTER 6

BEES

Tit. 3, c. 6
Ref. to
S.L. '45, c. 142
Item 75, p. 286

3-6-1. Duties of Board of Agriculture—Inspectors.
3-6-2. Id. Reports to Governor.
3-6-3. Box Hives Forbidden—Penalty.
3-6-4. Queen Bees—Care and Sale.
3-6-5. County Inspectors.
3-6-6. Id. Term—Oath—Bond.
3-6-7. Id. Rate of Pay.
3-6-8. Inspections — Treatment of Diseases—Condemnation.
3-6-9. Movement of Bees—Health Certificate—Penalty.
3-6-10. Inspectors to Disinfect Person.
3-6-11. Right of Visitation—Resistance, a Misdemeanor.
3-6-12. Importation — Health Certificate.
3-6-13. Id. Inspection at Destination—Condemnation.
3-6-14. Quarantine Regulations.
3-6-15. Annual Appropriation.

3-6-1. Duties of Board of Agriculture—Inspectors.

It shall be the duty of the state board of agriculture to enforce all laws pertaining to the care and culture of bees; to disseminate information concerning the care, prevention, eradication and control of bee diseases, profitable and approved methods of bee culture and honey production, and concerning those districts of this state wherein peculiar opportunity may be offered for the profitable prosecution of such business; to supervise the inspection of bees and apiaries by the various county inspectors, examine into and pass upon the qualifications of such county inspectors and their efficiency in the performance of the duties of their office, to dismiss from office any county inspector it may regard for any reason incompetent to perform the duties of such office, and pending action by the board of county commissioners for the county thus suffering a vacancy to appoint in his stead from the residents of such county a qualified person who shall temporarily perform the duties of such office. (L. 21, p. 24, § 2.)

Comparable provisions.

Cal. Agric. Code, § 272 (director of agriculture is directed to enforce the act and to promulgate and enforce rules and regulations; each county agricultural commissioner is declared to be ex officio State bee inspector; director has supervision over all enforcing officers).

Cross-references.

Tax on transient bees, 80-5-19 et seq.

Decisions from other jurisdictions.

— California.

The provisions of the act reasonably tend to promote the bee industry by lessening, if not precluding, the transmission of bee diseases, thereby adding to the welfare and prosperity of the state. Graham v. Kingwell, 218 Cal. 658, 24 P.2d 488.

Examination of the provisions of the statute indicates that they reasonably tend to the accomplishment of the purpose stated in the title, namely, "to promote the agricultural interests" of the state and "to prevent the introduction and spread of [bee] disease." Graham v. Kingwell, 218 Cal. 658, 24 P.2d 488.

There is reasonable basis for exercise of police power in prohibiting beekeeping within city limits, notwithstanding advantages resulting to residents of the community from cross-pollination of fruit blossoms and flowers. Ex parte Ellis, 11 Cal. 2d 571, 81 P.2d 911.

Bees may become a nuisance in residential areas. Ex parte Ellis, 11 Cal. 2d 571, 81 P.2d 911.

A. L. R. notes.

Law of bees, 39 A. L. R. 352.

3-6-2. Id. Reports to Governor.

The board shall make a biennial report to the governor concerning operations under this chapter which shall give the number of apiaries

inspected, the number of diseased apiaries found, the number of colonies treated, the number of colonies destroyed, and the expense incurred in the performance of such duties. A careful record of the locations where disease exists shall be kept. (L. 21, p. 24, § 3.)

Comparable provisions.
Iowa Code, 1939, § 4040 (similar).

3-6-3. Box Hives Forbidden—Penalty.

It shall be unlawful for any person to house or keep, or permit upon premises within his control to be housed or kept, bees in box hives (being mere boxes without movable frames) or in any kind of hives other than those with movable frames to all parts of which free access may be had without difficulty. Any violation of this section is a misdemeanor punishable by fine of not less than $10 nor more than $100. (L. 21, p. 24, § 5.)

Comparable provisions.
Cal. Agric. Code, § 282 (inspector must order transfer of bees kept in box or other immovable or stationary-comb hives to be transferred to movable frame hives; in case owner or person in charge of bees fails to comply within reasonable time, inspector must destroy hives and contents).

Idaho Code, § 22-1907 (owner or keeper of bees in box hives must transfer them to movable frame hives within five days after being notified in writing by bee inspector to do so; failure to comply is a misdemeanor and inspector must destroy or order destruction of hives and bees dwelling therein).

3-6-4. Queen Bees—Care and Sale.

It shall be the duty of every person who is engaged in the rearing of queen bees for sale to use honey which has been boiled for at least thirty minutes in the making of candy for use in mailing cages. Any person so engaged shall have his queen-rearing apiary inspected at least twice each summer season; and on the discovery of the existence of any disease which is infectious or contagious in its nature and injurious to bees in their egg, larval, pupal or adult stages he shall at once cease to ship queen bees from such diseased apiary until the inspector of apiaries shall declare it free from all disease. Any person engaged in the rearing of queen bees for sale who violates the provisions of this section is guilty of a misdemeanor, and shall be fined not less than $100 nor more than $200. (L. 21, p. 24, § 6.)

3-6-5. County Inspectors.

The board of county commissioners of the several counties when petitioned by at least five actual beekeepers shall appoint, by and with the consent of the state board of agriculture, a qualified person as inspector of bees for their respective counties. (L. 21, p. 24, § 415.)

3-6-6. Id. Term—Oath—Bond.

Such county inspector shall hold office during the pleasure of the board of county commissioners and the state board, and may be removed from office by either without the consent or approval of the other. He shall qualify by taking and subscribing the official oath and by giving a bond to be approved by the board of county commissioners, which oath and bond shall be filed with the county clerk. (L. 21, p. 24, § 416.)

3-6-7. Id. Rate of Pay.

County inspectors shall be paid out of the county treasury for services actually rendered at such rate per day as the board of county commissioners may fix. (L. 21, p. 24, § 417.)

3-6-8. Inspections—Treatment of Diseases—Condemnation.

All hives of bees in each county shall be carefully inspected at least once each year by the county inspector; and at any time upon complaint in writing by the owner of an apiary that disease exists among bees of any locality the county inspector within whose county the disease is alleged to exist shall immediately inspect the bees said to be infected. If satisfied of the existence of disease, he shall give the owner or caretaker of the diseased apiary full instructions how to treat such cases as in the inspector's judgment may seem best. Such inspector shall, however, have authority in his discretion and for the purpose of treatment to take charge and control of diseased bees and their hives, all infected combs in or about such apiary or apiaries and the tools and implements used in connection therewith; or the inspector may destroy or otherwise dispose of such bees, combs, brood or hives and their contents, or such implements as may be infected, and all honey and appliances that would spread disease; *provided,* that if any owner is dissatisfied with a decision of the county inspector, he may appeal to the state board, who shall forthwith at the expense of such owner cause an examination to be made of the apiary or colonies complained of, and its decision therein shall be conclusive as to the condition of the bees at the time of such examination. (L. 21, p. 24, § 418.)

Comparable provisions.

Cal. Agric. Code, § 276 (county agricultural commissioner may inspect, or cause to be inspected, apiaries whenever he deems it necessary; inspector reports findings to commissioner; commissioner then notifies owner in writing of prevalence of disease and orders eradication); § 277 (diseased apiary is a public nuisance and inspector must abate same by eradicating the disease).

Iowa Code, 1939, § 4039, as amended by Laws of 1941 (state apiarist required to give full written instructions to owner or person in charge of apiary containing diseased bees as to method of treating the disease; the 1941 amendment deals with movable frames; and with certificate of inspection as to bees and equipment brought into Iowa); § 4039.1 (notice in writing to complete treatment or destruction of bees in 10 days); § 4039.2 (if owner fails to comply, apiarist or assistants must carry out such treatment or destruction).

Mont. Rev. Codes, § 3566, as amended by Laws 1941, Ch. 133, § 1 (state entomologist is required to visit and examine, either personally or by deputy, any apiary to ascertain existence of disease among bees or brood).

3-6-9. Movement of Bees—Health Certificate—Penalty.

It shall be unlawful to remove bees from any county in the state into any other county without first obtaining a certificate from the county bee inspector, if there is one, stating that such bees are in a healthy condition and free from foul brood. The person so applying shall pay the inspector for his services and certificate at the same rate he is allowed by the county for the time actually engaged. If the owner of an apiary or appliances wherein disease exists shall sell, barter or give away, or move without the consent of such county bee inspector, any diseased bees (whether queens or workers), colonies or appliances, or expose other bees to the danger of such disease, such owner shall be

punished by a fine of not less than $50 nor more than $100 or by imprisonment in the county jail not less than one month nor more than six months, or by both such fine and imprisonment.

(L. 21, p. 24, § 419.)

Comparable provisions.

Cal. Agric. Code, § 275 (unlawful to move bees within the state without first obtaining certificate from county inspector of apiaries).

Idaho Code, § 22-1910 (misdemeanor to remove or attempt to remove bees which are, or have been, infected with foul brood or other contagious or infectious disease without first procuring permit).

Iowa Code 1939, § 4041 (misdemeanor to sell, barter, give away or move diseased colony of bees without consent of state apiarist).

Mont. Rev. Codes, § 3566, as amended by Laws 1941, Ch. 133, § 1 (state entomologist is required to regulate and control moving of bees and equipment within state when necessary for prevention, eradication, or control of bee diseases).

3-6-10. Inspectors to Disinfect Person.

After inspecting infected hives or fixtures, or handling diseased bees, the inspector shall before leaving the premises or proceeding to any other apiary thoroughly disinfect any portion of his own person and clothing and any tools or appliances used by him which have come in contact with infected material, and shall see that any assistant or assistants with him have likewise thoroughly disinfected their persons and clothing and any tools and implements used by them.

(L. 21, p. 24, § 421.)

3-6-11. Right of Visitation—Resistance, a Misdemeanor.

For the enforcement of the provisions of this chapter the state commissioner of agriculture and all county bee inspectors shall have access to all apiaries or places where bees, combs, honey, hives, implements and supplies are kept. Any person or persons who resist, impede or hinder in any way the commissioner or any county bee inspector in the discharge of his duties under the provisions of this chapter shall be punished by a fine of not less than $50 nor more than $100 or by imprisonment in the county jail for not less than one month nor more than six months, or by both such fine and imprisonment.

(L. 21, p. 24, § 422.)

Comparable provisions.

Idaho Code, § 22-1903 (similar).

3-6-12. Importation—Health Certificate.

It shall be unlawful to ship or move into this state any bees in packages, bees in hives or on combs or any previously used beekeeping equipment, unless accompanied by a certificate of inspection signed by a duly authorized inspector of the state from which shipment is made, showing that such bees and/or equipment have been inspected by duly authorized state inspectors within 30 days of the date of shipment and that no American foul brood or other contagious or infectious disease of bees existed in or among the apiary or apiaries from which such shipment is made. Such certificate must also show the point of destination to which such bees and/or equipment will be consigned. A copy of such certificate must be mailed to the state board of agriculture in advance of such shipment. It shall be unlawful to place in any combless

package of bees shipped into this state any syrup or food containing honey. (L. 29, p. 95, § 1.)

Comparable provisions.

Cal. Agric. Code, § 274 (certificate must show inspection as having been made within 60 days prior to importation or transportation into state and that bees were found free from American foulbrood).

Idaho Code, § 22-1911 (certificate must show that food containing honey prepared for use of bees shipped into state has been subjected to temperature of not less than 212 degrees Fahrenheit for not less than 30 minutes).

3-6-13. Id. Inspection at Destination—Condemnation.

Whenever in the judgment of the commissioner of agriculture it is necessary that any bees or equipment be inspected upon arrival at destination he shall immediately make such inspection and, if disease is found among the same, all such diseased colonies shall be burned immediately at the expense of the owner. Persons requiring a certificate of inspection for the removal of bees going out of this state shall pay the inspector for his certificate and services at the same rate per day that he is paid by either the state or county for inspecting bees. (L. 29, p. 95, § 2.)

3-6-14. Quarantine Regulations.

The state board of agriculture is hereby authorized to establish, maintain and enforce such quarantine regulations as may be deemed necessary to protect the bee industry against contagious or infectious bee diseases by establishing quarantine at the boundaries of the state or elsewhere within the state, and may make and enforce all rules and regulations necessary to prevent any bees or their brood, used hives or appliances, from passing over any quarantine line established pursuant to this chapter. (L. 29, p. 95, § 4.)

Comparable provisions.

Cal. Agric. Code, § 273 (similar provision as to quarantine which may be established by director of agriculture with approval of the governor).

Iowa Code 1939, § 4039.5 (state apiarist is required to prohibit movement of bees and used beekeeping appliances out of any area found to be infected with diseases of bees).

3-6-15. Annual Appropriation.

For the purpose of carrying into effect the provisions of this chapter there is hereby appropriated out of the state treasury the sum of $3,000 per year or as much thereof as may be necessary. (L. 21, p. 24, § 4.)

CHAPTER 7

SALE OF EGGS

Tit. 3, c. 7
Ref. to
S.L. '45, c. 142
Item 75, p. 286

3-7-1. Grades or Standards.
3-7-2. Sales of Unfit Eggs Forbidden.
3-7-3. Definitions.
3-7-4. Label or Signs to Indicate Grade.
3-7-5. Candling Record to Be Kept.
3-7-6. Effect of Seller's Guaranty.
3-7-7. Penalty.

3-7-1. Grades or Standards.

It shall be the duty of the state board of agriculture to establish from time to time grades or standards of quality and of size or weight govern-

ing the sale of eggs, and to make suitable rules and regulations for otherwise carrying out the provisions of this chapter. Such rules, regulations and standards of quality and weight shall be filed in the office of the state board of agriculture and shall be in effect thirty days after such filing. (L. 25, p. 165, § 3.)

Cross-references.
Municipal regulation of poultry, 15-12-4.

3-7-2. Sales of Unfit Eggs Forbidden.

No person shall sell, or offer or expose for sale, or traffic in, any eggs unfit for human food, unless the same are broken in shell and then denatured so that they cannot be used for human food. For the purpose of this chapter an egg shall be deemed unfit for human food, if it is addled or mouldy, if it contains black spot, black rot, white rot or blood ring, if it has an adherent yolk or a bloody or green white (albumen), or if it consists in whole or in part of a filthy, decomposed or putrid substance. (L. 25, p. 165, § 1.)

Comparable provisions.
Idaho Code, 1940 Supp., § 22-7A2 (similar).
Iowa Code 1939, § 3104 (no person shall sell, offer or expose for sale, or have in his possession any egg unfit for human food, unless same is broken in shell and denatured so that it cannot be used for human food).

3-7-3. Definitions.

Unless the context otherwise requires, the following words and phrases used in this chapter are defined as follows:

(1) "Addled" or "white rot" means putrid or rotten.

(2) "Mouldy" means that through improper care the egg has deteriorated so that mould spores have formed within it.

(3) "Black spot" means that mould or bacteria have developed in isolated areas inside the shell.

(4) "Black rot" means that the egg has deteriorated to such an extent that the whole interior presents a blackened appearance.

(5) "Blood ring" means that germs have developed to such a stage that blood is formed.

(6) "Adherent yolk" means that the yolk has settled to one side and become fastened to the shell.

(7) "Candling" is the act of determining the condition of any egg by holding it before a strong light in such a way that the rays of light will shine through the egg and reveal its contents to the operator by the use of an apparatus and method which shall be approved by the commissioner of agriculture. (L. 25, p. 165, § 2.)

History.
As amended by L. 35, ch. 2, eff. May 14, by eliminating definitions of "standard" and "pullet" size eggs.

Comparable provisions.
Cal. Agric. Code, § 1101 (similar).
Iowa Code 1939, § 3105 (similar as to egg "deemed unfit for human food"); § 3107 (defining "candling").
Mont. Rev. Codes, § 2634.6 (similar).

Decisions from other jurisdictions.
-- California.
There is a recognized distinction between the trade terms of "fresh eggs" and "processed eggs," and it is a well known fact that processed eggs are not presumed to have the high degree of quality of fresh eggs. Nye & Nisson v. Weed Lumber Co., 92 Cal. App. 598, 268 P. 659.

3-7-4. Label or Signs to Indicate Grade.

It shall be unlawful for any person to sell or offer or expose for sale any eggs that are intended for human consumption without notifying by suitable signs or label the persons purchasing or intending to purchase the same of the exact grade or quality according to the standards prescribed by the state board of agriculture. (L. 25, p. 165, § 4.)

History.
As amended by L. 35, ch. 2, eff. May 14, by eliminating requirement that "pullet" eggs be labeled such.

Comparable provisions.
Cal. Agric. Code, § 1103.1 (similar).

3-7-5. Candling Record to Be Kept.

Every person shall in selling, buying or exchanging eggs keep such candling records as may be required by the rules and regulations of the state board of agriculture, and all such records shall be open at all reasonable times for examination by accredited inspectors or representatives of the state board of agriculture. (L. 25, p. 165, § 5.)

Comparable provisions.
Iowa Code 1939, § 3109 (substantially the same).

3-7-6. Effect of Seller's Guaranty.

No retailer shall be prosecuted under the provisions of this chapter, if he can establish a guaranty from the person from whom any eggs are purchased to the effect that the eggs at the time of such purchase conformed to the grade or quality and the size or weight as stated in the invoice and said eggs were labeled by the retailer for resale in accordance with the purchase invoice; *provided,* that such guaranty shall not exempt from prosecution any retailer who may have kept the eggs covered by such guaranty for such time after their purchase or under such conditions as to cause them to deteriorate into a lower grade or standard. (L. 25, p. 165, § 6.)

3-7-7. Penalty.

Every person who violates any of the provisions of this chapter is guilty of a misdemeanor, and shall be punished by a fine of not less than $25 nor more than $100. (L. 25, p. 165, § 7.)

CHAPTER 8

Tit. 3, c, 8
Ref. to
S.L. '45, c. 142
Item 75, p. 286

COMMERCIAL FEEDING STUFFS

3-8-1. Commercial Feed and Feeding Stuff Defined.
3-8-2. To Be Labeled Before Sale.
3-8-3. Registration — Fees — Invoice and Tax Stamps for Consumers' Formula Mixtures.
3-8-4. Id. One Statement Sufficient.
3-8-5. Purchasers to Be Supplied with Statement.
3-8-6. Deceptive Names and Labels Denied Registration.
3-8-7. Right of Visitation—Samples.
3-8-8. Rules and Regulations.
3-8-9. State Chemist to Analyze.
3-8-10. Violation of Chapter—Penalty.

3-8-1. Commercial Feed and Feeding Stuff Defined.

The terms "commercial feed and commercial feeding stuff" shall include all materials used for feeding birds or other domestic animals or

domesticated wild animals except the following:

1. Unmixed whole seeds or grain as defined by U. S. grain standards.

2. The unmixed meals made directly from and consisting wholly of any one of the following entire grains; corn, wheat, rye, barley, oats, buckwheat, flaxseed, kaffir, milo or other seeds or grains.

3. Entire, unmixed, hays, straws, cotton seed hulls, stover or silage, whether whole, ground or chopped when unmixed with other materials.

(L. 21, p. 35, § 1.)

History.

As amended by L. 39, ch. 9, eff. May 9, making number of changes in section.

Comparable provisions.

Cal. Agric. Code, § 1081, as amended by Laws of 1941 (includes similar provision; exception also as to following items: fresh green roughage; unprocessed milk; wet garbage; salt except in block or chunk form; preparations represented or sold primarily as tonics or for cure, mitigation, or prevention of disease; preparations sold for feeding domestic pets).

Idaho Code, § 24-2501 (similar).

Iowa Code 1939, § 3113 (includes similar provision).

Other provisions comparable to those contained in Title 3, Ch. 8: Ill. Rev. Stats. 1941, Ch. 56½, § 56 et seq.; Mich. Stats. Ann., § 12.491 et seq.; McKinney's N. Y. Consol. Laws, Agriculture and Markets Law, § 128 et seq.; Wis. Stats. § 94.72.

Decisions from other jurisdictions.

— Iowa.

In action against corporation for death of sheep from being fed defendant's powder, the court properly instructed the jury that defendant would be bound by representations of its sales manager made in furtherance of sales that powder was not injurious to sheep in condition of plaintiff's sheep if jury found that he did make such representation to plaintiff since warranty was not unusual, not being one of cure but that powder would not harm sheep. Miller v. Economy Hog & Cattle Powder Co., 228 Iowa 626, 293 N. W. 4.

— Federal.

Iowa statute regulating sale within state by manufacturers, importers, dealers and agents of "concentrated commercial feeding stuffs" and exacting an inspection fee or license fee, falls within the rule that "one who would strike down a state statute as violative of the Federal Constitution must bring himself by proper averments and proper showing within the class as to whom the act thus attacked is unconstitutional," and show that the unconstitutional feature of the statute so operates as to deprive him of rights protected by the Federal Constitution. Standard Stock Food Co. v. Wright, 225 U. S. 540, 56 L. Ed. 1197, 32 S. Ct. 784.

3-8-2. To Be Labeled Before Sale.

Every lot or parcel of commercial feeding stuff sold, offered or exposed for sale, or distributed within this state shall have affixed thereto a tag in a conspicuous place on the outside thereof containing a legible and plainly printed statement in the English language, clearly and truly certifying:

(1) The net weight of the contents of the package, lot or parcel.

(2) The name, brand or trade-mark.

(3) The name and principal address of the manufacturer or distributor of the product.

(4) The minimum percentage of crude protein.

(5) The minimum percentage of crude fat.

(6) The maximum percentage of ash.

(7) The maximum percentage of crude fiber.

(8) The maximum percentage of minerals.

(9) The specific name of each and every ingredient used in its manufacture using the term as defined by the association of feed control officials of the United States.

(10) In the case of mixed feeds containing more than a total of five per cent of one or more mineral ingredients or other unmixed materials used as mineral supplements and in the case of mineral feeds mixed or unmixed which are manufactured, represented and sold for the primary purpose of supplying mineral elements in rations for animals or birds and containing mineral elements generally regarded as dietary factors essential for normal nutrition the minimum percentage of calcium, phosphorus, of iodine and the maximum percentage of salt, if the same be present; *provided,* that if no nutritional properties other than those of a mineral nature be claimed for a mineral feed product the per centum of crude protein, crude fat, crude fiber and ash may be omitted.

The analysis of commercial feeding stuffs shall be performed according to the methods prescribed at the time by the association of official agricultural chemists of the United States. (L. 21, p. 35, § 2.)

History.
As amended by L. 35, ch. 3, eff. May 14; L. 39, ch. 9, May 9, materially changing section as it appeared in 1933 Stats.

Comparable provisions.
Cal. Agric. Code, § 1083, as amended by Laws of 1941 (similar).
Idaho Code, § 24-2502 (similar).
Iowa Code 1939, § 3114 (similar).

Cross-references.
Trade marks and names generally, Title 95.

Decisions from other jurisdictions.
— California.
Notwithstanding that tags attached to bags of beet pulp showed, in compliance with statute, that the pulp contained in the bags was composed of a certain quantity of each of several chemical elements, the trial court properly excluded the tags on objection of defendant, inasmuch as no issue in the case involved the question whether the pulp contained those elements; the tags not even purporting to show that the pulp did not contain certain other elements which would be deleterious to animal life, the action at bar having been brought to recover the purchase price of beet pulp sold and delivered to defendant who claimed in defense of the action that four of her cows died after eating the pulp. Pacific Feed Co. v. Kennel, 63 Cal. App. 108, 218 P. 274.

— Federal.
The provisions of the Iowa Stock Food Law requiring that name and percentage of the diluents or bases be stated on the container is a valid exercise of the police power and its effect upon interstate commerce is incidental only. Standard Stock Food Co. v. Wright, 225 U. S. 540, 56 L. Ed. 1197, 32 S. Ct. 784.

The state had authority under its police power to enact statute requiring manufacturers, importers and dealers in "concentrated commercial feeding stuffs," defined in the statute, to state on labels attached to packages or containers of such food stuffs, the percentage of diluents or bases of such food stuffs. Standard Stock Food Co. v. Wright, 225 U. S. 540, 56 L. Ed. 1197, 32 S. Ct. 784.

A. L. R. notes.
Constitutionality of requirement of disclosure by label of materials or ingredients of articles sold or offered for sale, 57 A. L. R. 686; constitutionality of statutes requiring notice by label or otherwise of the fact that product is imported, or as to the place of production, 83 A. L. R. 1409.

3-8-3. Registration—Fees—Invoice and Tax Stamps for Consumers' Formula Mixtures.

Before any person shall sell, offer or expose for sale, or distribute in this state any commercial feeding stuff he shall file with the state board of agriculture a certified copy of the statement specified in section 3-8-2 for each brand of commercial feeding stuffs, and, if the state board shall so request, a sealed package containing at least one pound of the commercial feeding stuff to be sold, offered or exposed for sale, or distributed in this state and an affidavit of the person that the said sample is representative of the commercial feeding stuff offered for registration.

All such commercial feeding stuff shall be registered annually and the fee for such registration of each feed shall be $4. The person so registering such feed shall receive therefor a license to sell such commercial feed until the first day of January next following. Before any change in ingredients or guaranteed analysis may be made by the manufacturer of any commercial feeding stuffs registered in the state of Utah notice of said change must be given to the state board of agriculture and a new application for registration filed in the office of such board. A new certificate shall be issued before such commercial feeding stuffs may be offered for sale in the state of Utah. Fee for such change in registration shall be $1. Any manufacturer, jobber, firm, association, corporation or person who manufactures or mixes any feeding stuffs according to a formula furnished by a consumer which is not to be resold shall furnish those for whom such feeding stuffs are manufactured or made a numbered invoice which shall have written or printed thereon the date of the sale, name and address of purchaser, and name and number of pounds of each ingredient entering into such feeding stuff. All such invoices shall remain on file with such manufacturer or mixer for one year and the same invoice number shall not be used twice in any one year. The state board of agriculture and its authorized agent shall have access to all such invoices at all times. Each package or parcel of such feeding mixture shall have attached thereto a written or printed tag showing the invoice number and date of each invoice and the name and address of the mixer or manufacturer. Such mixture shall not be subject to registration and fee as provided for in this section but will be subject to a fee of $0.10 per ton. For the purposes of collection of said fee stamps of appropriate denominations will be provided and sold by the state board of agriculture to the manufacturers and mixers and such stamps must be placed on tags to be attached to each package or parcel or if the mixture is delivered in bulk and not in containers such stamps must be affixed to the invoice covering such mixtures. All fees under this section shall be collected by the commissioner of agriculture and shall be used for the payment of the cost of inspection, assembling, analysis, and other expenses necessary for putting into effect the provisions of this chapter. (L. 21, p. 35, § 3.)

History.
As amended by L. 39, ch. 9, eff. May 9, by adding all of section following first sentence, except requirement of fee which formerly was $3.00.

Comparable provisions.
Idaho Code, § 24–2503 (substantially identical with first sentence herein).
Iowa Code 1939, § 3117 (similar in purport).

Cross-references.
Failure to obtain license generally as crime, 103–26–68.

Decisions from other jurisdictions. — Iowa.
Inasmuch as the statute imposing license fee on persons who sell concentrated feeding stuffs does not authorize recovery of the fee by civil action, no such action will lie for that purpose. State v. Shores-Mueller Co., 182 Iowa 501, 166 N. W. 62, 5 A. L. R. 1305.

3–8–4. Id. One Statement Sufficient.

Whenever a person manufacturing or selling a brand of commercial feeding stuff shall have filed the statement required by section 3–8–3 no other agent or person shall be required to file such statement. (L. 21, p. 35, § 6.)

Comparable provisions.
Idaho Code, § 24-2506 (similar in purport).

3-8-5. Purchasers to Be Supplied with Statement.

Whenever any commercial feeding stuff as defined in section 3-8-1 is offered or exposed for sale in bulk or otherwise or stored the person keeping the same for sale shall keep on hand cards, to be furnished by the manufacturer of the product, upon which shall be printed the statement required by the provisions of section 3-8-2, and when such feeding stuff is sold at retail in bulk or in packages the seller shall furnish the purchaser cards upon which appears the statement required by the provisions of section 3-8-2. (L. 21, p. 35, § 4.)

Comparable provisions.
Idaho Code, § 24-2504 (similar).

3-8-6. Deceptive Names and Labels Denied Registration.

The state board of agriculture may refuse to register any commercial feeding stuff under a name, brand or trade-mark which would tend to mislead or deceive as to the materials of which it is composed, or when the specific name of each and all ingredients used in its manufacture is not stated. It may also refuse to register more than one commercial feeding stuff under the same name or brand when offered by the same person. Should any commercial feeding stuff be registered in this state in violation of any of the provisions of this chapter, the state board of agriculture may cancel such registration. The board may also refuse to allow any person to lower the guaranteed quality or change the ingredients of any brand of his commercial feeding stuffs during the term for which registered, unless satisfactory reasons are presented for making such change. (L. 21, p. 35, § 5.)

Comparable provisions.
Idaho Code, § 24-2505 (substantially identical).

3-8-7. Right of Visitation—Samples.

The state board of agriculture shall have free access to all places of business, mills, buildings, carriages, cars, vessels and parcels of every kind used in the manufacture, transportation, importation, sale or storage of commercial feeding stuffs, and may open any parcel containing or supposed to contain any commercial feeding stuff and take therefrom such samples as it may deem necessary upon tender and full payment of the selling price of such samples, and the board shall cause to be analyzed as often as it may deem necessary at least one sample so taken of every commercial feeding stuff that is found sold, offered or exposed for sale, or distributed in this state. No action shall be maintained for a violation of the provision of this chapter based upon the analysis of the samples from fewer than ten separate original packages unless there be less than ten separate original packages in the lot in which case portions for official samples shall be taken from each original package or parcel; if the commercial feed stuff is in bulk portions shall be taken from not less than ten different places in the lot; *provided* that

this does not exclude sampling in bulk when not exposed sufficiently to take samples from ten different places in which case portions are to be taken from as many places as practical. If the feed being sampled is contained in small sealed packages or cans a fair sample shall be obtained under such rules and regulations as the state board of agriculture shall prescribe. If the sample procured under the provisions of this section is larger than is required it shall be thoroughly mixed and quartered until a sample of suitable size remains. When a sample is taken if requested it shall be divided into two parts and each part shall be placed in a suitable separate container and sealed and one part shall be delivered to the person apparently in charge of such feed. The state board of agriculture shall analyze or cause to be analyzed the sample so collected and the result of such analysis together with such additional information as the said state board of agriculture may deem advisable shall be promptly transmitted to the manufacturer and to the dealer or person in whose possession the product was sampled and may be published in reports or bulletins from time to time. The manufacturer or person responsible for the placing of any commodity so sampled upon the market or the dealer or person in whose possession the feed was found shall upon request to the state board of agriculture within ten days after the report is mailed be furnished with a portion of the official sample if the same is not of a perishable nature.

(L. 21, p. 35, § 7.)

History.
As amended by L. 39, ch. 9, eff. May 9, by adding all of section following first sentence.

Comparable provisions.
Idaho Code, § 24-2507 (substantially identical with first sentence herein).

3-8-8. Rules and Regulations.

The state board of agriculture is hereby empowered to prescribe the form of tags, stamps and labels to be used, and to prescribe and enforce such rules and regulations relating to the sale of commercial feeding stuffs, as it may deem necessary to carry into effect the provisions of this chapter, and shall have power to prevent the sale within the state of any commercial feeding stuffs which may be made in whole or in part of any noxious weeds or seeds. (L. 21, p. 35, § 10.)

3-8-9. State Chemist to Analyze.

The state chemist shall analyze all samples of commercial feeding stuffs submitted by the state board of agriculture and report to it in detail the result of his findings. (L. 21, p. 35, § 11.)

Comparable provisions.
Idaho Code, § 24-2511 (substantially the same).

Cross-references.
State chemist generally, 87-7.

3-8-10. Violation of Chapter—Penalty.

(a) If it shall appear from the examination of any sample of feed or other evidence that any of the provisions of this chapter have been violated the commissioner of agriculture shall cause notice of such violation to be given to the manufacturer or mixer and the dealer from whom said sample was taken and any party so notified shall be given an

opportunity to be heard under such rules and regulations as may be prescribed by the board of agriculture. After such hearing if it appears that any of the provisions of this chapter have been violated the commissioner of agriculture may certify the facts to the proper prosecuting attorney and furnish that officer with a copy of the results of the analysis or other examination of such sample duly authenticated by the analyst or other officer making the examination under the oath of such officer.

(b) Any manufacturer, importer, jobber, firm, association, corporation or person who shall sell, offer or expose for sale, or distribute in this state any commercial feeds without having attached thereto or furnished therewith such tax stamps or tags as are required by the provisions of this chapter, or who shall use the required tax stamps, or tags a second time, or use a counterfeit of such tax stamps, or tags, or who shall impede, obstruct, hinder or otherwise prevent or attempt to prevent said commissioner of agriculture or his authorized agent in the performance of his duty in connection with the provisions of this chapter, or who shall sell, offer or expose for sale or distribute in this state any commercial feeds as defined in section 1 without complying with the requirements of the provisions of this chapter, or who shall sell, offer or expose for sale or distribute in this state any commercial feed which contains a smaller percentum of crude protein, crude fat calcium, phosphorus or iodine, or a larger per centum of crude fiber, salt, ash or minerals than is certified to be contained therein, or who shall fail to properly state the name of each and every ingredient used in its manufacture, or who shall sell any commercial feed which carries any false or misleading statements upon or attached to the package or if false or misleading statements regarding its feeding value are made on the package by the corporation, firm or individual registering said commercial feed or if the number of net pounds set forth upon the package is not correct or who shall violate any other provision of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than $50 for the first violation and not less than $25 or more than $100 for each subsequent violation. Any manufacturer, importer, jobber, firm, association, corporation or person who shall sell, offer or expose for sale or distribute any feeds mixed or adulterated with any substance or substances injurious to the health of livestock or poultry shall be deemed guilty of a misdemeanor and in addition to the penalty provided in this section the lot of feeds shall be subject to seizure by judicial court action, condemnation and disposition as the court may direct, the proceeds from such sale to be covered into the state treasury. The court may in its discretion release the feeds so seized when the requirements of the provisions of this chapter have been complied with and upon payment of all costs and expenses incurred by the state in any proceedings connected with such seizure.

(L. 21, p. 35, § 9.)

History.
As amended by L. 35, ch. 3, eff. May 14; L. 39, ch. 9, eff. May 9, materially changing section as it appeared in 1933 Stats.

Cross-references.
Criminal offenses generally, 103-56.

CHAPTER 8a

COMMERCIAL FERTILIZERS AND FERTILIZER MATERIALS

L. 1935, ch. 1; eff. July 1.

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3-8a-27. Effective Date.

L. 1935, ch. 1; eff. July 1.

AN ACT to regulate the licensing, registration, sale, inspection, sampling and analysis of commercial fertilizers, superphosphates and fertilizer materials in the state of Utah, and to repeal all laws and parts of laws in conflict therewith.

Be it enacted by the Legislature of the State of Utah:

3-8a-1. State Board of Agriculture to Administer Act.

This act shall be administered by the state board of agriculture.

(Sec. 1.)

3-8a-2 Amended S.L. '47 c. 2 sec. 1 p. 2

3-8a-2. Words and Phrases Defined.

When used in this act:

(a) The word "person" includes individuals, partnerships, associations and corporations.

(b) Words importing the singular number may extend and be applied to several persons or things and words importing the plural number may include the singular.

(c) The term "manufacturer" means a person engaged in the business of preparing, mixing or manufacturing commercial fertilizer or fertilizer material; and the term "manufacture" means preparation, mixing or manufacturing.

(d) The word "sell" or "sale" includes exchange.

(e) The term "commercial fertilizer" means any substance, including any combination or mixture of substances, designed and fit for use in inducing increased crop yields or plant growth when applied to the soil,

except unmanipulated animal manures and organic substances, liming materials, sulphur, and gypsum.

(f) The term "fertilizer material" means any substance which is or may be used with another substance in the compounding of mixed fertilizers, or for direct application to the soil, principally as a source of plant food.

(g) The term "filler" means any foreign inert substance of no agricultural value, added to superphosphate or to any other fertilizer material, or added in the manufacture of any mixed fertilizer, to increase the weight or improve the condition of the material.

(h) The term "brand" means the name, number, trade-mark or other designation under which commercial fertilizer material is offered for sale, sold or distributed under such name, number, trade-mark or other designation.

(i) The term "grade" or "guaranteed analysis" means the minimum percentages, stated in whole numbers only, of total nitrogen, phosphoric acid in available form (comprising the water and citrate soluble), and water soluble potash.

(j) The term "official sample" means any sample of commercial fertilizer or fertilizer material registered under this act which is taken by an official inspector duly appointed by the state board of agriculture for the purpose of taking samples.

(k) The term "per cent" or "percentage" means the percentage by weight.

(l) The term "importer" means any person bringing into this state for sale any commercial fertilizer or fertilizer material. (Sec. 2.)

3–8a–3. Registration of Fertilizers Required.

3-8a-3 ref. to S.L. '47 c. 2 sec. 1 p. 6

It shall be unlawful for any person, acting for himself, or as agent, to sell or offer for sale within the state, or to import or bring into the state any commercial fertilizer or fertilizer material for fertilizer purposes that has not been registered and of which the manufacturer or importer has not paid an annual license fee as required by this act; *provided,* the said registration and the payment of said license fee by the manufacturer or importer shall exempt all other persons from such requirement. (Sec. 3.)

Comparable provisions.

Cal. Agric. Code, § 1030, as amended by Laws of 1941 (certificate of registration must be obtained from director of agriculture; if one person desires authority to sell both commercial fertilizer and agricultural minerals he must register and pay fee required for each registry); § 1026 (no registration required in case of commercial fertilizers sold for less than $8 per ton).

Idaho Code, § 22–605 (similar).

Mont. Rev. Codes, § 4208.5 (similar).

Other provisions comparable to those contained in Title 3, Ch. 8a: Ill. Rev. Stats., Ch. 5, § 47 et seq.; Mich. Stats. Ann., § 12.161 et seq.; McKinney's N. Y. Consol. Laws, Agriculture and Markets Law, § 143 et seq.; Wis. Stats., § 94.64 et seq.

Decisions from other jurisdictions. — California.

In action to recover price of fertilizer sold to defendant by plaintiff, defendant claiming that the sale was made in violation of the so-called commercial fertilizer act because the fertilizer was not certified and labeled as required in the act, defendant's contention was held to be without merit inasmuch as the evidence showed that the fertilizer consisted of the excreta of domestic animals, mixed with material commonly used for bedding, and not artificially added, the statute expressly excepting from the operation of its provisions fertilizer of that kind. Blumer v. Rauer, 69 Cal. App. 195, 230 P. 964.

3-8a-4 Amended S.L. '47 c. 2 sec. 1 p. 3

3-8a-4 ref. to S.L. '47 c. 2 sec. 1 pp. 4, 6

3-8a-4. Registration Forms—Statement of Analysis.

Any manufacturer or importer who may desire to sell or offer for sale, either by himself, or through another person, commercial fertilizer or fertilizer materials in this state shall first file with the state board of agriculture, on registration forms supplied by the board, a signed statement, giving the name and address of the applicant and the following information with respect to each brand or grade:

(1) Net weight of each package in pounds.

(2) Brand name and/or trade-mark, together with the grade numerals.

(3) Guaranteed analysis showing the minimum percentage of plant food in the following order and giving:

(a) Total nitrogen (N) Per cent (whole numbers only).

(b) Available phosphoric acid (P_2 O_5) Per cent (whole numbers only).

(c) Water soluble potash, (K_2 O) Per cent (whole numbers only).

(4) The name and address of the person guaranteeing registration. (Sec. 4.)

3-8a-5. Id. Phosphoric Acid.

3-8a-5 Amended S.L. '47 c. 2 sec. 1 p. 3

3-8a-5 ref. to S.L. '47 c. 2 sec. 1 pp. 4, 6

In the case of mineral phosphates or other unacidulated phosphatic fertilizer materials in which the phosphoric acid is not shown by laboratory methods to be available but may eventually become available in the soil, the phosphoric acid may be guaranteed as total phosphoric acid. If the term "available phosphoric acid" be used in the statement of analysis, it shall mean the sum of the water soluble and citrate soluble phosphoric acid as determined by the official method of the association of official agricultural chemists, except that when applied to basic slag phosphates or similar materials, the term "available" shall mean that part of the phosphoric acid found available by the Wagner citric acid method as adopted by the association of official agricultural chemists. Both the total phosphoric acid and available phosphoric acid may be used in the same statement of analysis if desired. (Sec. 5.)

3-8a-6. Changing Guaranteed Percentages.

The guaranteed percentage of the plant food in any brand shall not be changed without reregistration, in which event the registration fee herein required shall be paid again by the person offering the brand for registration. (Sec. 6.)

3-8a-7. Registration and License Fees.

For the privilege of registration, selling and offering for sale commercial fertilizer and fertilizer materials, the manufacturer or importer applying therefor shall pay to the state board of agriculture in advance of registration $25 annual registration fee for each brand, trade-mark, guaranteed analysis or grade as the case may be, and an annual license fee of $25. Said license and registration shall expire on the thirty-first day of December of the year for which such is issued. (Sec. 7.)

3-8a-8. Shipments to Be Labeled.

3-8a-8 Amended S.L. '47 c. 2 sec. 1 p. 4

3-8a-8 ref. to S.L. '47 c. 2 sec. 1 p. 6

Each person who offers for sale or sells commercial fertilizer or fertilizer material in this state shall mark in conspicuous letters in the

English language upon each container or associate with each shipment or some document relative thereto the information required by sections 4 and 5. The information may either be branded or printed directly on the bag or other shipping container, or may be printed on a tag, label or certificate which shall be affixed to the shipping container or otherwise associated with the shipment, as provided in this section.

(Sec. 8.)

Comparable provisions.

Cal. Agric. Code, § 1023 (similar to §§ 3-8a-8 and 3-8a-4).

Idaho Code, § 22-603 (substantially identical with §§ 3-8a-8 and 3-8a-4).

Iowa Code, 1939, § 3141 (commercial fertilizer, price of which is more than $3 per ton, must be labeled as to chemical analysis).

A. L. R. notes.

Constitutionality of requirement of disclosure by label of materials or ingredients of articles sold or offered for sale, 57 A. L. R. 686.

3-8a-9. Id.

3-8a-9 Amended S.L. '47 c. 2 sec. 1 p. 4

If shipped in bags, barrels or other containers commonly used, the data required by sections 4 and 5 shall be printed either directly on the package, or on tags to be affixed to the package by the manufacturer.

If shipped in bulk by rail, the data shall be printed on a suitable label which shall be fastened on the inside wall of the car near the door. If the fertilizer is to be distributed to more than one person, the original consignee shall furnish to each such person upon his request a copy of the guaranteed analysis.

If shipped in bulk, by truck, wagon, or other vehicle, the information required by paragraph (b) of section 4 shall be attached to the copy of the invoice delivered to the purchaser or other receiver.

The tags, labels or certificates required by this section shall be furnished by the manufacturer. (Sec. 9.)

3-8a-10. Statement of Registrant.

Each registrant who sells commercial fertilizer or fertilizer material in this state shall furnish to the state board of agriculture at the close of each calendar year a written statement as to the total amount of each grade sold, listing separately that sold to dealers and that sold to consumers and shall certify to the correctness of the same. (Sec. 10.)

3-8a-11. Inspection—Samples.

3-8a-11 Amended S.L. '47 c. 2 sec. 1 p. 4

It shall be the duty of the state board of agriculture or its duly authorized agents, to make such inspection of commercial fertilizer or fertilizer material in this state, to have such samples taken, and to have such chemical analysis made as in their judgment may be necessary to ascertain whether or not persons offering, selling or distributing commercial fertilizer or fertilizer material are complying with the provisions of this act. For this purpose the board or its agent shall have free access to all places where commercial fertilizer is held for sale, and permission to secure samples by the official methods. (Sec. 11.)

Comparable provisions.

Cal. Agric. Code, § 1033 (director of agriculture is required to take samples, analyze or examine same "at such times and to such extent" as necessary to enforce the act); § 1037 (director is authorized to take sample, not exceeding two pounds).

Mont. Rev. Codes, § 4208.6 (chemist of agricultural experiment station is required, once each year, to obtain and analyze at least one sample of each

brand of commercial fertilizer offered for sale in state).

A. L. R. notes.
Constitutionality, construction, and application of statutes relating to testing or sampling of agricultural fertilizers, 105 A. L. R. 348.

3-8a-12. Method of Sampling.

The method of obtaining samples shall be the official method of the association of official agricultural chemists. The state board of agriculture shall not be required to analyze samples except such as are taken under the provisions of the section. (Sec. 12.)

3-8a-13 Amended S.L. '47 c. 2 sec. 1 p. 4

3-8a-13. Chemical Analyses.

Official samples of each brand of commercial fertilizer sold within this state shall be analyzed at least once each year by the state chemist or a chemist of the Utah experiment station. All such analyses shall be made under the direction of the state board of agriculture. The official methods of sampling and analysis prescribed by the association of official agricultural chemists shall be followed in making the chemical analysis provided for in this section. The findings of the state chemist or his deputy, as shown by the sworn statement of the results of analysis of official samples of any brand of commercial fertilizer or fertilizer material, shall constitute prima facie evidence of their correctness in the courts of this state as to the particular lots sampled and analyzed. (Sec. 13.)

Comparable provisions.
Cal. Agric. Code, § 1040 (certificate of director showing results of analysis is prima facie evidence of proper analysis and of finding that substances analyzed contained component parts stated in certificate and analysis).

Idaho Code, § 22-607 (brands must be inspected at least once a year by chemist of state agriculture experiment station).

Cross-references.
State chemist generally, 87-7.

3-8a-14 Amended S.L. '47 c. 2 sec. 1 p. 5

3-8a-14. Id. Analysis by Referee.

Should the certificate of analysis of the state chemist or the chemist of the Utah experiment station of any sample of commercial fertilizer or fertilizer material show that the plant food content of any lot of a brand or trade-mark registered under this act is 5 per centum or more below the guaranteed analysis for any constituent, a copy of said certificate shall be sent to the manufacturer or other person who registered the brand or trade-mark, and, should he request it, a portion of the sample analyzed by the state chemist or the chemist of the Utah experiment station, shall be sent to him for analysis by his own chemist or by one employed by him. If said analysis differs materially from the analysis of the state chemist or chemist of the Utah experiment station, the registrant may request that the reserve sample be analyzed by a disinterested chemist, mutually agreed upon by the state board of agriculture and the registrant, or if such agreement is not possible, to be selected by the state board of agriculture and this analysis shall be accepted, and a sworn statement of the results of said analysis shall constitute prima facie evidence as to the lot in question. (Sec. 14.)

Comparable provisions.
Idaho Code, § 22–609 (provision for examination by an umpire where analysis of sample made by chemist of experiment station indicates deficiencies below guaranteed analysis in excess of one-half of one per cent).

Mont. Rev. Codes, § 4208.8 (provision for analysis by umpire in case deficiencies are indicated below guaranteed analysis).

3–8a–15. Official Samples Determinative.

The state board of agriculture, in determining for administrative purposes whether or not any commercial fertilizer or fertilizer material is deficient in plant food, shall be guided solely by the official samples as defined in section 2 and taken as provided for in section 12 of this act. (Sec. 15.)

3–8a–16. Deficiencies in Plant Food—Notice to Seller—Revocation of License.

It shall be the duty of the state board of agriculture to notify the seller of all deficiencies in plant food found by the said board by means of a copy of the statement setting forth the official analysis, and if the deficiencies in plant food, as shown by the statement, exceed 5 per centum of the guaranteed analysis for any constituent, the licensee shall be required to register and relabel the fertilizer at its proper grade. For any violation of this act the board shall have authority to revoke licenses. (Sec. 16.)

3–8a–17. Unlawful to Use Injurious Filler.

3-8a-17 ref. to S.L. '47 c. 2 sec. 1 p. 6

It shall be unlawful for any person to manufacture, offer for sale or sell in this state any commercial fertilizer containing any substance used as a filler that is injurious to crop growth or deleterious to the soil. (Sec. 17.)

3–8a–18. Unlawful to Use Certain Untreated Materials.

3-8a-18 ref. to S.L. '47 c. 2 sec. 1 p. 6

It shall be unlawful for any person to offer for sale or to sell in this state for fertilizer purposes any raw or untreated leather, hair, wool, waste, hoof, horn, or similar materials, either as such or mixed with other fertilizer materials; *provided, however,* this section shall not be deemed to apply to such substances when they have been treated or processed in such manner as to make available the plant food constituents contained therein; nor to such substances when shipped, offered for sale or sold to manufacturers of fertilizer. (Sec. 18.)

3–8a–19. Misrepresentation Unlawful.

3-8a-19 ref. to S.L. '47 c. 2 sec. 1 p. 6

It shall be unlawful for any person to make any false and misleading representation in regard to any commercial fertilizer or fertilizer material shipped, sold or offered for sale by him in this state, or to use any misleading or deceptive trade-mark or brand name in connection therewith. The state board of agriculture is hereby authorized to refuse registration for any commercial fertilizer or fertilizer material with respect to which this section is violated. (Sec. 19.)

Comparable provisions.
Cal. Agric. Code, § 1042 (misdemeanor to make material or substantial misrepresentation, or to make false promises, or to engage in dishonest dealing or in illegitimate business, or to cause

to be published or distributed false or misleading literature or advertising).

Cross-references.
Trade mark offenses generally, 103–56.

3–8a–20. Manufacturer May Secure Unregistered Material.

Nothing in this act shall abridge the right of a manufacturer to import or secure for the purpose of manufacturing commercial fertilizer, materials which have not been registered and on which no license fee shall have been paid; *provided,* that said manufacturer complies with all the other provisions of this act. (Sec. 20.)

3–8a–21. Publication of Information Concerning Fertilizers.

3-8a-21 Amended S.L. '47 c. 2 sec. 1 p. 5

The state board of agriculture is authorized to publish at such time and in such forms as the said board may deem proper information concerning the production and use of commercial fertilizer and fertilizer materials; also appropriately classified statistics of fertilizer sales in the state. (Sec. 21.)

Comparable provisions.
Idaho Code, § 22–611 (commissioner of agriculture is required to publish each year in his annual report detailed statement of registrations made of fertilizers and of results of analyses).
Mont. Rev. Codes, § 4208.10 (annual report of analyses).

3-8a-22 Amended S.L. '47 c. 2 sec. 1 p. 5

3–8a–22. Enforcement of Act by Board of Agriculture.

3-8a-22 ref. to S.L. '47 c. 2 sec. 1 p. 6

For the enforcement of this act the state board of agriculture is authorized to prepare and issue such regulations as may be necessary, and to coöperate with any department or agency of the government of this state as the said board may elect in their enforcement. (Sec. 22.)

3–8a–23. Funds Available for Administering Act.

The state board of agriculture, subject to any additional appropriation that the legislature may deem necessary and make for the purpose, is hereby authorized and directed to use the funds received from the registration and license fees to defray the expenses of administration of this act. (Sec. 23.)

3–8a–24. Offenses a Misdemeanor.

3-8a-24 Amended S.L. '47 c. 2 sec. 1 p. 6

Each of the following offenses shall be a misdemeanor:

(a) The violation of any one of the following sections: 3, 4, 8, 17, 18 and 19.

(b) The filing with the state board of agriculture of any false statement of fact in connection with the registration of any commercial fertilizer or fertilizer material as herein provided.

(c) Forcibly obstructing the state board of agriculture or their authorized official inspector in the lawful performance by them of their duties in the administration of this act.

(d) Knowingly taking a false sample of commercial fertilizer or fertilizer material for use under any provision of this act; or knowingly submitting to the state board of agriculture for analysis a false sample thereof; or making to any other person any false representation with regard to any commercial fertilizer or fertilizer material sold or offered for sale in this state for the purpose of deceiving or defrauding such other person.

(e) The fraudulent tampering with any lot of commercial fertilizer or fertilizer material so that as a result thereof any sample of such commercial fertilizer or fertilizer material taken and submitted for analysis under this act may not correctly represent the lot; or tampering with any sample taken or submitted for analysis under this act, if done prior to such analysis and disposition of the sample under the direction of the state board of agriculture.

(f) The delivery to any person by the state chemist or his deputy, or an employe of the state board of agriculture of a report that is wilfully false and misleading on any analysis of commercial fertilizer or fertilizer material made by him in connection with the administration of this act. (Sec. 24.)

3-8a-25. Constitutionality.

If any clause, sentence, paragraph or part of this act shall for any reason be judged invalid by any court of competent jurisdiction, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered. (Sec. 25.)

3-8a-26. Inconsistent Laws Repealed.

All laws and parts of laws in conflict with or inconsistent with the provisions of this act are hereby repealed. (Sec. 26.)

3-8a-27. Effective Date.

That this act shall take effect and be in force from and after the first day of July, 1935. (Sec. 27.)

CHAPTER 9

Tit. 3, c. 9 Ref. to S.L '45, c. 142 Item 75, p. 286

Title 3, c. 9 Inspection of Turkeys S.L. '43, c. 8 Secs. 1-5 pp. 13, 14

LICENSING OF PRODUCE DEALERS

3-9-1 to 3-9-5. (Repealed.)

L. 1935, ch. 4; eff. May 14.

PRODUCE DEALERS' ACT

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3-9-28. Constitutionality.
3-9-29. Repeal—Effect.

3-9-1 to 3-9-5. (Repealed by L. 35, ch. 4, § 24, eff. May 14. See 3-9-29.)

L. 1935, ch. 4; eff. May 14.

PRODUCE DEALERS' ACT

AN ACT to provide for the bonding, licensing, regulation and supervision of produce dealers engaged in the handling, receiving, or selling of farm products and to create a produce dealers' license fund; to define the purpose of the act and the terms used therein; to define the powers and duties of the state board of agriculture with reference thereto; to provide for the keeping of certain records concerning the sale of farm products; to provide for the revocation of produce dealers' license; to declare certain acts to be offenses and to fix the penalties thereof, and to repeal Title 3, Chapter 9, Revised Statutes of Utah, 1933, as amended by Chapter 3, Laws of Utah, 1933, as further amended by Chapter 1, Laws of Utah, 1933, Second Special Session; and all conflicting acts or parts of acts.

Be it enacted by the Legislature of the State of Utah:

3-9-6. Short Title.

This act may be known and cited by the short title of "Produce Dealers' Act." (Sec. 1.)

Numbering of section.
L. 33, ch. 3, repealed by L. 35, ch. 4, added two sections to this chapter, one of which bore the same number as that assigned to this section.—Ed.

1. Validity of legislation.
This statute does not work a denial of equal protection of law or a denial of due process. State v. Mason, 94 U. 501, 78 P.2d 920, 117 A. L. R. 330. (Moffat, J., dissenting.)

This statute was a proper exercise of the police power. State v. Mason, 94 U. 501, 78 P.2d 920, 117 A. L. R. 330. (Moffat, J., dissenting.)

This statute bears a distinct relationship to the general welfare even though it does not cover every person in the state. State v. Mason, 94 U. 501, 78 P.2d 920, 117 A. L. R. 330. (Moffat, J., dissenting.)

The ineffectiveness of this statute to accomplish its purpose goes to the wisdom of the statute and not its constitutionality. State v. Mason, 94 U. 501, 78 P.2d 920, 117 A. L. R. 330. (Moffat, J., dissenting.)

3-9-7. Definitions.

(a) The term "person" includes any individual, firm, association, partnership, or corporation.

(b) "Farm products" shall mean all agricultural, horticultural, vitacultural, and vegetable products of the soil, poultry and poultry products, livestock and livestock products, field grain products and honey, and the by-products of any and/or all such products while in the hands of the producer of such products.

(c) The term "producer" means any person engaged in the business of growing or producing any farm product.

(d) The term "consignor" means any person who ships or delivers to any commission merchant or dealer any farm products for handling sale, or resale.

(e) The term "commission merchant" means any person who shall solicit from the producer thereof any farm product for sale on commission on behalf of such producer or who shall accept any farm product in trust from the producer thereof for the purpose of resale, or who shall sell or offer for sale on commission any farm product, or who shall in any way handle for the account of or as an agent of the producer thereof any farm product.

(f) The term "broker" means any person engaged in the business of soliciting or negotiating the sale of any farm products.

(g) The term "dealer" means any person other than a commission merchant who for the purpose of resale obtains from the producer thereof possession or control of any farm products, except by payment to the producer at the time of obtaining such possession or control, of the full agreed purchase price of such commodity in lawful money of the United States, provided the term, dealer, as herein defined shall not be construed to include those who are regularly licensed under the laws of this state to sell tangible personal property exclusively at retail.

(h) The term "agent" means any person who on behalf of any commission merchant, dealer, processor, or broker receives, contracts for, or solicits any farm product from a producer thereof, or who negotiates the consignment or purchase of any farm product on behalf of any commission merchant, dealer, processor, or broker.

(i) The term "processor" means any individual, firm, or corporation who is engaged in the business of purchasing or contracting to purchase from producers any farm products for the purpose of packing, canning, drying, fermenting, or otherwise preserving them for resale.

(Sec. 2.)

History.

As amended by L. 37, ch. 8, eff. May 11, by inserting "processor" in subd. (h) and by adding subd. (i).

Comparable provisions.

Cal. Agric. Code, § 1261 (substantially the same, other than that "processor" is not dealt with); § 1299.18 et seq. (provisions dealing with processors of farm products).

Idaho Code, 1940 Supp., § 22–1021 (substantially the same except that "processor" is not mentioned); § 22–1022 (specifically excludes from operation of statute person or exchange buying farm products for purpose of reselling same in dried, canned or other preserved form; any cash buyer; co-operative organizations except as they handle farm products of nonmembers).

Mont. Rev. Codes, § 2443.1 et seq. (analogous provisions pertaining to "dealer at wholesale" of produce).

Other provisions comparable to those contained in Title 3, Ch. 9: Ill. Rev. Stats. 1941, Ch. 5, § 17 et seq.; Mich. Stats. Ann., § 19.671 et seq.; McKinney's N. Y. Consol. Laws, Agriculture and Markets Law, § 244 et seq.; Wis. Stats., § 100.01.

Numbering of section.

L. 33, ch. 3, repealed by L. 35, ch. 4, added two sections to this chapter, one of which bore the same number as that assigned to this section.—Ed.

1. Meaning of words used.

This section makes a single transaction of the types defined the badge of a commission merchant or dealer, as the case may be. State v. Mason, 94 U. 501, 78 P.2d 920, 117 A. L. R. 330. (Moffat, J., dissenting.)

Under former statute, held, "produce dealer" was not every person engaged in business of buying or selling fresh fruit or vegetables, but one engaged in business of buying and selling in carload

lots on commission or consignment. Maycock v. White, 83 U. 446, 29 P.2d 934.

Decisions from other jurisdictions.

— California.

Subd. (b) defining "producer" and subd. (f) defining "dealer", section 1261 Agricultural Code, are not in violation of sections 1 (referring to inalienable rights), 11 (referring to uniform general laws) and 21 (referring to privileges and immunities) of Article I of State Constitution, and section 1 (referring to deprivation of rights, privileges and immunities by the state) of the Fourteenth Amendment to the Federal Constitution. People v. Mulholland, 16 Cal. 2d 62, 104 P.2d 1045.

This statute was intended to protect the farmer in disposing of his *products*, something which he raised upon the farm, whether it be livestock or crops; the very word "producer" carries that implication; and by the term "dealer" is meant one who contracts or obtains such products so raised. People v. Mulholland, 16 Cal. 2d 62, 104 P.2d 1045.

3-9-8. Construction and Effect.

It is recognized that the producer of farm products as defined in this act is subject to unusual hazards and losses in his dealings with certain persons who seek to obtain and do obtain from such producer his products for resale upon a speculative basis; and it is further recognized that it is in the public interest that such hazards and losses shall be minimized to the end that the production of such products shall be stabilized and perpetuated in order that the consumer of such products may depend upon a constant and adequate supply thereof; and to that end and purpose it is hereby declared to be the policy of the legislature that such dealings shall be regulated and systematized so as to safeguard such producer against such hazards and losses, and this measure is enacted for the purpose of providing such regulations. (Sec. 3.)

1. Former law.

The purpose of the former act, since repealed, was to regulate sales on commission or consignment transactions; it did not apply to outright sales of property. Carstensen v. Stratton, 90 U. 19, 58 P.2d 1035.

2. Purpose of present law.

The purpose of this law was to protect farmers from those whose credit was not good and who might deprive them of their season's labor by hauling away the products of it and never paying. State v. Mason, 94 U. 501, 78 P.2d 920, 117 A. L. R. 330. (Moffat, J., dissenting.)

One of the reasons for substitution of this statute for former repealed laws was to include class called "dealers" who took title outright for resale rather than possession for sale as a commission merchant. State v. Mason, 94 U. 501, 78 P.2d 920, 117 A. L. R. 330. (Moffat, J., dissenting.)

A. L. R. notes.

Duty of factor, broker, or commission merchant with respect to care and protection of goods intrusted to him, 17 A. L. R. 538; liability of broker or agent for failure to procure or keep up insurance, 18 A. L. R. 1214; right of a factor, commission merchant, or produce broker to sell property to protect advances, 40 A. L. R. 387.

3-9-9. Exceptions from Act.

This act shall not be construed to apply to:

(a) Any coöperative organization operating under and by virtue of the laws of the state of Utah, or of any other state, or of the District of Columbia, or under federal statute, or the agents, individual, or corporate officers of such organization in the performance of their duties as such, except as to that portion of the activities of such organization or agent as involves the handling or dealing in the farm products of nonmembers of such organization, or in processing the products as defined in paragraph (i) section 2, hereof.

(b) Any person or exchange dealing in livestock and operating at a public livestock market and subject to and operating under a bond re-

quired by the United States to secure the performance of their obligations. (Sec. 4.)

History.
As amended by L. 37, ch. 8, eff. May 11, by inserting "officers" in fourth line of subd. (a) and by adding matter following comma in next to last line of such subd.

3-9-10. License—Application—Requirements of Applicants.

No person shall act as a commission merchant, dealer, broker, processor, or agent without having obtained a license as provided in this act. Every person, acting as a commission merchant, dealer, broker, processor, or agent as herein defined shall file an application with the state board of agriculture for a license to transact the business of commission merchant, dealer, broker, processor, or agent and such application shall be accompanied by the license fee herein provided for each specified class of business. Separate applications shall be filed for each class of business.

Such application shall in each case state the class or classes of farm products applicant proposes to handle, the full name of the person applying for such license, and if the applicant be a firm, exchange, association, or corporation, the full name of each member of the firm, or the names of the officers of the exchange, association, or corporation shall be given in the application. Such application shall further state the principal business address of the applicant in the state of Utah and elsewhere, and the name or names of the person or persons authorized to receive and accept service of summons and legal notices of all kinds for the applicant. Such applicant shall further satisfy the state board of agriculture of his or its character, responsibility, and good faith in seeking to carry on the business stated in the application.

In addition to the general requirements applicable to all classes of applications as in this section set forth, the following requirements shall apply to the class of application noted:

(a) Commission merchants: each application shall include a schedule of commissions and charges for services, and such designated commissions and charges shall not be changed or varied for the license period, except by written contract between the parties.

(b) Agents: each application shall include such information as the state board of agriculture may consider proper or necessary and shall include the name and address of applicant, the name and address of each commission merchant, dealer, processor, or broker represented or sought to be represented by said agent, and the written endorsement or nomination of such commission merchant, processor, dealer, or broker.

(c) Processor: each application for license shall contain such information as the state board of agriculture shall consider proper and necessary and shall include name and address of applicant and name and address of each processing plant and products to be processed by each.

Licenses issued under the provisions of this act shall entitle the holder thereof to conduct the business described in the application therefor until the first day of January following the issuance of such license or until the same shall have been revoked for cause. The state board of agriculture may also issue to each agent a card or cards which shall

bear the signature of said agent and his principal, separate cards being required for each principal. Any agent shall show said card or cards upon the request of any interested person.

Fraud or misrepresentation in making any application shall ipso facto work a revocation of any license granted thereunder. All indicia of the possession of a license shall be at all times the property of the state of Utah and each licensee shall be entitled to the possession thereof only for the duration of said license. (Sec. 5.)

History.
As amended by L. 37, ch. 8, eff. May 11, by inserting "processor" in first paragraph and in subd. (b) of third paragraph, and by adding subd. (c) to third paragraph.

Comparable provisions.
Cal. Agric. Code, § 1263 (includes substantially the same provision); § 1300.1 (license requirements as to processor or agent).
Idaho Code, 1940 Supp., § 22-1023 (includes substantially the same provision except as to "processor").

Cross-references.
Municipal regulation and establishment of markets, 15-8-43.

1. Compared with former law.
The first sentence of this section is much like that of the former law since repealed. Carstensen v. Stratton, 90 U. 19, 23, 58 P.2d 1035.

2. Violation of section.
The act or omission which constitutes the public offense under this section is that of assuming or attempting to act as a dealer without a license. State v. Mason, 94 U. 501, 78 P.2d 920, 117 A. L. R. 330. (Moffat, J., dissenting.)

A. L. R. notes.
Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 A. L. R. 834, 42 A. L. R. 1226.

3-9-11. Fees.

For filing the applications herein described, each applicant must pay a fee as follows:

(a) Commission merchants, $25 for each year.
(b) Dealers, $25 for each year.
(c) Brokers, $25 for each year.
(d) Agents, one dollar for each year.
(e) Processors, $25 for each year.

A refund of $10 is hereby authorized on all licenses issued, under the produce dealers act, for the calendar year 1937 on which a license fee of $35 has been paid. Any person who shall have been licensed as a commission merchant shall upon application be licensed also as a dealer and as a broker as defined herein, without payment of further fees, and shall thereupon conform to the parts of this act regulating the business of a dealer or broker. Any person who has applied for and received a license as a dealer or broker in the manner and upon payment of the fee herein set forth may apply for and secure a license as a commission merchant in addition to the license issued to him as such dealer or broker, without payment of further fee, upon further complying with those parts of this act regulating the licensing of a commission merchant. (Sec. 6.)

History.
As amended by L. 37, ch. 8, eff. May 11, by changing amount of fees, and by adding subd. (e) of first paragraph and first sentence of second paragraph.

Comparable provisions.
Cal. Agric. Code, § 1263 (includes identical scale of license fees; licensed slaughterer may be licensed as "commission merchant" without payment of further fees); § 1300.1 (license fee of $25 for each applicant processing or handling as processor 100 tons or more of farm products in their raw state, or $10 for applicant processing or handling as processor less than 100 tons).

Idaho Code, 1940 Supp., § 22-1023 (same scale of fees except as to processor; and, as to agents, the license fee is $5 per year).

A. L. R. notes.

Liability for license fee or occupation tax of one who has conducted business without required license or payment, 5 A. L. R. 1312.

3-9-12. Publishing Names of Licensees and Rules—Posting License—Fees Credited to License Fund.

The state board of agriculture may publish in pamphlet form as often as necessary a list of all licensed commission merchants, dealers, brokers, processors, and agents, together with all necessary rules and regulations concerning the enforcement of this act. Each licensed commission merchant, dealer, broker, processor, or agent shall post his license, or a copy thereof, in his office or salesroom in plain view of the public. All license fees and penalties collected under the provisions of this act shall be remitted to the state treasury monthly and credited to the produce dealers' license fund. Disbursements from said fund shall be made upon approval of the state board of examiners for the enforcement of this act. (Sec. 7.)

History.

As amended by L. 37, ch. 8, eff. May 11, by inserting "processors" and "processor".

Comparable provisions.

Cal. Agric. Code, § 1264 (substantially the same except as to "processors"); § 1300.2 (similar as to "processors").

Idaho Code, 1940 Supp., § 22-1025 (substantially the same except as to "processors").

3-9-13. Bonds of Commission Merchants and Processors—Actions on Bonds.

Before any license is issued to any commission merchant, the applicant shall execute and deliver to the state board of agriculture a surety bond in the sum of $5,000 executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety. Said bond shall be conditioned upon compliance with the provisions of this act and upon the faithful and honest handling of farm products in accordance with the terms of this act. Said bond shall run to the state in favor of every consignor of farm products. Any consignor of farm products claiming to be injured by the fraud, deceit, or negligence of any commission merchant may bring action upon said bond against both principal and surety in any court of competent jurisdiction to recover the damages caused by such fraud, deceit, or negligence, or by the failure to comply with the provisions of this chapter. In case of failure by a commission merchant to pay consignor creditors for farm products received from said consignors to be sold, the state board of agriculture shall proceed forthwith to ascertain the names and addresses of all consignor creditors of such commission merchant, together with the amounts due and owing to them and each of them by such commission merchant, and shall request all such consignor creditors to file a verified statement of their respective claims with the state board of agriculture. Thereupon the state board of agriculture shall bring an action on the bond in behalf of said consignor creditors. Upon any action being commenced on said bond, the state board of agriculture may require the filing of a new bond and immediately upon the re-

covery in any action on such bond such commission merchant shall file a new bond and upon failure to file the same within ten days in either case such failure shall constitute grounds for the suspension or revocation of his license.

The board of agriculture shall, before issuing license to such processor applicant, require surety bond with good and sufficient surety in the amount of $1,000 executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety, with good and sufficient surety which bond shall run to the state in favor of farm produce to a processor and shall be conditioned on the payment by the said applicant for all farm products purchased by the applicant during the year for which the license is issued in accordance with the terms of purchase. Any producer of farm products claiming to be injured by fraud, deceit or negligence of any processor may bring action as provided in this act in the case of commission merchant. In case of failure by processor to pay producer for farm produce received from said producer the board of agriculture shall proceed as authorized by this act in the case of commission merchant. (Sec. 8.)

History.

As amended by L. 37, ch. 8, eff. May 11, by adding last paragraph.

Comparable provisions.

Cal. Agric. Code, § 1265 (substantially the same provision as to commission merchant).

Idaho Code, 1940 Supp., § 22-1023A (broker, dealer or commission merchant must give bond in penal sum of $2,500).

1. Scope and operation.

It would seem that this section, as well as the former one since repealed, is limited to buying, selling, or handling on commission. Undoubtedly, the obligation of the sureties is strictissimi juris as in the case of official bonds generally. The form of the bonds under the old law was much the same as provided for by this section. Carstensen v. Stratton, 90 U. 19, 58 P.2d 1035.

Decisions from other jurisdictions. — California.

Showing of fraud, deceit, or wilful negligence is not a prerequisite before a cause of action may arise under the statute; and although such conduct does authorize a cause of action in any injured party, the act is much broader in its terms and expressly authorizes a suit by the director of agriculture in all cases where a dealer has failed to account to a consignor for proceeds of produce sold and disposed of by him, thus violating the act. Moulton, Director of Agriculture v. Williams Fruit Corp., 218 Cal. 106, 21 P.2d 936.

Case at bar was essentially one arising out of a dispute as to terms of contract and, on defendant's part, was one to recover certain amounts to which the contract entitled them; hence, assuming that company (which had furnished to plaintiff, a licensed vegetable broker, the bond required by section 1265 of the Agricultural Code and which company had been brought into the case by cross-complaint as cross-defendant) had any liability on its bond in connection with particular payments in question, that liability under the provisions of the statute was one to be enforced by director of agriculture in an action brought by him and could not be enforced in the case at bar. Whitacre v. Hall, 40 Cal. App. 2d 68, 104 P.2d 401, rehearing denied 40 Cal. App. 2d 68, 104 P.2d 660.

Where plaintiff, licensed vegetable broker, entered into written contracts with defendants whereby they agreed to consign to plaintiff 50 cars of lettuce, and due to unusual freezing weather a part of the lettuce was damaged, plaintiff thereupon filing claims against the railroad companies, collecting and retaining damages therefor, plaintiff now seeking to recover from defendants a sum of money advanced on five cars of lettuce which had not been delivered, and herein seeking also an accounting, defendants meanwhile alleging by cross-complaint fraud and deceit on part of plaintiff, it was incumbent on defendants and cross-complainants to prove that they were injured by such fraud and deceit. Whitacre v. Hall, 40 Cal. App. 2d 68, 104 P.2d 401, rehearing denied 40 Cal. App. 2d 68, 104 P.2d 660.

3-9-14. Enforcement of Act.

For the purpose of enforcing the provisions of this act, the state board of agriculture is authorized to receive verified complaints against any commission merchant, dealer, broker, processor, or agent, or any person assuming or attempting to act as such, and upon receipt of such verified complaint shall have full authority to make any and all necessary investigations relative to the said complaint. It shall have at all times free and unimpeded access to all buildings, yards, warehouses, storage, and transportation facilities in which any produce is kept, stored, processed, handled, or transported. (Sec. 9.)

History.
As amended by L. 37, ch. 8, eff. May 11, by inserting "processor" and "processed".

3-9-15. Witnesses, Subpoenas, Fees, Privilege—Oaths—Depositions.

(1) The state board of agriculture and each member thereof or the commissioner of agriculture may issue subpoenas for the attendance of witnesses and the production of papers, waybills, books, accounts, documents and other evidence in any inquiry, investigation, hearing or proceeding under this act in any part of the state and may administer oaths in any and all such proceedings. Each witness who shall appear by order of the state board of agriculture or a member thereof or the commissioner of agriculture shall receive for his attendance the same fees and mileage allowed by law to a witness in the district court, which amount shall be paid by the party at whose request such witness is subpoenaed. When any witness who has not been required to attend at the request of any party shall be subpoenaed by the state board of agriculture or a member thereof or the commissioner of agriculture, his fees and mileage shall be paid from the produce dealers license fund in the same manner as other expenses and costs of carrying out the provisions of this act are paid. Any witness subpoenaed except one whose fees and mileage may be paid from the produce dealers license fund, may, at the time of service, demand the fee to which he is entitled for travel to and from the place at which he is required to appear, and for one day's attendance. If such witness demands such fees at the time of service and they are not at that time paid or tendered, he shall not be required to appear before the state board of agriculture, or member thereof, or the commissioner of agriculture as directed in the subpoena. The fees or mileage to which any witness is entitled under the provisions of this section may be collected by action therefor instituted by the person to whom such fees are payable.

(2) The state board of agriculture or any member thereof, or the commissioner of agriculture may in any investigation or hearing had under the provisions of this act, cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the district court of this state and to that end may compel the attendance of witnesses and the production of books, waybills, documents, papers and accounts.

(3) Any person shall not be excused from testifying or from producing any book, waybill, document, paper or account in any investigation

or inquiry by, or hearing, before the state board of agriculture or any member thereof or the commissioner of agriculture when ordered to do so, upon the ground that the testimony or evidence, book, waybill, document, paper or account required of him may tend to incriminate him or subject him to penalty or forfeiture, but any such person shall not be prosecuted, punished or subjected to penalty or forfeiture for or on account of any act, transaction, matter or thing concerning which he shall under oath have testified to or upon which he shall have produced such documentary evidence; *provided,* that any person so testifying shall not be exempt from prosecution or punishment for any perjury committed by him in his testimony; *and provided further,* that such penalties or forfeitures shall not be held to include revocation of licenses or permits provided for hereunder. (Sec. 10.)

Comparable provisions.
Cal. Agric. Code, § 1267 (similar).
Idaho Code, 1940 Supp., § 22-1027 (similar).

3-9-16. Hearings—Technical Rules Not Applicable.

In all hearings, investigations and proceedings had under the provisions of this act, technical rules of evidence need not be applied. Any informality in any hearing, investigation or proceeding or in the manner of taking testimony shall invalidate no order, decision, rule or regulation made, approved or confirmed by the state board of agriculture. (Sec. 11.)

3-9-17. Process, Service, Fees.

The process issued by the state board of agriculture or any member thereof or the commissioner of agriculture shall extend to all parts of the state and may be served by any person authorized to serve process in courts of record, or any person designated for that purpose by the state board of agriculture or a member thereof or the commissioner of agriculture. The person executing any such process shall receive such compensation as may be allowed by the state board of agriculture not to exceed the fees prescribed by law for similar services in civil actions and such fees shall be paid in the same manner as provided in this act for payment of the fees of witnesses subpoenaed upon order of the state board of agriculture or a member thereof or the commissioner of agriculture. (Sec. 12.)

3-9-18. Copies of Official Documents Prima Facie Evidence of Contents.

Copies of any official documents or orders filed or deposited according to law in the office of the state board of agriculture certified by a member of such board, or by the secretary, under the official seal of such board to be true copies of the originals shall be evidence in the same manner as the originals. Copies of records, inspection certificates, certified reports and all papers on file in the office of the state board of agriculture shall be prima facie evidence of the matters therein contained. (Sec. 13.)

3-9-19. Investigating Transactions Relating to Farm Products.

The state board of agriculture on its own motion, or upon the verified complaint of any interested party shall investigate, examine, or inspect

any and all transactions involving solicitation, receipt, sale, or attempted sale of farm products by any person or persons acting or assuming to act as a commission merchant, dealer, broker, processor, or agent; failure to make proper and true account of sales and settlement thereof as in this act required; the intentional making of false statements as to condition and quantity of any farm products received or in storage; the intentional making of false statements as to market conditions; the failure to make payment for farm products within the time required by this act; or it shall investigate, examine, or inspect any and all other injurious transactions, and in furtherance of any such investigation, examination, or inspection, the state board of agriculture, or any authorized representative, may examine that portion of the ledgers, books, accounts, memoranda, and other documents, farm products, scales, measures, and other articles and things in connection with the business of such person relating to the transactions involved. When a consignor of farm products fails to obtain settlement satisfactory to him in any transaction after having notified the consignee, a verified complaint may be filed with the state board of agriculture which shall undertake to effect a settlement, and in the event that it shall fail to effect such settlement it shall cause a copy of such complaint, together with a notice of the time and place of hearing of such complaint, to be served personally or by mail upon such person and the consignee. Such service shall be made at least ten days before the hearing, which shall be held in the city or town in which is situated the business location of the licensee, or in which the transaction complained of is said to have accrued. At the time and place appointed for such hearing the state board of agriculture or its agents shall hear the parties to such complaint and shall make and enter a decision either dismissing such complaint or specifying the facts established on such hearing. A copy of such decision shall be furnished to each, every, and all the respective parties thereto. (Sec. 14.)

History.
As amended by L. 37, ch. 8, eff. May 11, by inserting "processor" in fifth line from top of section and "and the consignee" in tenth line from bottom of section.

Comparable provisions.
Cal. Agric. Code, § 1268, as amended by Laws of 1941 (similar); § 1300.3, as amended by Laws of 1941 (provision dealing with investigation of transactions with processors).

Idaho Code, 1940 Supp., § 22-1028 (substantially the same except as to "processor").

Mont. Rev. Codes, § 2443.8 (similar provision as to "any dealer or any person, firm, exchange, association, or corporation assuming or attempting to act as such").

3-9-20. Refusing, Revoking or Suspending Licenses—Grounds.

The state board of agriculture may refuse to grant a license, and may revoke or suspend any license, as the case may require, when it shall be satisfied of the existence of any of the following facts: (a) that fraudulent charges or returns have been made by the applicant, or licensee, for the handling, sale, or storage of, or for rendering of any service in connection with the handling, sale, or storage of any farm products; (b) that the applicant or licensee, has failed or refused to render a true account of sales, or to make a settlement thereon, or to pay for farm products received, within the time and in the manner by this act

required; (c) that the applicant, or licensee, has made any false statement as to the condition, quality, or quantity of farm products received, handled, sold or stored by him; (d) that the applicant, or licensee, directly, or indirectly, has purchased for his, or its own account farm products received by him, or it, upon consignment without prior authority from consignor together with price fixed by consignor or without promptly notifying the consignor of such purchase; *provided,* that this shall not prevent any commission merchant from taking to account of sales, in order to close the day's business, miscellaneous lots or parcels of farm products remaining unsold, if such commission merchant shall forthwith enter such transactions on his account of sales; (e) that the applicant, or licensee, has intentionally made any false or misleading statement as to the condition of the market for any farm products; (f) that the applicant, or licensee, has made fictitious sales or has been guilty of collusion to defraud the producer; (g) that a commission merchant to whom any consignment is made has re-consigned such consignment to another commission merchant for the purpose of receiving, collecting, or charging by such means more than one commission for making the sale thereof for the consignor, unless by consent of such consignor; (h) that the licensee was intentionally guilty of fraud or deception in the procurement of such license; (i) that the licensee or applicant has failed or refused to file with the state board of agriculture a schedule of his charges for services in connection with produce handled on account of or as an agent of another; that the applicant or licensee has indulged in any unfair practice. (Sec. 15.)

Comparable provisions.
Cal. Agric. Code, § 1269, as amended by Laws of 1941 (includes substantially identical provisions).
Idaho Code, 1940 Supp., § 22-1029 (includes substantially identical provision).

3-9-21. Previous Violations Ground for Refusing License.

Previous violation by the applicant or by any person connected with him or it, of any of the provisions of this act shall be good and sufficient ground for denial of a license. (Sec. 16.)

3-9-22. Review by Court.

Any action of the state board of agriculture with reference to the granting of, or the refusal to grant, or to renew any license, or with reference to the revocation or suspension of any license granted under the provisions of this act, may be reviewed by any court of competent jurisdiction; but pending final determination of any such review, in the case of the revocation or suspension of the license of any person licensed hereunder, such license shall be deemed in full force and effect pending the expiration of the license period or the final determination of such proceedings whichever is first in point of time. (Sec. 17.)

Comparable provisions.
Cal. Agric. Code, § 1270 (substantially the same); § 1300.5 (provision as to writ of certiorari or review of rulings of director of agriculture pertaining to processors).
Idaho Code, 1940 Supp., § 22-1030 (substantially the same).
Mont. Rev. Codes, § 2443.10 (similar).

3-9-23. Commission Merchants' Records.

It shall be the duty of every commission merchant having received any farm products for sale as such commission merchant to promptly make and keep a correct record showing in detail the following with reference to the handling, sale, or storage of such farm products:

(a) The name and address of the consignor.

(b) The date received.

(c) The condition and quantity upon arrival.

(d) Date of such sale for account of consignor.

(e) The price for which sold.

(f) An itemized statement of the charges to be paid by consignor in connection with the sale.

(g) The names and addresses of the purchasers if said commission merchant has any financial interest in the business of said purchasers, or if said purchasers have any financial interest in the business of said commission merchant, directly or indirectly, as holder of the other's corporate stock, as copartner, as lender or borrower of money to or from the other, or otherwise.

(h) A lot number or other identifying mark for each consignment, which number or mark shall appear on all sales tags, or other essential records needed to show what the produce actually sold for.

(i) Any claim or claims which have been or may be filed by the commission merchant against any person for overcharges or for damages resulting from the injury or deterioration of such farm products by the act, neglect, or failure of such person and such records shall be open to the inspection of the state board of agriculture or any member or the commissioner of agriculture and the consignor of farm products for whom such claim or claims are made. (Sec. 18.)

Comparable provisions.

Cal. Agric. Code, § 1271 (substantially the same).

Idaho Code, 1940 Supp., § 22-1031 (substantially the same).

Mont. Rev. Codes, § 2443.6 (includes clauses similar to subds. (a) through (h) herein, pertaining to "dealer in produce").

3-9-24. Daily Reports and Settlements.

When requested by his consignor, a commission merchant shall, before the close of the next business day following the sale of any farm products consigned to him, transmit or deliver to the owner or consignor of the farm products a true written report of such sale, showing the amount sold, and the selling price. Remittance in full of the amount realized from such sales, including all collections, overcharges, and damages, less the agreed commission and other charges, together with a complete account of sales shall be made to the consignor within ten days after receipt of the monies by the commission merchant, unless otherwise agreed in writing. On the account the names and addresses of purchasers need not be given, except as required in section 17.

Every commission merchant shall retain a copy of all records covering each transaction, for a period of one year from the date thereof, which copy shall at all times be available for, and open to, the confidential inspection of the state board of agriculture and the consignor,

or authorized representative of either. In the event of any dispute or disagreement between a consignor and a commission merchant arising at the time of delivery as to condition, quality, grade, pack, quantity, or weight of any lot, shipment, or consignment of farm products, the department shall furnish upon the payment of a reasonable fee therefor by the requesting party, a certificate establishing the condition, quality grade, pack, quantity, or weight of such lot, shipment or consignment. Such certificate shall be prima facie evidence in all courts of this state as to the recitals thereof. The burden of proof shall be upon the commission merchant to prove the correctness of his accounting as to any transaction which may be questioned.

Every dealer must pay for farm products delivered to him or it at the time and in the manner specified in the contract with the producer, but if no time is set by such contract, or at the time of said delivery, then within thirty days from the delivery or taking possession of such farm products. (Sec. 19.)

Comparable provisions.
Cal. Agric. Code, § 1272 (includes substantially the same provision).

Idaho Code, 1940 Supp., § 22-1032 (substantially the same).

3-9-25. Fraud—Sale at Less Than Current Price.

Any sale of farm products made by a commission merchant for less than the current market price to any person with whom he has any financial connection, directly or indirectly as owner of its corporate stock, as copartner, or otherwise, or any sale out of which said commission merchant receives, directly or indirectly, any portion of the purchase price, other than the commission allowed in section 5 of this act, shall be prima facie evidence of fraud within the meaning of this chapter. (Sec. 20.)

Comparable provisions.
Cal. Agric. Code, § 1272.5 (substantially the same).

Idaho Code, 1940 Supp., § 22-1033 (substantially the same).

3-9-26. Violations of Act—Penalties.

Any person is guilty of a misdemeanor who assumes or attempts to act as a commission merchant, dealer, broker, or agent without a license, or who being a commission merchant:

(a) Imposes false charges for handling or services in connection with farm products.

(b) Fails to account promptly, correctly, fully, and properly and to make settlement therefor as herein provided.

(c) Intentionally makes false or misleading statement or statements as to market conditions.

(d) Makes fictitious sales or is guilty of collusion to defraud the producer.

(e) Directly or indirectly purchases for his own account, goods received by him upon consignment without prior authority from the consignor, or fails promptly to notify the consignor of such purchases, if any, on his own account. This clause does not prevent any commission merchant from taking to account of sales, in order to close the day's business, miscellaneous lots or parcels of farm products remaining un-

sold, if such commission merchant forthwith enters such transaction on his account of sales.

(f) Intentionally makes false statement or statements as to the grade, condition, markings, quality, or quantity of goods shipped or packed in any manner.

(g) Fails to comply in every respect herewith. Civil suits and criminal prosecutions arising by virtue of any of the provisions of this act may be commenced and tried in either the county where the products were received by the commission merchant, or within the county in which the principal place of business of such commission merchant is located, or within the county in which the violation of this act occurred.

(h) Every person duly summoned as a witness in any proceeding or investigation who refuses to attend as required. (Sec. 21.)

Comparable provisions.
Cal. Agric. Code, § 1273, Idaho Code, 1940 Supp., § 22-1034 (substantially the same; specified fine of not more than $1,000 or imprisonment for not more than one year or both fine and imprisonment).

Cross-references.
Failure to obtain license as crime generally, 103-26-68.

Former law.
The former act, since repealed, was held to be restricted to sales on commission; it did not apply to outright sales of property. Carstensen v. Stratton, 90 U. 19, 58 P.2d 1035.

1. Complaint.
Complaint in prosecution of defendant for acting as a dealer in farm products without a license, in violation of this statute, held, sufficient. State v. Mason, 94 U. 501, 78 P.2d 920, 117 A. L. R. 330. (Larson and Moffat, JJ., dissenting.)

A. L. R. notes.
Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 A. L. R. 834, 42 A. L. R. 1226.

3-9-27. Rules and Regulations—Construction of Act.

The state board of agriculture is hereby empowered to make all needful rules and regulations for the administration of this act, to provide such forms as may be necessary to carry it into effect, from time to time in the administration thereof. The provisions of this act shall be liberally construed to effect the purposes thereof. (Sec. 22.)

3-9-28. Constitutionality.

If any section, subsection, sentence, clause, or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. (Sec. 23.)

3-9-29. Repeal—Effect.

That Title 3, Chapter 9, Revised Statutes of Utah, 1933, as amended by Chapter 3, Laws of Utah, 1933, as further amended by chapter 1, Laws of Utah, 1933, Second Special Session, and all acts or parts of acts, in conflict with this act are hereby repealed; *provided, however,* that the passage of this act shall be without prejudice to any criminal liability already incurred, or any civil liability already accrued, or to any criminal prosecutions now pending or any civil prosecutions now pending under the acts hereby repealed, and such liability may be asserted by the state and such prosecutions shall be continued with like force and effect as if this act had not been passed. (Sec. 24.)

Title 3, c. 10 Inspection of Horse Meat and Turkeys, etc. S.L. '43, c. 8 Secs. 1-5 pp. 13, 14

Tit. 3, c. 10 Ref. to S.L. '45, c. 142 Item 75, p. 286

CHAPTER 10

Tit. 3, c. 10 New matter S.L. '45, c. 8 Secs. 1-23 pp. 8-17

DAIRY AND FOOD PRODUCTS

3-10-1. Impure and Adulterated to Be Prevented—Duties of Commissioner.
3-10-2. Visitation by Commissioner—Obstruction, a Misdemeanor.
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3-10-1. Impure and Adulterated to Be Prevented—Duties of Commissioner.

3-10-1
New matter
S.L. '43, c. 8
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pp. 13, 14

It shall be the duty of the state board of agriculture to enforce all laws regarding the production, manufacture and sale of dairy and creamery products, the adulteration of any article of food, the use of skimmed or adulterated milk and the feeding of unwholesome food to cattle. The commissioner of agriculture shall inspect any article of food made or offered for sale within this state which he may suspect or believe to be impure, unhealthful, adulterated or counterfeit. He shall also visit and inspect the various dairies and cheese and butter factories of the state and shall enforce proper sanitary regulations in their management and surroundings. He shall, when complaint is made of the violation of any law relating to the feeding of any unwholesome food for cattle or the keeping upon the premises of any cattle afflicted with any contagious or infectious diseases, immediately investigate such charge, and may prosecute any person violating any of the provisions of this chapter. (C. L. 17, § 1921.)

Comparable provisions.

Cal. Agric. Code, § 454, renumbered § 452 by Laws of 1941 (director of agriculture may enter and inspect premises; may take samples of milk, cream or products thereof or of imitation dairy products; may impound and hold such articles for analysis or as evidence, as well as their containers); Cal. Health and Safety Code, §§ 26321 (state board of public health is vested with regulatory powers as to drugs); § 26542 as amended by Laws of 1941 (idem as to foods).

Idaho Code, § 36–101 (duty of department of public welfare to enforce laws as to healthfulness and purity of dairy products, foods, meats, drinks, drugs and illuminating oils); § 36–105 (inspection provision); § 36–702 (director of dairying is required to make inspections, under supervision of commissioner of agriculture, of places where dairy products are sold or manufactured).

Iowa Code 1939, § 3030 (powers of department of agriculture as to rules and inspections); Iowa Session Laws 1941, Ch. 128 (creating "Iowa Dairy Industry Commission").

1. Scope and operation of chapter.

This chapter does not prohibit and punish same acts as municipal ordinance which provided for inspection of milk and regulated sale of it by requiring permit to be obtained by persons selling it within city, and ordinance is not in conflict with any penalty imposed by statute. Salt Lake City v. Howe, 37 U. 170, 106 P. 705, Ann. Cas. 1912 C 189.

Decisions from other jurisdictions. — Iowa.

Statutes regulating the sale of substitutes for butter are not unconstitutional. State v. Armour Packing Co., 124 Iowa 323, 100 N. W. 59, 2 Ann. Cas. 448.

Under statute fixing a standard for ice cream, a manufacturer is not deprived of his right to sell his product if it contains a less percentage of butter fat than is prescribed by the statute, since he may sell it for what it really is. State v. Hutchinson Ice Cream Co., 168 Iowa 1, 147 N. W. 195, L. R. A. 1917 B 198, aff'd 242 U. S. 153, 61 L. Ed. 217, 37 S. Ct. 28.

In a city ordinance regulating the sale of milk and dairy products, a provision prohibiting such sale except by permit obtained from the city health department was reasonably adapted to carry out the sanitary purposes of the ordinance, and was not invalid as giving the health department an arbitrary power to prohibit a lawful business. City of Des Moines v. Fowler, 218 Iowa 504, 255 N. W. 880.

A. L. R. notes.

Validity, construction, and application of statutes or ordinances relating to inspection of food sold at retail, 127 A. L. R. 322.

3-10-2. Visitation by Commissioner—Obstruction, a Misdemeanor.

The commissioner and inspectors and agents of the board shall have access to all places of business, factories, farms, buildings and vehicles

used in the manufacture, transportation or sale of any article of food as defined in this chapter, and also to restaurants, dining halls, cafes, hotels and all rooms thereof, and to all other places where food is prepared, stored or served to patrons. They shall also have power and authority to open any package, can or vessel containing or supposed to contain any article manufactured, sold or exposed for sale, or held in possession with intent to sell, in violation of law, and may inspect the contents thereof and may take samples therefrom for analysis. All dealers, clerks, bookkeepers, express agents, railroad officials and employees, and common carriers shall render to them all the assistance in their power when so requested in tracing, finding or discovering the presence of, any article prohibited by law and in securing samples thereof as herein provided for. Any refusal or neglect on the part of such dealers, clerks, bookkeepers, express agents, railroad officials or employees, or common carriers to render such assistance or to furnish such sample for analysis is a misdemeanor. (C. L. 17, § 1922.)

Comparable provisions.

Cal. Health and Safety Code, §§ 26324, 26545 (board must require examination of samples of drugs and foods); §§ 26327, 26548 (board's agents have free access for purpose of examining any place where it is suspected that any article of adulterated, mislabeled or misbranded drugs or foods exists).

Iowa Code 1939, § 3031 (department of agriculture must procure samples); § 3032 (has full access to premises and vehicles); § 3033 (sample must be furnished on request and tender of selling price); § 3035 (sealing of sample and delivering of duplicate sample).

3–10–3. Samples to Be Marked and Sealed.

The person taking such sample shall mark or seal the same with a proper seal or otherwise, and shall write his name thereon and number the sample so as to properly identify the same, and shall tender to the manufacturer or vendor of such article or product, or to the person in whose control or possession such article or product may be at the time the same is taken, the value thereof; and, if the person from whom such sample is taken shall request him to do so, he shall at the same time and in the presence of the person from whom the same is taken seal with proper seals or otherwise two samples of the article taken, on each of which or on the seal placed thereon shall be placed the name of the person taking said samples and also the number above provided for. One of the said samples shall be delivered to the person from whom the same is taken and the other shall be taken by the person so procuring the same to the state chemist or other competent person appointed for the purpose of making examination or analysis of samples so taken. (C. L. 17, § 1923.)

Comparable provisions.

Cal. Agric. Code, § 457, renumbered § 454 by Laws of 1941 (provision as to leaving with accused a duplicate of sample of milk, cream or product thereof); Cal. Health and Safety Code, §§ 26328 and 26549 (if sale of drug or of foods is refused on tender of market price of the articles, agent of state board of health may take samples from any person).

Cross-references.

State chemist generally, 87–7.

Decisions from other jurisdictions. — California.

Transaction in question was not a violation of the statute where the sale proved was one made to an agent of the state board of health who announced his authority to defendant and stated that he wished to take officially a sam-

ple of the ginger, whereupon defendant delivered to the agent four bottles of the ginger for which the agent paid defendant $1. People v. Wolin, 119 Cal. App. Supp. 770, 2 P.2d 60.

3-10-4. Standards of Foods and Drinks.

The standards of quality, purity and strength for foods, liquors and drinks that have been or may be adopted by the United States Department of Agriculture are hereby declared to be the standards of purity, quality and strength for foods, liquors and drinks in this state, except where otherwise specified. (C. L. 17, § 1924.)

Comparable provisions.

Idaho Code, § 36-315 (substantially the same as to food, liquors and drugs).

Iowa Code 1939, § 3059 (department of agriculture may establish and publish standards for foods when such are not fixed by law, but same must conform with those proclaimed by United States secretary of agriculture).

Decisions from other jurisdictions. — Iowa.

Statements on a can of pork and beans that the meat has passed Federal inspection and that the contents are ready for the table do not constitute an express warranty of the contents, though the can is also stamped "sanitary." Davis v. Van Camp Packing Co., 189 Iowa 775, 176 N. W. 382, 17 A. L. R. 649.

3-10-5. Sale of Adulterated or Misbranded Article, a Misdemeanor.

Every person who manufactures for sale, sells, exchanges or delivers, or offers to sell, exchange or deliver, or has in his possession with intent to sell, exchange or deliver, any adulterated or misbranded drug, or article of food, drink, or confectionery, or who adulterates or misbrands any article of food, drink, drug or confectionery, is guilty of a misdemeanor. (C. L. 17, § 1925.)

Comparable provisions.

Cal. Health and Safety Code, §§ 26331, 26566 (state board of health is required to report to county district attorney as to violations of drug and foods acts, following hearing before the board); §§ 26384, 26604 (the county district attorney is required to prosecute all violations).

Decisions from other jurisdictions. — California.

Testimony was admissible as given by paralytics to show that they had purchased fluid extract of ginger from a druggist to whom defendant had sold the preparation and that they had become paralyzed as a result of drinking the ginger, the testimony being admissible as a means of showing that the ginger was mislabeled "pure fluid extract of ginger" and "U.S.P.," not only because the ginger did not conform to the United States Pharmacopoeia, and was substandard as disclosed by analysis, but also because, although labeled as ginger, it also contained other substances, including a poison, as disclosed by the effect on the drinkers, and which had no place in extract of ginger. People v. Rosenbloom, 119 Cal. App. Supp. 759, 2 P.2d 228.

A. L. R. notes.

Knowledge or actual negligence on part of seller which is not an element of criminal offense under penal statute relating to sale of unfit food or other commodity, as condition of civil action in tort in which violation of the statute is relied upon as negligence per se or evidence of negligence, 128 A. L. R. 464.

3-10-6. Food Defined.

The term "food" as used in this chapter shall include all articles, whether simple mixed or compound, used for food, drink, confectionery or condiment by man or beast; and the name and address of the manufacturer or distributer shall appear upon the label of all food offered for sale in package form. (L. 19, p. 83, § 1926.)

Comparable provisions.

Cal. Health and Safety Code, § 26450 (substantially the same as the first clause herein; liquor and chewing gum are also specified); § 26452 (defining "label" as display of written or graphic matter on immediate container of any article).

Idaho Code, § 36–304 (includes substantially the same provision).

Iowa Code 1939, § 3058, subd. 32 (similar).

Mont. Rev. Codes, § 2578 (includes substantially the same definition of "food").

A. L. R. notes.

What is "food" within meaning of statute, 17 A. L. R. 1282.

3–10–7. Drug Defined.

The term "drug," as used in this chapter shall include all medicines and preparations recognized in the United States Pharmacopoeia or National Formulary for internal or external use, and any substance or mixture of substances intended to be used for the cure, mitigation, or prevention of disease in either man or beast. (C. L. 17, § 1927.)

History.

As amended by L. 37, ch. 6, eff. Mar. 16, which indicated that this section was also amended by L. 35, ch. 5. L. 35, ch. 5, however, in no way amended this section. Amendment of 1937 inserted "and any substance or mixture of substances intended to be used".

Comparable provisions.

Cal. Health and Safety Code, § 26200 (similar).

Idaho Code, § 36–304 (includes substantially the same provision).

Iowa Code 1939, § 3143 (substantially the same).

Mont. Rev. Codes, § 2578 (includes substantially the same definition of "drug").

Cross-references.

Druggists, 79–12–1 et seq.; municipal license, 15–8–39; inspection of drug stores, 35–1–13; labeling of drugs, 103–34–9; adulteration and substitutes, 79–12–14; standard quality, 79–12–16.

Decisions from other jurisdictions. — Iowa.

Aspirin is a drug within meaning of statute provision relating to sale of drugs and medicines. State ex rel. Missildine v. Jewett Market Co., 209 Iowa 567, 228 N. W. 288.

3–10–8. Drugs and Food When Deemed Adulterated.

For the purpose of this chapter an article shall be deemed to be adulterated:

In the case of drugs:

(1) If, when a drug is sold under or by a name recognized in the United States Pharmacopoeia or National Formulary, it differs from the standard of strength, quality or purity as determined by the test laid down in the United States Pharmacopoeia or National Formulary official at the time of investigation; *provided,* that no drug defined in the United States Pharmacopoeia or National Formulary shall be deemed to be adulterated under this provision, if the standard of strength, quality or purity is plainly stated upon the bottle, box or other container thereof, although the standard may differ from that determined by the test laid down in the United States Pharmacopoeia or National Formulary.

(2) If its strength falls below the professed standard or [of] quality under which it is sold.

In the case of confectionery:

If it contains terra alba, barytes, talc, chrome yellow, paraffine or other mineral substance, or poisonous flavor or color or other ingredient deleterious or detrimental to health, or any vinous, malt or spirituous liquor or compound, or narcotic drug.

In the case of foods:

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

(2) If any substance has 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 is mixed, colored, powdered, coated or stained in a manner whereby damage or inferiority is concealed.

(5) If it contains any added poisonous or other added deleterious ingredients which may render such article injurious to health.

(6) If it contains any added antiseptic or preservative substance, except common salt, saltpeter, cane or beet sugar, vinegar, spices or wood smoke; *provided,* that when in the preparation of food products for shipment they are preserved by any external application applied in such a manner that the preservative is necessarily removed mechanically or by maceration in water or otherwise and directions for removal of such preservative shall be printed on the package, the provisions of this chapter shall be construed as applying only when said products are ready for consumption. The provisions of this chapter shall not apply to the addition of benzoate of soda in those foods in which generally heretofore it has been used; *provided,* that each container or package is plainly labeled to show the presence and amount of benzoate of soda, if it contains more than one-tenth of one per cent of benzoate of soda.

(7) If it consists in whole or in part of a filthy, decomposed or putrid animal or vegetable substance or any portion of any animal unfit for food (whether manufactured or not), or if it is a product of a diseased animal or one that has died otherwise than by slaughter.

(8) If it contains saccharine or other artificial sweetening agent.

(C. L. 17, § 1927.)

Comparable provisions.

Cal. Health and Safety Code, §§ 26230–26233 (similar as to drugs); 26470, as amended by Laws of 1941 (similar as to food).

Idaho Code, § 36–305 (same as to drugs except as to the proviso in first subdivision; § 36–306 (substantially the same as to confectionery or gum); § 36–307 (substantially the same as to food).

Iowa Code 1939, § 3060, as amended by Laws of 1941 (similar as to "food"); § 3144 (similar as to "drugs").

Mont. Rev. Codes, § 2579 (substantially the same).

Decisions from other jurisdictions.

— California.

The question of adulteration of a drug sold under or by a name recognized in the United States Pharmacopoeia does not concern itself with the label; and representation as to quality or character required on a charge of adulteration may be made orally, or by letter, or in many ways other than by label; on the other hand, if the label is false or misleading the drug may be misbranded though nothing is said about it or the label is not shown to or read by the purchaser. People v. Rosenbloom, 119 Cal. App. Supp. 759, 2 P.2d 228.

— Iowa.

The doctrine of caveat emptor does not apply to a purchaser of canned goods, since the purchaser has no opportunity to examine the contents until opened. Davis v. Van Camp Packing Co., 189 Iowa 775, 176 N. W. 382, 17 A. L. R. 649.

An action by a retail dealer against the manufacturer of hog cholera serum and virus, for loss of business because of impure product delivered by defendant to plaintiff, in that it contained certain germs cannot be maintained on the ground of defendant's negligence in not maintaining a bacteriological laboratory, it appearing that such product was manufactured strictly in accordance with the rules and regulations as laid down

by the department of agriculture as required by the written contract between the parties. Howard v. United Serum Co., 202 Iowa 822, 211 N. W. 419, 26 N. C. C. A. 921.

Aspirin is a drug within statute provision relating to sale of drugs, and not a proprietary medicine within purport of another statute provision excepting the sale of proprietary medicines not in themselves poisonous. State ex rel. Missildine v. Jewett Market Co., 209 Iowa 567, 228 N. W. 288.

Plaintiff, suing bottler for injuries caused by presence of a mouse in a bottle of Coca-Cola, which he had purchased at soft drink stand, was entitled to rely on both implied warranty and breach of duty or negligence. Anderson v. Tyler, 223 Iowa 1033, 274 N. W. 48.

A. L. R. notes.

Constitutionality of statutes, ordinances or other regulations against adulteration of food products as applied to substances used for preservative purposes, 114 A. L. R. 1214; preservative as adulterant within statute in relation to food, 50 A. L. R. 76; statutory provisions relating to purity of food products as applicable to foreign substances which get into product as result of accident or negligence, 98 A. L. R. 1496.

3–10–9. Id. When Deemed Misbranded.

The term "misbranded" as used herein shall apply to all drugs and articles of food, and articles which enter into the composition of food, the package or label of which shall bear any statement, design or device regarding such article or the ingredients or substances contained therein which shall be false or fraudulent in any particular, and to any food or drug product which is falsely branded as to the state, territory or county in which it is manufactured or produced. For the purposes of this chapter an article shall also be deemed to be misbranded:

In the case of drugs:

(1) If it is an imitation of, or offered for sale under the name of, another article.

(2) 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 therein, or if the package fails to bear a statement on the label of the quantity or proportion of any alcohol, wood alcohol, denatured alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, Cannabis indica, chloral hydrate or acetanilide, or any derivative or preparation of any of such substances contained therein; *provided*, that wood or denatured alcohol shall not be allowed in any article of food or medicine intended for internal use.

(3) If its package or label bears or contains any statement, design or device regarding the curative or therapeutic effect of such article or any of the ingredients or substances contained therein which is false or fraudulent.

In the case of foods:

(1) If it is an imitation of, or offered for sale under the distinctive name of, another article.

(2) If it is labeled or branded so as to deceive or mislead the purchaser or purports to be a foreign product when not so, or 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 it fails to bear a statement on the label of the quantity of any morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, Cannabis indica, chloral hydrate or acetanilide, or any derivative or preparation of any of such substances contained therein.

(3) If when in package form the net quantity of the contents is not plainly and conspicuously marked on the outside of the package in terms of weight, measure or numerical count; *provided,* that reasonable variation and tolerance shall be permitted by rules and regulations made in accordance with this chapter by the state board of agriculture.

(4) If the package containing it or its label shall bear any statement, design or device regarding the ingredients or the substances contained therein, which statement, design or device shall be false or misleading in any particular; *provided,* that an article of food that does not contain any added poisonous or deleterious ingredient shall not be deemed misbranded or adulterated in the following cases:

(a) In the case of mixtures or compounds which may be known as articles of food under their own distinctive names and are not imitations of, or offered for sale under, the distinctive name of other articles, if the name is accompanied on the same label or brand with a statement of the place where such article was manufactured or produced.

(b) In case of articles labeled, branded or tagged so as to plainly indicate that they are compounds, imitations or blends, and the word "compound," "imitation" or "blend" as the case may be is plainly stated on the package in which it is offered for sale; *provided,* that the term "blend" as used herein shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring or flavoring only; *and provided further,* that nothing in this chapter shall be construed as requiring manufacturers or proprietors of proprietary foods that contain no unwholesome added ingredient to disclose trade formulas, except in so far as the provisions of this chapter may require to secure freedom from adulteration or misbranding. (C. L. 17, § 1928.)

Comparable provisions.

Cal. Health and Safety Code, § 26240 et seq. (similar as to drugs); § 26490 et seq. (similar as to food).

Idaho Code, § 36–308 (substantially the same as opening paragraph herein); § 36–309 (similar as to drugs); § 36–310 (substantially the same as to food).

Mont. Rev. Codes, § 2587 (substantially the same).

Decisions from other jurisdictions. — California.

Presence of labels on bottles displaying the words "pure fluid extract of ginger" and "U. S. P." was a representation that no ingredients were contained in the contents of the bottles other than those which properly belonged in fluid extract of ginger, and that it conformed to the standards of the United States Pharmacopoeia. People v. Rosenbloom, 119 Cal. App. Supp. 759, 2 P.2d 228.

A. L. R. notes.

Constitutionality of requirement of disclosure by label of materials or ingredients of articles sold or offered for sale, 57 A. L. R. 686.

3–10–10. Imitations, Jams, etc., to Be Labeled.

No person shall directly or indirectly manufacture for sale, have in his possession with intent to sell, offer or expose for sale, or sell, as fruit jelly, jam or fruit butter any imitation fruit jelly, jam or fruit butter, or other similar compound, made or composed in whole or in part of glucose, dextrine, starch or other substances, under any name or designation whatever, unless the same shall be composed entirely of ingredients not injurious to health; and every can, pail or package of such jelly, fruit jam or fruit butter sold, offered for sale or kept for

sale in this state shall be distinctly and durably labeled in a conspicuous place immediately preceding the name of the article with the word "imitation" preceding the name of the fruit jelly, jam or fruit butter which the article is intended to imitate; *provided,* any fruit jelly, jam or fruit butter containing no foreign ingredient other than glucose may be labeled and sold as "glucose" (or corn syrup) jelly, fruit jam or fruit butter as the case may be to conform in name to the fruit or fruits used in its preparation. (C. L. 17, § 1929.)

A. L. R. notes.
Constitutionality of requirement of disclosure by label of materials or ingredients of articles sold or offered for sale, 57 A. L. R. 686.

3–10–11. Flavoring Extracts Defined.

A flavoring extract is a solution in ethyl alcohol proper strength of the sapid or odorous principles derived from an aromatic plant or part thereof with or without its coloring matter, and must conform in name to the plant used in its preparation. The flavoring extracts herein described are intended solely for food purposes and are not to be confounded with a similar preparation described in the pharmacopoeia for medicinal purposes. The term "flavoring extract" includes solutions sold for food purposes as flavors, flavorings, essences and tinctures.

Lemon extract is a flavoring extract prepared from oil of lemon or from lemon peel or both, and must contain not less than five per cent by volume of lemon oil.

Vanilla extract is a flavoring extract prepared from vanilla beans with or without sugar or glycerine and must contain in one hundred cubic centimeters the soluble matters from not less than ten grams of the vanilla bean.

Double extract is or represents twice the strength of an ordinary extract. A double extract of lemon must contain ten per cent of the oil of lemon. A triple extract of lemon must contain fifteen per cent of the oil of lemon.

Double extract of vanilla means that it contains the soluble matter of not less than twenty grams of vanilla bean per hundred cubic centimeters of the extract.

All extracts artificially prepared and not made from the natural fruit, berry, bean or other part of the plant must be labeled, in letters similar in size to, and immediately preceding, the name of the article, "imitation," "substitute," or "artificial," and, if artificially colored, must in like manner be labeled "artificially colored."

Imitation vanilla flavor, imitation vanilla extract, is a solution, chiefly aqueous, of vanilla-like flavoring materials, with or without sugar, glycerol and caramel color and with or without ethyl alcohol. The flavoring ingredients may consist of pure vanilla extract or flavor, vanillin, ethyl vanillin, coumarin, heliotropin or oleoresin vanilla, or a mixture of any or all of these, provided that the preparation shall possess a flavoring strength equivalent to not less than seven-tenths gram vanillin in each one hundred cubic centimeters, of which at least an equivalent of three-tenths gram vanillin shall be derived from either vanillin or ethyl vanillin. In computing flavoring value it is assumed that ethyl vanillin and coumarin each has three times the flavoring

value of vanillin, and that oleoresin vanilla has one-sixth the flavoring value of vanillin. The terms, "double strength," and "triple strength," imitation vanilla may only be used when the flavoring strength of the product is a corresponding multiple of the minimum values herein prescribed.

Imitation lemon extract or flavor is the flavoring extract or flavor prepared from citral with or without additional flavoring ingredients and harmless color. It shall contain not less than 0.2 of 1 per cent by weight of citral.

The standards of other flavoring extracts, unless otherwise provided, shall be the standards adopted by the United States Department of Agriculture, and all extracts must be labeled with the name and address of the manufacturer or distributor thereof. (C. L. 17, § 1930.)

History.
As amended by L. 37, ch. 6, eff. Mar. 16, which indicated that this section was also amended by L. 35, ch. 5. L. 35, ch. 5, however, in no way amended this section. Amendment deleted "of" after "alcohol" in first line and added last three paragraphs.

3-10-12. Certain Drugs in Liquors Deemed Deleterious.

No person shall within this state manufacture, brew or distill, have or offer for sale or sell, any spirituous or fermented or malt liquor containing any drug, substance or ingredient not healthful or not normally existing therein, or which may be deleterious or detrimental to health when such liquors are used as a beverage; and the following drugs, substances or ingredients shall be deemed to be not healthful or not normally existing in spirituous, fermented or malt liquor, and shall be deemed to be deleterious or detrimental to health when contained in such liquors, to wit:

Cocculus indicus, chloride of sodium, copperas, opium, cayenne pepper, picric acid, Indian hemp, strychnine, arsenic, tobacco, darnel seed, extract of logwood; salts of zinc, copper or lead; alum, methyl alcohol and its derivatives; and any extract or compound of any of the above drugs or substances. Any person violating any of the provisions of this section is guilty of a misdemeanor. (C. L. 17, § 1931.)

3-10-13. Standard Baking Powder.

Every person who makes or manufactures any baking powder or any other mixture or compound intended for use as baking powder, or who shall sell, exchange, deliver or offer to sell, exchange or deliver, or have in his possession with intent to sell, exchange or deliver, any baking powder or any mixture or compound intended for use as baking powder, which shall contain less than ten per cent of available carbon dioxide, or without the names of all ingredients thereof printed on the package containing the same, is guilty of a misdemeanor.

The acid-reacting materials in baking powder are: (1) Tartaric acid or its acid salts; (2) Acid salts of phosphoric acid; (3) Compounds of aluminium; or (4) Any combinations in substantial proportions of the foregoing. (L. 23, p. 176, § 1932.)

3-10-14. Standard Milk.

Every person who sells, exchanges or delivers, or offers to sell, exchange or deliver, or has in his possession with intent to sell, exchange or deliver, any milk which is not whole milk or which contains less than

3-10-14 Rel. matter S.L. '45, c. 8 Secs. 1-23 pp. 8-17

three and two-tenths per cent butter fat or less than eleven and five-tenths per cent solids, or evaporated milk which contains less than seven and eight-tenths per cent pure milk fat and twenty-five and five-tenths per cent of milk solids, or any milk from which any cream has been removed which is not labeled or sold as "skimmed milk," or any milk which contains any coloring matter or preservatives, or which is impure, unwholesome or adulterated, or any milk from any cow that is diseased or fed upon any food that is in a state of putrefaction or is deleterious to health, is guilty of a misdemeanor; *provided,* the above standard as to butter fat shall not apply to milk sold to creameries or to cheese or condensed-milk factories. (C. L. 17, § 1933.)

History.
As amended by L. 35, ch. 5, eff. May 14, making several material changes.

Cross-references.
Marketing control over milk, 3–10a.

A. L. R. notes.
Constitutionality of regulations as to milk, 119 A. L. R. 243, 18 A. L. R. 235, 42 A. L. R. 556, 58 A. L. R. 672, 80 A. L. R. 1225, 101 A. L. R. 64, 110 A. L R. 644; constitutionality of requirement of disclosure by label of materials or ingredients of articles sold or offered for sale, 57 A. L. R. 686; constitutionality of statutes relating to grading, packing, or branding of farm products, 73 A. L. R. 1445.

3–10–15. Skimmed and Evaporated Milk to Be Labeled.

3-10-15 Rel. matter S.L. '45, c. 8 Secs. 1-23 pp. 8-17

No person shall sell, exchange or deliver, or have in his custody or possession with intent to sell, exchange or deliver, milk from which the cream or any part thereof has been removed, unless in a conspicuous place above the center upon the outside of every vessel, can or package from or in which milk is sold the words "skimmed milk" are distinctly marked in uncondensed gothic letters not less than one inch in height. Such skimmed milk shall contain not less than eight and five-tenths per cent of milk solids exclusive of fats. No person shall sell, exchange or deliver, or have in his custody or possession with intent to sell, exchange or deliver, any evaporated milk which has been diluted to represent natural milk, unless in a conspicuous place above the center upon the outside of every vessel, can or package from or in which such milk is sold the words "diluted evaporated milk" are distinctly marked in extended gothic letters not less than one inch in height.

(C. L. 17, § 1934.)

History.
As amended by L. 35, ch. 5, eff. May 14, substituting "eight and five-tenths", in seventh line, for "nine".

Cross-references.
See 15–8–84.

A. L. R. notes.
Constitutionality of regulations as to milk, 18 A. L. R. 235, 42 A. L. R. 556, 58 A. L. R. 672, 80 A. L. R. 1225, 101 A. L. R. 64, 110 A. L. R. 644, 119 A. L. R. 243; constitutionality of requirement of disclosure by label of materials or ingredients of articles sold or offered for sale, 57 A. L. R. 686; constitutionality of statutes relating to grading, packing or branding of farm products, 73 A. L. R. 1445.

3–10–16. Standard Cream.

3-10-16 Rel. matter S.L. '45, c. 8 Secs. 1-23 pp. 8-17

Cream is that portion of milk, rich in milkfat, which rises to the surface of milk on standing, or is separated from it by centrifugal force, is fresh and clean and contains not less than 18 per cent of milkfat. Sweet cream is that portion of milk, rich in milkfat, which rises to the surface of milk on standing, or is separated from it by centrifugal force. It

is fresh and clean. It contains not less than 18 per cent of milkfat and not more than two-tenths per cent of acid-reacting substances calculated in terms of lactic acid. No person shall sell cream containing a less percentage of butter fat than is represented. The sale of cream other than in conformity with the foregoing standards is prohibited. This section shall not apply to cream for butter making purposes.

(C. L. 17, § 1935).

History.
As amended by L. 35, ch. 5, eff. May 14, rewriting section.

Cross-references.
Marketing control over milk, 3-10a.

A. L. R. notes.
Constitutionality of regulations as to milk, 18 A. L. R. 235, 42 A. L. R. 556, 58 A. L. R. 672, 80 A. L. R. 1225, 101 A. L. R. 64, 110 A. L. R. 644, 119 A. L. R. 243.

3-10-17. Use of Babcock and Other Test.

The method of operating and the equipment used in the Babcock test or any other test for the determination of the percentage of butter fat in the purchase of milk or cream shall be that prescribed by the latest edition of the methods of the association of official agricultural chemists. Cream shall be tested by weight and the standard unit for testing shall be either nine grams or eighteen grams. It is hereby made a misdemeanor to use any other standards of milk or cream measures where milk or cream is purchased by or furnished to creameries or cheese factories and where the value of such milk or cream is determined by the percentage of butter fat contained in the same by the Babcock test. In sampling cream or milk from which composite tests are to be made to determine the percentage of butter fat contained therein no such sample or sampling shall be lawful unless a sample is taken from each weighing and the quantity thus used shall be proportioned to the total weight of the cream or milk tested. Every person operating a creamery when using the Babcock test as a standard to determine the value of any milk or cream received or bought by such person to be manufactured into butter shall when paying for such milk or cream include in every statement or check issued to any patron in payment thereof a statement of the number of pounds of butterfat for which payment is made. Any person who offers for sale or sells a milk pipette or measure, test tube or bottle, which is not correctly marked or graduated as herein provided is guilty of a misdemeanor. It shall be unlawful for any person to falsely manipulate or under-read or over-read the Babcock test or any other contrivance used for determining the quantity or value of milk or cream, or to make any false determination by Babcock test or otherwise. (C. L. 17, § 1975.)

History.
As amended by L. 35, ch. 5, eff. May 14; L. 37, ch. 6, eff. Mar. 16, making several material changes.

A. L. R. notes.
Constitutionality of regulations as to milk, 18 A. L. R. 235, 42 A. L. R. 556, 58 A. L. R. 672, 80 A. L. R. 1225, 101 A. L. R. 64, 100 A. L. R. 644, 119 A. L. R. 243; validity of statute or ordinance requiring pasteurization of milk, 10 A. L. R. 132.

3-10-18. Preservatives in Dairy Products Forbidden.

Every person who sells, exchanges, delivers or consigns, or offers to sell, exchange, deliver or consign, or has in his possession with intent

3-10-18
Rel. matter
S.L. '45, c. 8
Secs. 1-23
pp. 8-17

to sell, exchange, deliver or consign, to any person any milk, cream or other dairy product, or delivers to any creamery or factory to be manufactured into butter or cheese any milk, cream or other dairy product, to which any boracic acid, formaldehyde, salicylic acid, viscogen or other compound has been added, is guilty of a misdemeanor.

(C. L. 17, § 1936.)

A. L. R. notes.

Constitutionality of regulations as to milk, 18 A. L. R. 235, 42 A. L. R. 556, 58 A. L. R. 672, 80 A. L. R. 1225, 101 A. L. R. 64, 110 A. L. R. 644, 119 A. L. R. 243; constitutionality of statutes, ordinances or other regulations against adulteration of food products as applied to substances used for preservative purposes, 114 A. L. R. 1214; preservative as adulterant within statute in relation to food, 50 A. L. R. 76.

3–10–19. Sale of Butter Under Standard.

3-10-19
Rel. matter
S.L. '45, c. 8
Secs. 1-23
pp. 8-17

Every person who sells, exchanges, delivers or consigns, or offers to sell, exchange, deliver or consign, or has in his possession with intent to sell, exchange, deliver or consign, any butter not made wholly and exclusively from normal milk or cream free from all additions, except salt and harmless coloring matter as provided or permitted by law, or containing less than eighty per cent butter fat, or any unsalted butter containing less than eighty-two per cent butter fat, or, if in package form, without the name and address of the manufacturer or distributor plainly and conspicuously printed upon the outside of the package, is guilty of a misdemeanor.

(C. L. 17, § 1936.)

History.

As amended by L. 35, ch. 5, eff. May 14, substituting "or any unsalted butter containing less than eighty-two per cent butter fat" for "or more than sixteen per cent moisture".

A. L. R. notes.

Constitutionality of statutes relating to grading, packing or branding of farm products, 73 A. L. R. 1445.

3–10–20. Standard Cheese—Labeling.

3-10-20
Rel. matter
S.L. '45, c. 8
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pp. 8-17

Cheese is the sound, solid or semi-solid product made from milk or cream by coagulating the casein thereof with rennet, pepsin, lactic acid or such other coagulating agents as may be approved in writing by the department of agriculture of the state of Utah, with or without the addition of ripening ferments and seasoning and with or without salt (sodium chloride) and with or without coloring matter. All cheese sold, offered for sale, exposed for sale, or on hand for sale must be labeled to indicate the variety and whether whole milk, part skim or skim, and, if made and sold in Utah, it must be labeled at the factory with the words, "Utah, Factory No.....," followed by the manufacturer's factory number, assigned by the department of agriculture of the state of Utah. If made outside of the state of Utah, it must also be labeled with the name of the manufacturer or distributor, or other markings by which the manufacturer can be identified. Whole mild cheese of the cheddar variety must contain not less than fifty per cent of pure milkfat in its water-free substance. Part skim cheese must contain not less than thirty per cent of pure milkfat in its water-free substance. Skim cheese is cheese that contains less than thirty per cent of pure milkfat in its water-free substance. It shall be unlawful for any person, firm, corporation or association by themselves, or their agents or employes, to sell, exchange or deliver, or to offer for sale,

exchange or delivery, or to cause to permit to be sold, exchanged or delivered or advertised for sale any part skim cheese or skim cheese, except cottage cheese, unless the same be offered for sale and sold as part skim cheese or skim cheese; and it shall be unlawful for any person, firm, corporation or association to expose any such cheese for sale, unless there shall be attached to the outside of every vessel, can, package or piece from or in which such cheese is exposed, sold or held for exchange or delivery, a tag, upon which shall be legibly and distinctly printed in black letters at least one inch in height the words "part skim cheese" or "skim cheese" as the case may be. (C. L. 17, § 1936).

History.
As amended by L. 35, ch. 5, eff. May 14, rewriting section.

A. L. R. notes.
Constitutionality of requirement of disclosure by label of materials or ingredients of articles sold or offered for sale, 57 A. L. R. 686; constitutionality of statutes relating to grading, packing, or branding of farm products, 73 A. L. R. 1445.

3-10-21. Removal of Diseased Dairy Cows from Herd.

3-10-21 Rel. matter S.L. '45, c. 8 Secs. 1-23 pp. 8-17

No person selling or exchanging, furnishing or delivering, milk or other dairy products shall have in his possession at any place where milch cows are kept any cattle having tuberculosis or other infectious or contagious disease. It shall be the duty of the commissioner of agriculture, in case he shall find that cattle are kept in violation of the provisions of this section, to cause all such cattle to be removed from the herd. (C. L. 17, § 1937.)

History.
As amended by L. 37, ch. 6, eff. Mar. 16, which indicated that this section was also amended by L. 35, ch. 5. L. 35, ch. 5, however, in no way amended this section. Amendment substituted "removed from the herd" for "killed".

3-10-22. Containers of Milk and Cream to Be Clean.

3-10-22 Rel. matter S.L. '45, c. 8 Secs. 1-23 pp. 8-17

All premises, cans, bottles and utensils employed or used in the production, transportation, sale or delivery of milk or cream for consumption, or employed or used in the manufacture or sale of any food products, shall be kept in a clean and sanitary condition, and no person shall sell, offer for sale or have in his possession with intent to sell any milk, cream or other food product not manufactured, transported and offered for sale under such clean and sanitary conditions. The commissioner shall have power, when inspecting cans, bottles and utensils used in the production, transportation, manufacture or sale of milk, cream or other food products, to order the use of any such can, bottle or other utensil that is in an unclean or insanitary condition discontinued until such can, bottle or other utensil is thoroughly cleaned and put in a sanitary condition; and shall have power to brand, mark or tag such can, bottle or other utensil with the words "This (can, bottle or utensil) is unfit to contain (human food, milk or cream)" as the case may be. Any person who erases, changes, removes, conceals or obliterates any such brand, mark or tag, except for the purpose of properly cleaning and putting such can, vessel or utensil in a sanitary condition, or who, after being ordered not to do so by the inspector, sells, offers for sale, has in his possession with intent to sell, buys or receives into his possession with intent to buy, any milk, cream or other food product in

a can or container which has been so marked or branded or tagged, is guilty of a misdemeanor. (C. L. 17, § 1938.)

History.
As amended by L. 35, ch. 5, eff. May 14, inserting, in last sentence, clause beginning "or who".

A. L. R. notes.
Construction of statute or ordinance in relation to containers, 35 A. L. R. 782; validity of statute or ordinance as to "containers," 5 A. L. R. 1068, 101 A. L. R. 862.

3-10-23. Failure to Keep Containers of Dairy Products Clean, a Misdemeanor.

3-10-23 Rel. matter S.L. '45, c. 8 Secs. 1-23 pp. 8-17

Every person who receives any milk, cream or ice cream, or other dairy product, in any can, bottle or vessel, shall (if the can, bottle or vessel is to be returned to the sender empty) immediately upon emptying such can, bottle or vessel cause the same to be thoroughly washed, cleaned and dried. No can or container which is used for transportation of milk or other dairy product shall be used to contain or transport whey or any other material of a contaminating nature; and every violation is a misdemeanor. (C. L. 17, § 1939.)

History.
As amended by L. 35, ch. 5, eff. May 14; L. 37, ch. 6, eff. Mar. 16, changing section in several material respects.

3-10-24. Dairy Cows—Feed and Care.

3-10-24 Rel. matter S.L. '45, c. 8 Secs. 1-23 pp. 8-17

No person shall keep cows for the production of milk in a crowded condition, or in stables that are not properly ventilated or that are filthy from an accumulation of animal refuse or from any other cause. Nor shall milk for food purposes be drawn from cows that are themselves in a condition of filth or uncleanliness or from cows that are affected with tuberculosis, running sores or any other disease, or from cows that are fed upon any form of food that will produce milk that is unhealthful or unwholesome, or from cows within fifteen days before and five days after parturition. All milk thus produced is hereby declared to be unclean, impure, unhealthful and unwholesome milk; and any milk to which water or any other foreign substance has been added, or from which any part of the milk commonly known as strippings has been withheld, or that has been deprived either wholly or in part of any constituent naturally or normally contained in milk, is hereby declared to be adulterated milk. (C. L. 17, § 1940.)

History.
As amended by L. 35, ch. 5, eff. May 14, substituting "uncleanliness" for "uncleanness" and deleting certain matter which formerly followed "fed" and also former last two sentences.

3-10-25. Id. Premises to Be Free from Disease.

3-10-25 Rel. matter S.L. '45, c. 8 Secs. 1-23 pp. 8-17

Every person who shall sell, exchange, deliver, or offer to sell, exchange or deliver, or have in his possession with intent to sell, exchange or deliver, to any person any milk or cream, or any product thereof, from any cow kept upon any premises occupied by any family while any member of or person residing with such family has any contagious disease, or before or until a permit shall have been issued by the proper health officer stating that the premises have been properly disinfected, is guilty of a misdemeanor. (C. L. 17, § 1941.)

3–10–26. Products from Unwholesome Milk or Cream Forbidden.

3-10-26 Rel. matter S.L. '45, c. 8 Secs. 1-23 pp. 8-17

No person shall manufacture any article of food from unclean, impure, unhealthful or unwholesome milk or cream. (C. L. 17, § 1942.)

History.
As amended by L. 35, ch. 5, eff. May 14, deleting "from" before "cream" and "from the same" after "cream".

3–10–27. Imitation Butter Forbidden.

3-10-27 Rel. matter S.L. '45, c. 8 Secs. 1-23 pp. 8-17

No person shall render or manufacture, sell, ship, consign, offer for sale, expose for sale, take orders for the future delivery of, or have in his possession with intent to sell, any article, product or compound made wholly or partly out of any fat, oil or oleaginous substance or compound thereof, not produced from unadulterated milk or cream from the same and without the admixture or addition of any fat foreign to milk or cream, that shall be an imitation of yellow butter produced from pure, unadulterated milk or cream of the same with or without coloring matter; *provided,* that nothing in this section shall be construed to prohibit the manufacture or sale of oleomargarine in a separate and distinct form and in such manner as will advise the consumer of its real character; it must, however, be free from any word, brand or marking, either upon the package or upon any wrapper or upon the contents of the same, that would in any wise tend to deceive the purchaser or consumer. (C. L. 17, § 1943.)

3–10–28. Id. Sale, a Misdemeanor.

It shall be unlawful for any person to sell or offer for sale to any person who asks, sends or inquires for butter any oleomargarine, butterine, or any substance made in imitation or semblance of pure butter and not made entirely from milk of cows, with or without coloring matter. (C. L. 17, § 1944.)

3–10–29. Oleomargarine to Be Labeled.

It shall be unlawful for any person to expose for sale oleomargarine or any similar substance not marked and distinguished on the outside of each tub, package or parcel thereof by a placard bearing the word "Oleomargarine" and not having also upon the exposed contents of every open tub, package or parcel thereof a conspicuous placard bearing the word "Oleomargarine." Such placard in each case shall be printed in plain, uncondensed gothic letters not less than one inch long, and shall contain no other words thereon. (C. L. 17, § 1945.)

Comparable provisions.
Cal. Agric. Code, § 597, renumbered § 581 by Laws of 1941 (words "renovated butter" or word "oleomargarine," as the case may be, must be printed on package, roll, print, square and upon "any container" in letters not less than one-half inch in height).

Cross-references.
Sales by weight only, 3–13–20.

A. L. R. notes.
Constitutionality of requirement of disclosure by label of materials or ingredients of articles sold or offered for sale, 57 A. L. R. 686; constitutionality of statute in relation to oleomargarine or other substitute for butter, 53 A. L. R. 474; constitutionality of statutes relating to grading, packing, or branding of farm products, 73 A. L. R. 1445.

3–10–30. Id. Place of Sale to Be Placarded.

It shall be the duty of every person who sells oleomargarine, or any similar substance from any dwelling, store, office or public market

to have conspicuously posted thereon the placard or sign in letters not less than four inches in length "Oleomargarine sold here." Such placard shall be approved by the commissioner of agriculture.

(C. L. 17, § 1946.)

3-10-31. Id. Vehicles to Be Placarded.

It shall be unlawful for any person to peddle, sell, solicit orders for the future delivery of, or deliver, from any vehicle, oleomargarine or any other similar substance without having on the outside of both sides of such vehicle the placard "Oleomargarine" in uncondensed gothic letters not less than three inches in length. (C. L. 17, § 1947.)

3-10-32. Id. Patrons to Be Notified.

It shall be unlawful for any person to furnish or cause to be furnished in any hotel, boarding house or restaurant, or at any lunch counter, oleomargarine or any similar substance to any guest or patron thereof without first notifying each guest or patron that the substance so furnished is not butter. (C. L. 17, § 1948.)

3-10-33. Search and Seizure of Adulterated or Misbranded Articles.

When complaint is made on oath to any magistrate authorized to issue warrants in criminal cases that any article of food, drug or confectionery that is adulterated or misbranded within the meaning of this chapter is in the possession or under the control of any person contrary to law, and that the complainant believes that such article of food, drug or confectionery is concealed in any particular warehouse, store or refrigerator for mercantile purposes, the magistrate, if he is satisfied that there is cause for such belief, shall issue a warrant for such property. (C. L. 17, § 1949.)

Cross-references.
Search warrants generally, 105-54.

1. To be construed with Constitution.
Section should be read in connection with provision of Constitution (art. I, § 14) requiring probable cause to be shown to justify issuance of search warrant. Allen v. Lindbeck, 97 U. 471, 93 P.2d 920.

3-10-34. Id. Warrant.

All such warrants shall describe and designate the place and property to be searched for and shall be directed to the sheriff or any constable of the county, commanding such officer to search the house, building, store or other place where any such article of food, drug or confectionery for which he is required to search is believed to be concealed, and to bring such property when found and the person or persons in whose possession the same shall be found before the magistrate who issued the warrant, or before some other magistrate or court having cognizance of the case. (C. L. 17, § 1950.)

3-10-35. Id. Procedure.

When any officer in the execution of a search warrant under the provisions of sections 3-10-33 and 3-10-34 shall find any article of food, drug or confectionery that is adulterated or misbranded within the meaning of this chapter and for which a search has been allowed, all the property so seized shall be safely kept by the direction of the

court or magistrate so long as shall be necessary for the purpose of being produced as evidence on any trial. And, if upon a trial on any such complaint any article of food, drug or confectionery is found to be adulterated or misbranded within the meaning of this chapter, and if it further is found that the same at the time of such seizure was in the possession or under the control of any person contrary to any of the provisions or requirements of law, the property so seized shall be confiscated under the direction of the court or magistrate; otherwise, the said property shall be forthwith returned to the person from whom it was taken and no costs shall be charged to such person. If at any stage of the proceedings before any court or magistrate it appears that the matter exceeds the jurisdiction of such court or magistrate, the case shall be forthwith certified to the district court of the proper county, and thereupon such district court shall assume jurisdiction and proceed and determine the matter. (C. L. 17, § 1951.)

3-10-36. Vinegar—Standard—To Be Labeled.

Every person who sells, delivers, exchanges or disposes of, or offers to sell, deliver, exchange or dispose of, or has in his possession with intent to sell, deliver, exchange or dispose of, any vinegar without the name and address of the manufacturer or distributor in large letters in the English language upon the barrel or package containing such vinegar, or who sells, delivers, exchanges or disposes of any distilled vinegar that contains less than five per cent or more than five and one-half per cent by weight of absolute acetic acid; or who disposes of any fermented vinegar that contains less than four per cent by weight of absolute acetic acid or that contains any preparation of lead, copper, sulphuric acid or any other mineral acid, vinegar eels or ingredients injurious to health; or who disposes of any vinegar made by fermentation or oxidation that is not branded on the barrel or package "Fermented Vinegar," with the name of the fruit or substance from which such vinegar is made, or that is not free from foreign substance, or contains less than one and three-fourths per cent by weight of solids contained in the fruit or grain from which such vinegar is fermented or less than two and one-half tenths of one per cent ash or mineral matter, the same being the product of the mineral from which such vinegar is manufactured; or who disposes of any vinegar made wholly or in part from any distilled liquor without "Distilled Vinegar" branded on the barrel or package, with the name of the material from which such liquor was made and which is not free from harmful artificial coloring matter, is guilty of a misdemeanor. (L. 25, p. 164, § 1952.)

A. L. R. notes.
Constitutionality of requirement of disclosure by label of materials or ingredients of articles sold or offered for sale, 57 A. L. R. 686.

3-10-37. Id. Not to Be Diluted.

No person who sells vinegar shall reduce with water or other substance the strength of vinegar purchased and sold by him, unless he is a licensed rectifier and marks in plain figures on the container thereof the strength of the vinegar. (L. 25, p. 164, § 1953.)

3-10-38. Id. License of Rectifier.

No person shall be granted a license as a rectifier until he shall have made written application to the state board of agriculture, setting forth by affidavit that he is of the age of twenty-one years, and until he shall have paid a license fee of $100 per year. (L. 25, p. 164, § 1953x.)

Cross-references.
Failure to obtain license as crime generally, 103-26-68.

3-10-39. Hotels and Restaurants to Be Sanitary—Diseased Employees Forbidden.

Every owner, proprietor or person in charge of, or operating or maintaining, any restaurant, hotel, bakery, confectionery or ice cream plant, or any store, place of storage or plant where any article of food or drink is manufactured, stored, deposited, offered for sale or sold, who fails, neglects or refuses to keep such place clean and in good sanitary condition, or who employs any person who is afflicted with tuberculosis, syphilis or any communicable disease in any such place, is guilty of a misdemeanor. The commissioner of agriculture upon finding any violation of this section may forthwith order such place to be made clean and sanitary; or, if he deems it necessary, may close such place or order it closed. (C. L. 17, § 1954.)

Cross-references.
Transfer of duties to state board of health, 35-1-22 et seq.

A. L. R. notes.
Validity of statute or ordinance relating to place of sale of food, 52 A. L. R. 669.

3-10-40. Commissioner of Agriculture to Report to Governor.

The commissioner of agriculture shall make a biennial report to the governor which shall contain an itemized account of all expenses incurred and fines collected, and such statistics and information as he may regard of value. (C. L. 17, § 1956.)

3-10-41. Interference with Labels, a Misdemeanor.

Whoever defaces, changes, erases or removes any mark, label or brand provided for by this chapter with intent to mislead or deceive or to violate any of the provisions of this chapter is guilty of a misdemeanor. (C. L. 17, § 1957.)

Cross-references.
Trade marks and names generally, Title 95; criminal offenses respecting, 103-56.

3-10-42. Misbranded or Adulterated Articles Subject to Confiscation.

And any article found in the possession of any person in violation of this chapter shall be subject to confiscation and may be destroyed by the commissioner of agriculture. (C. L. 17, § 1958.)

3-10-43. False Advertising, a Misdemeanor.

Every person who makes or uses any false or fraudulent statements or representations in advertising any article of food, drink, drug or confectionery mentioned, referred to or included in this chapter in any

pamphlet, newspaper, periodical or advertisement is guilty of a misdemeanor. (C. L. 17, § 1959.)

A. L. R. notes.
Statute or ordinance in relation to advertising as interference with interstate commerce, 57 A. L. R. 105, 115 A. L. R. 952.

3-10-44. Prosecution Under Chapter—Pleading.

In every action arising under any of the provisions of this chapter it shall be sufficient to charge the offense in the language of the statute without further particularity, and every exception or proviso shall be deemed matter to be proved in defense. (C. L. 17, § 1960.)

3-10-45. Id. Defenses.

No dealer in food or drink products shall be held liable to prosecution, if he can establish that the goods in question were sold to him under a guaranty by a wholesaler, manufacturer, jobber, dealer or other person residing in the United States. (C. L. 17, § 1961.)

Comparable provisions.
Cal. Health and Safety Code, § 26520, as amended by Laws of 1941 (analogous provision exonerating one from prosecution on production of signed guaranty dated prior to date of sale of article; also excepting retailer's handling of food in original unbroken packages where reasonable care is used).

Decisions from other jurisdictions. — California.
Letter written by jobbing firm undertaking to guarantee certain items as not being adulterated or misbranded within meaning of Federal Food and Drug act, as amended, the letter being offered in evidence by defendant in prosecution for selling mislabeled and misbranded extract of ginger, was inadmissible inasmuch as the signature of the signer was not written in, but stamped; and although presumption of genuineness of reply letters is indulged in even as to letters bearing typewritten or rubber stamp signatures, the letter was nevertheless inadmissible under the rule as to reply letters, because of insufficient proof of the writing or contents, and, more particularly, of the mailing of the letter to which the proffered letter was said to be an answer. People v. Rosenbloom, 119 Cal. App. Supp. 759, 2 P.2d 228.

3-10-46. Sale of Spoiled Food, a Misdemeanor.

It shall be unlawful for any person to sell or offer for sale, or have in his possession with intent to sell, any article of food or drink that has become tainted, decayed or spoiled, or that is otherwise unwholesome or unfit to be eaten or drunk. (C. L. 17, § 1962.)

1. Food partially spoiled.
This section did not prevent sale of potatoes, three-fourths of which were sound and fit for use, though remaining fourth were affected with dry rot which could not be detected without cutting into them with knife. Baker v. Latses, 60 U. 38, 206 P. 553.

Public health officers have no right to confiscate and destroy articles of food in bulk simply because some portion may be affected and unfit for use when good can be detected from bad and readily separated before being used, provided, of course, the spoiled portion does not contaminate the whole. Baker v. Latses, 60 U. 38, 206 P. 553.

A. L. R. notes.
Knowledge or actual negligence on part of seller which is not an element of criminal offense under penal statute relating to sale of unfit food or other commodity, as condition of civil action in tort in which violation of the statute is relied upon as negligence per se or evidence of negligence, 128 A. L. R. 464.

3-10-47. Renovated Butter, Defined.

The term "renovated butter" as used in this chapter shall mean butter that has been reduced to a liquid state by melting and drawing off such

liquid or butter oil and churning or otherwise manipulating it in connection with milk or any product thereof. (C. L. 17, § 1964.)

3–10–48. Id. To Be Labeled.

No person shall sell, offer for sale, or expose for sale, or have in his possession for sale, any renovated butter unless the same shall have printed upon each and every package, roll, print, square or any container of such renovated butter the words "Renovated Butter" in letters not less than one-half inch in height, and unless he has secured a license as hereinafter provided. (C. L. 17, § 1963.)

Comparable provisions.

Cal. Agric. Code, § 597, renumbered § 581 by Laws of 1941 (similar provision dealing with both renovated butter and oleomargarine); § 626, renumbered § 611 and amended by Laws of 1941 (license provision).

A. L. R. notes.

Constitutionality of statutes relating to grading, packing, or branding of farm products, 73 A. L. R. 1445.

3–10–49. Id. License to Manufacture and Sell—Fees.

Any person desiring to manufacture or deal in renovated butter shall make application to the state board of agriculture for a license, and upon payment of the license fee mentioned herein said board shall issue to the applicant a license. All such licenses shall expire December 31 of each year, and may be issued for periods of one year, or of six months upon payment of a proportionate part of the license fee. Manufacturers of renovated butter within this state shall pay an annual license fee of $1000; wholesale dealers shall pay an annual license fee of $400; retail dealers shall pay an annual license fee of $50; hotels, restaurants, boarding houses and all other places where meals are served and payment is received therefor either immediately or by the day, week or month and where such renovated butter is used shall pay an annual license fee of $25. The term "wholesale dealers" as used herein includes all persons who shall sell renovated butter in quantities of ten pounds or more. The term "retailers" includes all persons who shall sell in quantities of less than ten pounds. All licenses while in force shall be conspicuously displayed in the places of business of the persons to whom they have been issued. The commissioner of agriculture shall require all persons holding manufacturers' or wholesalers' licenses to keep a record, in a form separate from all other business, in which every sale of renovated butter shall be recorded; giving the quantity sold, the name and location of the buyer, and the place to which it was shipped. Such record shall be accessible at all times to duly authorized representatives of the state commissioner of agriculture. (C. L. 17, § 1965.)

Cross-references.

Failure to obtain license as crime generally, 103–26–68.

3–10–50. Inspection of Creameries, Cheese Factories, etc.

It shall be the duty of the commissioner of agriculture to visit regularly all creameries, cheese factories, condensed milk factories, dairies where milk and cream are bottled or prepared for sale, and farm dairies, in the state, and inspect and score the same according to the score cards authorized by the Bureau of Animal Industry of the United States

Department of Agriculture. A copy of the score card shall be left with the owner and such information given as will assist the producer to improve the sanitary conditions or remedy such defects as the score card indicates. A copy of the score card shall be kept on file in the commissioner's office. All creameries, cheese factories, condensed milk factories, dairies where milk and cream are bottled or prepared for sale, and farm dairies, falling below fifty points in the rating as indicated by the score card are hereby declared to be in an insanitary condition, and the commissioner shall immediately proceed against them according to law. (C. L. 17, § 1970.)

3-10-51. Canned Fruits and Vegetables.

No person shall bottle or can fruits or vegetables or their products and offer them for sale unless said fruits and vegetables have been previously washed in clean water continuously changed preparatory to canning or bottling. (C. L. 17, § 1971.)

3-10-52. Soda Fountain Syrups.

Soda fountain syrups flavored with imitation flavoring extracts must be plainly and correctly labeled. If the containers of such syrups are not displayed to the customer so that the label is readily seen, conspicuous signs must be attached to the fountain where they can be readily seen by the customer. Such signs must be printed with letters not less than one-half inch in height to read as follows: "Some of the products served at this fountain are artificially flavored and colored and contain a trace of benzoate of soda." (C. L. 17, § 1972.)

3-10-53. Dyes and Coloring Matter.

The use of any dye, harmless or otherwise, to color or stain food in a manner whereby damage or inferiority is concealed is specifically prohibited. The use in food for any purpose of any mineral dye is hereby prohibited. Only those coal tar dyes permitted for use in foods and under conditions specified by the United States Department of Agriculture may be lawfully used in this state. All other coal tar dyes are hereby prohibited for use in foods. The coal tar dyes which may be used in foods and which bear a guaranty from the manufacturer that they are made from subsidiary products and represent the actual substance, the name of which they bear, may be used in foods. In every case a certificate that the dye in question has been tested by competent experts and found to be free from harmful constituents must be filed with the commissioner of agriculture and approved by him.

Each of these colors shall be free from any coloring matter other than the one specified and shall not contain any contamination due to imperfect or incomplete manufacture. (C. L. 17, § 1973.)

History.
As amended by L. 37, ch. 6, eff. Mar. 16, rewriting section.

3-10-54. Slaughtering Houses to Be Sanitary.

All slaughtering, packing, meat canning, salting, rendering and similar establishments shall be maintained and operated under sanitary

conditions, and shall be inspected under the following regulations by the commissioner of agriculture:

(1) All ceilings, walls, pillars and the interior of each building including partitions shall be kept in sanitary condition, and shall be whitewashed or painted once a year or oftener, if required. When floors or other parts of the building, or tables or other parts of the equipment, are so old or in such poor condition that they cannot be readily made sanitary, they shall be removed and no longer used. All places in which animals are slaughtered or meats and meat food products are prepared, cured, packed, stored or handled shall be properly screened against flies and other vermin. Walks, platforms or approaches leading into buildings shall be kept clean to prevent dirt being tracked into the same.

(2) All tracks, receptacles, chutes, platforms, racks, tables and other appliances, and all knives, saws, cleavers and other tools, and all utensils, machinery and vehicles, used in moving, handling, cutting, chopping, mixing, canning or other processes shall be thoroughly cleaned before using.

(3) The aprons, smocks and other outer clothing worn by employees who handle meat or meat food products shall be of a material that may be readily cleaned and made sanitary, and only clean garments shall be worn. Persons who handle meat or meat food products shall be required to keep their hands clean, and they shall be required also to pay particular attention to the cleanliness of their boots or shoes.

(4) Persons with tuberculosis or any other communicable disease shall not be employed in any department of establishments where carcasses are dressed, meat is handled or meat products are prepared. Any employee of such establishment who may be suspected of being so afflicted shall be reported by the inspector in charge to the manager of the establishment, and to the commissioner of agriculture, who in turn shall report such case to the secretary of the state board of health.

(5) The feeding of animals dead from natural causes to hogs is prohibited; offal from hogs shall not be fed to hogs. Hogs must be kept at least one hundred feet from slaughter houses and fed in clean troughs and pens. The offal of all slaughtered healthy animals, except hogs, may be fed to hogs; *provided,* that offal shall not be fed to hogs for at least a month before they are killed and at least one-half of their daily rations shall consist of grain or vegetable matter. The offal of all hogs must be buried, burned or tanked. The offal of animals that is not fed to hogs must be burned, buried or tanked.

(6) All yards, fences, pens, chutes, alleys and other places belonging to the premises of such establishments, whether they are in use or not, shall be maintained in a sanitary condition and no nuisance shall be allowed in the establishment or on its premises.

(7) The rooms or compartments in which meat and meat food products are prepared, cured, stored, packed or otherwise handled shall be free from odors from toilet rooms, catch-basins, casing departments, tank rooms, hide cellars or other similar places, and shall be kept free from flies and other vermin by screening or other methods. All rooms or compartments shall be provided with cuspidors of such shape as not

readily to be upset and of such material and construction as to be readily disinfected, and employees who expectorate shall be required to use them.

(8) Due care must be taken to prevent meat and meat food products from falling on floors, and in the event of their having so fallen they must be condemned or the soiled portions removed and condemned. When meat or meat products are being emptied into tanks some device (such as a metal funnel) must be used.

(9) Only good, clean and wholesome water and ice shall be used in the preparation of carcasses, meat or meat food products. Whenever there is any doubt regarding the sanitary condition of the water supply notice shall be sent immediately to the commissioner of agriculture.

(10) Wagons or cars in which meat or meat products are transported shall be kept in a clean and sanitary condition. All wholesalers and retailers conveying meat to markets are required to furnish ample and complete protection against contamination by flies, using covered and screened conveyances for such purpose. (C. L. 17, §§ 1974, 2741.)

Comparable provisions.
Idaho Code, § 36-1301 et seq. (similar).

Cross-references.
Regulation of slaughterhouses, 3-5-158 to 3-5-160; by municipalities, 15-8-66.

3-10-55. Manufacturers of Dairy Products to Report.

Every person who manufactures butter, cheese, condensed milk or ice cream for sale in quantities exceeding fifty pounds per week shall report to the state board of agriculture at the end of each year:

(1) The name and address of the manufacturer.

(2) The number of pounds of milk purchased.

(3) The number of pounds of butter fat used in the manufacture of butter.

(4) The number of pounds of butter fat used in the manufacture of cheese.

(5) The number of pounds of butter fat used in the manufacture of ice cream and other products.

(6) The number of pounds of cheese made.

(7) The number of pounds of butter made.

(8) The number of pounds of condensed milk manufactured; *provided,* that the amount of butter, cheese, condensed milk and ice cream made by any such person shall be confidential and shall not be open to the public without his consent. (L. 25, p. 194, § 1.)

Cross-references.
Marketing control, 3-10a; unfair competition and monopolies, 103-55-5.

3-10-56. Butter Fat Content—Duty of Testers.

The testing and sampling of milk or cream or other dairy products purchased on the basis of the amount of butter fat contained therein shall be done by licensed testers who shall be responsible for the operation of the Babcock test or other test approved by the state board of agriculture in the testing of such dairy products. The licensed tester

shall upon request furnish seller and buyer with information that is secured from the test. (L. 25, p. 194, § 2.)

3–10–57. Id. License to Testers—Fees.

Such license shall be issued by the state board of agriculture upon application and the payment of an annual license fee of $2.50 and upon satisfactory evidence of ability to accurately operate the Babcock or other approved test. Examinations shall be given at stated times and places to applicants for such license. Each license shall expire on December 31 of each year, but may be renewed without reëxamination by the state board of agriculture. (L. 25, p. 194, § 2, Sub. 1, 2.)

3–10–58. Id. Application for License.

Application for such license shall be made upon blanks furnished by the state board of agriculture. No license or renewal shall be transferable. Each license shall be subject to revocation by the state board of agriculture upon presentation of sufficient evidence that the licensee has violated any of the rules or regulations prescribed by the board or has violated any law relating to milk or cream or other dairy products. With the approval of the commissioner of agriculture any licensee may for valid reasons appoint a person to act for him during a period not exceeding fourteen days. (L. 25, p. 194, § 2, Sub. 3, 4.)

3–10–59. Imitation Milk Defined.

For the purposes of this chapter certain manufactured substances and certain mixtures and compounds shall be known and designated as imitation milk, namely: (1) Any mixture or compound composed of skim milk, or of condensed, evaporated or powdered skim milk, and any edible oil or fat other than natural milk fat whether with or without any other ingredient; (2) Any mixture or compound made in imitation or semblance, or having the appearance or semblance, of milk or condensed or evaporated milk; or when so made or having such appearance or semblance calculated or intended, whether by intent of the compounder or other person, or by reason of the appearance or other characteristic of the mixture or compound, for use or disposition as or for milk, or as or for condensed or evaporated milk or to induce its purchase or use as or for milk or condensed or evaporated milk. (L. 21, p. 119, § 1.)

Comparable provisions.

Cal. Agric. Code, § 531, renumbered § 591 by Laws of 1941 (defining imitation milk).

Decisions from other jurisdictions. — California.

The proposition that a compound such as imitation milk which is not milk, but which resembles milk, and which for many purposes may be used as a substitute for milk, is subject to reasonable regulations under the police power, designed to prevent it from being sold to consumers as real milk, is settled by decision of the Supreme Court of the United States. In re Reineger, 184 Cal. 97, 193 P. 81.

3–10–60. Id. To Be Labeled.

Every person who lawfully manufactures any imitation milk or any substitute that may be used as and substituted for milk or condensed or evaporated milk shall mark the same by printing, stamping or stenciling upon the sides or ends of each case, box, carton or other package

in which such article or substance shall be packed and handled in a clear manner in the English language the words "Imitation Milk" in printed letters in plain Roman type, each of which shall not be less than one inch in height and one-half inch in width; and he shall prepare a statement printed in plain Roman type of a size not smaller than pica stating in the English language, its name, and the name and address of the manufacturer or distributor, and also the names and the actual percentages of the various ingredients used in the manufacture of such imitation milk; and shall place a copy of said statement within and upon the contents of each case, box, carton or other package next to such portion of each case, box, carton or other package as is commonly and most conveniently opened; and in addition thereto shall label each bottle, can or other container of imitation milk with the words "Imitation Milk" printed in letters of plain Roman type, each of which shall be not less than one-fourth inch in height and one-eighth inch in width, and said words shall appear upon the main or principal label of the bottles, cans or other containers, and no wording thereon shall be more prominent; and in addition thereto said main or principal label shall contain or bear the words "Do not use in place of milk for infants" in plain legible type. (L. 21, p. 119, § 2.)

3–10–61. Id. When Deemed Adulterated.

Imitation milk, not condensed or evaporated, shall be deemed adulterated within the meaning of this chapter, if it contains less than three and two-tenths per cent of edible fats or oils and twelve per cent solids; and imitation milk, if evaporated or condensed, shall be deemed adulterated within the meaning of this chapter, if it contains less than seven and eight-tenths per cent of edible fats or oils, and twenty-five per cent solids. (L. 21, p. 119, § 3.)

3–10–62. Id. License to Dealers—Fees.

No person shall engage in the business or occupation of manufacturing, selling, dealing in or furnishing imitation milk without first having obtained a license so to do as hereinafter provided. Any person engaged in the business or occupation of manufacturing, selling, dealing in or furnishing to his patrons imitation milk as in this chapter defined shall first make application each year to the state board of agriculture for a license; and upon payment of the license fee mentioned herein the board shall issue to the applicant a license. All such licenses shall expire on December 31st of each year and may be issued for periods of one year, or of six months on payment of a proportionate part of the license fee; *provided,* that no license shall be issued for a period of less than six months. The fee for issuing an annual license to manufacturers of any of said substances shall be $100; for issuing to wholesale dealers in any of said substances the fee shall be $10; for issuing to retail dealers in any of said substances the fee shall be $1. Every license while in force shall be kept conspicuously displayed in the place of business of the party to whom it has been issued. It shall be unlawful for any person to manufacture, buy, sell, deal in or furnish to his patrons, or to have in his possession for any purpose other than for consumption in his

own family, or for transportation in case of a common carrier, or for storage in case of a warehouseman, any imitation milk or similar substances designed to be used as a substitute for milk or for condensed or evaporated milk without having first applied for and obtained the license required by this chapter. (L. 21, p. 119, § 4.)

Cross-references.
Municipal regulation of markets, 15–8–43.

3–10–63. Id. False Advertising, a Misdemeanor.

Every person who shall make or use any false or fraudulent statements or representations in advertising imitation milk as defined in this chapter, in any pamphlet, newspaper, periodical or advertisement is guilty of a misdemeanor. (L. 21, p. 119, § 6.)

3–10–64. Meat—Inspection—Powers of Commissioners.

3-10-64
New matter
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The state commissioner of agriculture may examine and inspect all cattle, sheep, swine and goats, if the meat and meat food products thereof are to be used or sold for human food, before they enter any slaughtering, packing, meat-canning, rendering or similar establishment in which they are to be slaughtered; and all cattle, sheep, swine and goats found on such inspection to show symptoms of disease shall be set apart and slaughtered separately from all other cattle, sheep, swine or goats; and when so slaughtered the carcasses of such cattle, sheep, swine or goats shall be subjected to a careful examination and inspection. The commissioner may also make a post-mortem examination and inspection of the carcasses and parts thereof of all cattle, sheep, swine and goats to be prepared for human food at any slaughtering, meat-canning, salting, packing, rendering or similar establishment in this state, and the carcasses and parts thereof of all such animals found to be sound, healthful, wholesome and fit for human food shall be marked, stamped, tagged or labeled "inspected and passed;" and inspectors shall mark, stamp, tag or label "inspected and condemned" all carcasses and parts thereof of animals found to be unsound, unhealthful, unwholesome or otherwise unfit for human food; and all carcasses and parts thereof thus inspected and condemned shall be destroyed for food purposes by such establishment in the presence of the commission or of an inspector.

The state board of agriculture is empowered to establish meat inspection service in conformity with the following provisions:

(1) Any person, firm or corporation operating a slaughtering plant as provided in this section may apply for state meat inspection service under the official supervision of the state board of agriculture. In order to obtain state meat inspection service they shall provide a slaughtering establishment so located and so constructed as to meet the sanitary requirements of the state board of agriculture, which requirements for construction, equipment, and facilities for operating such a plant shall be in conformity with similar requirements for slaughtering establishments, which are under the official supervision of the United States bureau of animal industry meat inspection division.

(2) The state board of agriculture may enter into agreements with persons, firms, corporation, county or municipal governments whereby the applicant for the state meat inspection shall pay the necessary amount of money per annum to the state board of agriculture to pay the expenses of supervising inspection and employing competent, graduate, licensed, veterinary inspectors in the plant; *provided,* that when and if funds are made available by the legislature to the state board of agriculture for meat inspection service, the state board of agriculture may match funds paid by the applicant on a basis to be determined by the state board of agriculture.

(3) The supervision of the meat inspection service of the state board of agriculture shall be under the immediate direction of a competent, graduate, licensed veterinarian employed by the state board of agriculture and the inspectors employed in the slaughtering establishments shall be qualified, graduate, licensed veterinarians.

(4) The state board of agriculture shall have authority to adopt the necessary sanitary and meat inspection rules and regulations, including requirements for construction, equipment and facilities, for operating, as provided in this act, to put into effect said state meat inspection service. Said rules and regulations are to be predicated upon and made in conformity with the United States bureau of animal industry meat inspection rules and regulations which shall govern the method and procedure of meat inspection in the slaughtering establishments operating under state meat inspection service.

(5) Meat and meat food products from slaughtering establishments in which meat inspection service is maintained and which bears the official meat inspection stamp "Utah inspected and passed" of the state board of agriculture as provided in this section may be sold in any part of the state subject however, to the sanitary requirements of municipalities with respect to cleanliness and wholesomeness of the meat and meat food products in handling and transporting after they leave the slaughtering establishment.

(6) The state board of agriculture may withdraw meat inspection service from any slaughtering establishments for failure to comply with its rules and regulations governing such meat inspection service or for failure to live up to the agreement or because of lack of funds to carry on this service. *Provided,* that this section shall not invalidate or supersede any ordinance relating to inspection and sale of meat of a municipality now owning and operating a slaughtering plant where meat is inspected in the manner required by this act.

(C. L. 17, § 1990.)

History.
As amended by L. 41, ch. 4, eff. May 13, adding all of section beginning with second paragraph.

Comparable provisions.
Cal. Agric. Code, § 310 (director of agriculture may cause ante mortem inspection of animals to be made in order to safeguard public health); § 311 (may also provide post mortem inspection).

3-10-65. Id. Plants to Be Sanitary.

All slaughtering and packing houses shall be maintained and conducted under sanitary conditions. The state board of agriculture may

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make rules and regulations to carry out the provisions of this chapter, and any person violating any of such rules is guilty of a misdemeanor. (C. L. 17, § 1991.)

Comparable provisions.
Cal. Agric. Code, § 316 (similar).

Cross-references.
Regulation of slaughterhouses, 3-5-158 to 3-5-160; by municipalities, 15-8-66.

3-10-66. Id. Coöperation with Federal Inspectors.

In establishments where animals are slaughtered for human food, partly for consumption within the state and partly for interstate commerce, the commissioner may coöperate with the inspectors appointed by the national government; and all inspections made by such inspectors under the provisions of such coöperation shall be deemed a compliance with the provisions of this chapter. (C. L. 17, § 1992.)

3-10-67. Id. Federal Inspections Sufficient.

The provisions of this chapter shall not apply to any animals or the carcasses or parts thereof that are inspected and stamped by inspectors of the national government. (C. L. 17, § 1993.)

3-10-68. Slaughter by Farmer for Domestic Use—Inspection Not Required.

The provisions of this chapter requiring the inspection of animals to be slaughtered shall not apply to animals slaughtered by any farmer for domestic use. (C. L. 17, § 1994.)

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New matter
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3-10-69. Sale of Condemned Carcasses Forbidden.

No person shall sell or offer for sale the carcasses or parts thereof of any animals enumerated in this chapter that have been examined and condemned. (C. L. 17, § 1995.)

3-10-70. Fruit in Blind Containers to Be Labeled.

It shall be unlawful to sell, ship or dispose of, or to offer to sell or dispose of, or to have in one's possession for sale or shipment, any closed package of apples, pears, peaches, or apricots which is not marked in a plain and legible manner with the name and address of the person in possession of the fruit at the time of packing; also the name of the variety or varieties of fruit, and the designation of grade of fruit, as prescribed by the state board of agriculture. The term "closed package" within the meaning of this section shall refer to any box, barrel, basket or other container, the contents of which cannot be seen or inspected without opening such package. (C. L. 17, § 8458.)

A. L. R. notes.
Constitutionality of requirement of disclosure by label of materials or ingredients of articles sold or offered for sale, 57 A. L. R. 686; construction of statute or ordinance as to containers, 35 A. L. R. 782; validity of statute or ordinance as to "containers," 5 A. L. R. 1068, 101 A. L. R. 862.

3-10-71. Sale of Misbranded, Unlawful.

It shall be unlawful to sell or offer for sale, or have in one's possession for sale or shipment, any package of fruit, whether closed or open,

which is misbranded. A box, barrel, basket or package of fruit shall be deemed misbranded within the meaning of this section when it is marked in a plain and legible manner with the name and address of any person other than the one in possession of the fruit, or any designation of grade which does not comply with the rules and regulations of the state board of agriculture; *provided,* that in case the correct variety name of the fruit is not known to the person responsible for the packing, the variety may be marked "unknown." The commissioner of agriculture and his agents may enter upon any premises to make examination of any package of fruit suspected of being falsely marked.

(C. L. 17, §§ 8459, 8460.)

3-10-72. Penalty.

Whoever violates any of the provisions of this chapter where no other penalty is provided is guilty of a misdemeanor. (C. L. 17, § 1976.)

CHAPTER 10a

MILK CONTROL AND MARKETING

L. 1937, ch. 7; eff. May 11.

MILK CONTROL ACT

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MILK AND CREAM MARKETING ACT

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3-10a-41. Exceptions.

L. 1937, ch. 7; eff. May 11.

MILK CONTROL ACT

AN ACT giving to the state board of agriculture powers upon petition of certain groups interested in the production, distribution, and consumption of market milk; to create market areas; provide administrative agencies in said market areas; provide for fair trade practices and the control of surplus milk; licensing of producers, distributors, and milk dealers in the market areas; providing for minimum market prices for market milk and milk products, and providing a procedure whereby said powers may be exercised.

Be it enacted by the Legislature of the State of Utah:

3-10a-1. Short Title.

This act shall be known as the Milk Control Act. (Sec. 1.)

3-10a-2. Marketing of Milk a Public Interest.

It is hereby recognized that the production, processing, and distribution of fluid milk for consumption in its natural fluid state, pasteurized or unpasteurized, is vested with a public interest, that the general welfare requires a continuous and adequate supply of pure wholesome milk and in the interest of insuring to the people of the state of Utah an adequate and continuous supply of pure wholesome milk it is recognized that the production and distribution of market milk must be stabilized to the end that unfair practices heretofore existing in the industry be eliminated and that a fair price for market milk be maintained to avoid monopolies and insure to the producer, distributor, and consumer of market milk a fair price for the commodity. (Sec. 2.)

Comparable provisions.

Mont. Rev. Codes, § 2640.1 (similar in purport).

Other comparable provisions: Mich. Stats. Ann. § 12.808(2) (declaration of policy in relation to "Paterson-Acker Milk Marketing Act" adopted by Laws 1941, Act 369); McKinney's N. Y. Consol. Laws, Agriculture and Markets Law, § 252 (establishing division of milk control in department of agriculture and markets).

Cross-references.

Unfair competition and monopolies, 73-1, 103-55-5; agricultural marketing, 3-10b.

1. Governmental control.

That the milk industry is affected with a public interest is well settled. Rowell v. State Board of Agriculture, 98 U. 353, 99 P.2d 1.

A. L. R. notes.

Constitutionality of regulations as to milk, 18 A. L. R. 235, 42 A. L. R. 556, 58 A. L. R. 672, 80 A. L. R. 1225, 101 A. L. R. 64, 110 A. L. R. 644, 119 A. L. R. 243.

3-10a-3. Definitions.

Definitions as used in this act, unless the context otherwise requires, are as follows:

(a) "Board," means the state board of agriculture.

(b) "Person," means any person, firm, corporation, or association.

(c) "Producer," means any person who produces milk for fluid consumption within the state. Said term shall include those producers who distribute their own production unless said producer purchases from other producers for distribution more market milk than he produces.

(d) "Distributor," means any person purchasing milk and cream and distributing the same for fluid consumption within the state. Said term however excludes all persons purchasing milk from a dealer for resale over the counter at retail or for consumption on the premises. Said term shall also include those who produce less than fifty per cent of the milk they distribute.

(e) "Milk dealer," means any person who purchases or handles milk for ultimate resale to the consumer including brokers, agents, copartnerships, coöperative corporations, and unincorporated coöperative associations. Each corporation, which, if a natural person, would be a milk dealer within the meaning of this act and any subsidiary and affiliate of such corporation similarly engaged shall be deemed a milk dealer within the meaning of this definition. A hotel or restaurant which sells only milk consumed on the premises where sold or a producer who delivers milk only to a milk dealer shall not be deemed a milk dealer.

(f) "Administrative agency," means any agency duly constituted under orders of the board for the purpose of administering the orders of the board within a market area.

(g) "Market area," means any territorial subdivision of the state which is designated by the board as a natural marketing area for milk produced within the state, when competition in the market milk industries exists.

(h) "Market milk," means fluid milk and cream sold for consumption as such and shall not include milk used for manufacturing purposes.

(i) "Consumer," means any person other than a milk dealer who purchases milk for fluid consumption.

A "producer-distributor" shall for the purpose of this act be classified as producers or distributors in accordance with the definitions of said terms as herein set forth; members of a coöperative association shall be classified as producers and the coöperative association shall be classified as a distributor if producers and the coöperative association otherwise come within the foregoing definitions. (Sec. 3.)

Comparable provisions.

Mont. Rev. Codes, § 2640.3 (includes similar definitions; "board" means the Montana milk control board).

A. L. R. notes.

What amounts to sale of milk to "public" within statutory regulation as to milk, 111 A. L. R. 725.

3–10a–4. Powers of Board of Agriculture.

The state board of agriculture, hereinafter referred to as the board, in addition to its other powers and duties shall have the following powers:

Market Areas—Administrative Agencies.

(a) Upon written application of sixty per cent in number and eighty per cent in volume of the producers and sixty per cent in number and eighty per cent in volume of the distributors of market milk within a market area order the following:

1. That a market area be established. In determining this question the board shall consider the established marketing practices and competitive conditions existing in said area.

2. That an administrative agency shall be elected by the members of the milk producing and distributing industry of the market area established to administer the orders of the board. The administrative agency herein provided for shall be truly representative of the milk producing and milk distributing industry in the market area and shall be elected by the members of the industry as provided by order of the board. The administrative agency shall be constituted of such number as the board may designate, but the representation of producers and distributors shall be equal. The administrative agency shall administer all orders promulgated by the board and shall have power to do all things necessary to make the orders of the board effective. If the board should provide for the licensing of milk producers, distributors, and milk dealers the administrative agency shall have the power to cancel any license upon finding that the holder of said license has violated any of the orders issued by the board. No license, however, shall be canceled until after a public hearing of the administrative agency of which hearing the alleged violator has had actual notice.

Fair Trade Practices—Control of Surplus Milk—Licensing Producers, Distributors, and Dealers—Minimum Market Prices.

(b) After the designation of any market area in the state of Utah the board may, upon the written petition of any producer, distributor, milk dealer, organization representing producers or distributors, any consumer of market milk, or any group of consumers of market milk, residing within said trade area:

1. Provide for fair trade practices within said market area. Any fair trade practice rule promulgated by the board for any trade area under this subsection must be designed to and for the purpose of correcting some existing unfair practice in the industry which unfair practice militates against the best interests of the producers, consumers, distributors, or any combination of the aforementioned groups resulting in or likely to result in giving some individual or group of individuals some unfair advantage in the market milk industry or which may have a tendency to reduce or lower the quality of milk being produced and distributed in the area or having a tendency to create a surplus or shortage of suitable market milk.

2. Provide for the control of surplus market milk, provided that such order shall be fair so as to give to all producers and distributors of market milk an equal opportunity to produce and distribute market milk; the orders to be made under this section should have for their ultimate end the providing of an adequate supply of pure, wholesome milk and at the same time prevent the creation of any surplus of market milk in the trade area for which the order is promulgated.

3. To provide that each producer and distributor of market milk in the market area shall pay to the administrative agency theretofore provided by order of the board such sum as may be ordered by the board not to exceed one-fourth of one cent per pound of butter fat for each pound of butter fat produce[d], processed, and sold by the producer or distributor in the market area. The board shall not, however, at any time require the payment of any larger amount than is actually neces-

sary to defray the necessary expenses of the administrative agency in carrying out, operating, and administering the orders of the board in the market area.

4. Provide by order for the licensing of producers and distributors and other purchasers of milk for resale in any given market area and to provide for payment of a license fee in connection therewith sufficient to defray the actual expense incident to the issuance of said license; make rules and regulations whereby any license issued pursuant to this subsection may be canceled by the administrative agency of the market area. Should the board require the licensing of producers, distributors, and other purchasers of milk for resale within a designated market area, as provided by this subsection, it shall be a violation of this act for any producer, distributor, or milk dealer for resale to sell milk at wholesale or retail in the market area without having first procured such license.

5. Provide, fix, and regulate a minimum market price for market milk. Such a minimum market price shall be construed to include the price paid by distributors to producers for their product and the price paid by purchasers of milk for resale to distributors as well as the ultimate retail and wholesale prices to consumers. This price shall be the current market price and in determining this price the board shall consider the prices of other dairy products as well as the cost of producing, handling, pasteurizing, and distributing the product which is ultimately sold to the consumer.

6. To amend, modify, or cancel any existing order. (Sec. 4.)

1. Validity.

Milk Control Act vesting state board of agriculture with authority to establish milk marketing areas and regulate price of milk therein, held unconstitutional as violative of due process of law, and as constituting an unlawful delegation of legislative power. Rowell v. State Board of Agriculture, 98 U. 353, 99 P.2d 1, thus holding invalid parts of (b) 2 and 5.

3-10a-5. Id. Rules and Regulations.

The board, in addition to the powers enumerated in the foregoing section, shall have power to create rules and regulations for the conduct of its own business. (Sec. 5.)

3-10a-6. Filing Petitions for Designation of Area—Notice.

All petitions dealing with any of the subjects set forth in section 4 shall be filed with the commissioner of agriculture. The commissioner of agriculture shall, upon the filing of any petition as provided herein, collect the sum of $50 as a filing fee which money shall be deposited by said commissioner with the funds of the board and said funds shall be used for the purpose of administering this act. Upon the commissioner of agriculture receiving any petition provided herein he shall forthwith publish notice in some paper of general circulation within the county where the principal part of the market area to which the petition relates is located once each week for two weeks. Said notice shall briefly set forth the name of the petitioner or petitioners, or, if the petitioners be a large group, they may be designated by a group name, a brief description of the orders sought by the petitioners, the time for hearing

the petition which shall be not less than ten days after the giving of notice, and shall also contain a statement that all interested parties will be given an opportunity at the hearing to present such evidence as they may have relative to the subject matter of the petition. The cost of publishing or giving notice as directed by the board shall be paid by the petitioners. (Sec. 6.)

3-10a-7. Hearings.

At the hearing the board shall hear all relevant testimony offered by any person, group, or association relative to the subject matter of the petition. The board may employ a reporter for the purpose of making a written record of the proceedings of the board. (Sec. 7.)

3-10a-8. Orders of Board.

After the hearing of all the evidence the board shall make such order as comes within the province of the petition as is supported by competent evidence. Such order when made and promulgated by the board shall be binding upon all producers, distributors, milk dealers, and consumers of market milk within the area to which the petition and order relate. (Sec. 8.)

3-10a-9. Id. Certified Copies Prima Facie Evidence.

A copy of any order made by the board duly certified to over the signature of the commissioner of agriculture shall be prima facie evidence in any court in this state of the contents of said certified copy. (Sec. 9.)

3-10a-10. Id. Violation of Orders a Misdemeanor.

The violation of any order issued by said board shall constitute and be a misdemeanor. (Sec. 10.)

3-10a-11. Id. Actions to Review Order.

Any petitioners or protestant appearing before the board and offering evidence to support the contention of said petitioner or protestant may, if he feels aggrieved by the order of the board, bring an action within sixty days after the issuance of the order in the district court of the county wherein the principal part of the marketing area is located for a review of the action of the board. Parties shall be served with process as in other cases and notice of the pendency of this action shall be filed with the board within twenty days after the same is commenced. In said action any party appearing before and presenting evidence at the hearing may interplead and be made a party in said action. The burden shall be upon the plaintiff in said action to establish by a preponderance of the evidence that the order appealed from was beyond the jurisdiction of the board or that the said order was capriciously entered or that said order was not predicated upon good and sufficient evidence. If the plaintiff shall, by a preponderance of the evidence, establish any of the foregoing the court shall enter judgment vacating the order of the board appealed from otherwise the action shall be dismissed. (Sec. 11.)

3-10a-12. Partial Invalidity—Saving Clause.

If any word, clause, sentence, paragraph, or section of this act shall be declared invalid by any court of competent jurisdiction the remainder of the act shall not be affected thereby and the legislature hereby declares that it would have passed the remaining parts of this act if it had known that such part or parts would be declared unconstitutional. (Sec. 12.)

L. 1941, ch. 8; eff. May 13.

MILK AND CREAM MARKETING ACT

AN ACT regulating the production and distribution of fluid milk and fluid cream and giving to the commissioner of agriculture the power to appoint local control boards from producers nominated by milk producers of marketing areas; providing for the establishment of marketing areas, and power to create a stabilization and marketing plan and make it effective within marketing areas; power to create minimum prices to be paid by distributors to producers in the marketing areas; methods by which orders and regulations may be made effective and for the cancellation of orders and stabilization and marketing plans by the state board of agriculture; providing for licenses and fees, and for the administration of this act; to require bonds by distributors to guarantee payment to producers.

Be it enacted by the Legislature of the State of Utah:

3-10a-13. Declaration of Policy—Purpose.

The production and distribution of fluid milk and of fluid cream and the dissemination of accurate, scientific information as to the importance of milk and other dairy products in the maintenance of a high level of public health, is hereby declared to be a business affected with a public interest. The provisions of this chapter are enacted in the exercise of police powers of this state for the purpose of protecting the health and welfare of the people of this state.

The purpose of this chapter is to enable the dairy industry with the aid of the state to correct existing evils, develop and maintain satisfactory marketing conditions and bring about a reasonable amount of stability and prosperity in the production and marketing of fluid milk and fluid cream and provide means for carrying on essential educational activities. It is the intent of the legislature that the powers herein conferred shall be liberally construed. Nothing in this chapter shall be construed as permitting or authorizing the development of conditions under which fluid milk and fluid cream shall be purchased from producers, and under which distributors and retail stores shall sell and distribute the same, such terms and conditions shall be those which will, in the several localities and markets of the state and under the varying conditions of production and distribution insure an adequate and continuous supply of pure fresh wholesome fluid milk and fluid cream to consumers thereof at fair and reasonable prices. (Sec. 1.)

Comparable provisions.
Cal. Agric. Code, § 735, subd. a (identical with opening paragraph herein).

Cross-references.
Unfair competition and monopolies, 73–1, 103–55–5; agricultural marketing, 3–10b.

Decisions from other jurisdictions.
—California.
Provisions which protect a producer by establishing a fair price to him and affording him security for payment of the price due him for milk and cream by means of a bond are incident to the broader purpose to protect the public milk supply. Ex parte Willing, 12 Cal. 2d 591, 86 P.2d 663.

Uniformity of marketing conditions in the fluid milk industry is a sufficient standard for the guidance of the director of agriculture in designating marketing areas. Jersey Maid Milk Products Co. v. Brock, 13 Cal. 2d 620, 91 P.2d 577.

Milk Stabilization Act is for the benefit of the entire state and expenditure of funds collected thereunder wherever beneficial to enforcement is appropriate. Ray v. Parker, Director of Agriculture, 15 Cal. 2d 275, 101 P.2d 665.

Milk industry bears close relationship to public welfare and is sufficiently clothed with a public interest to warrant its regulation under the exercise of the police power, not only in emergencies but at all times. Ray v. Parker, Director of Agriculture, 15 Cal. 2d 275, 101 P.2d 665.

A. L. R. notes.
Constitutionality, construction and application of statutes relating to purchase of farm and dairy products from producers for purposes of resale, 117 A. L. R. 347; constitutionality of milk regulations, 18 A. L. R. 235, 42 A. L. R. 556, 58 A. L. R. 672, 80 A. L. R. 1225, 101 A. L. R. 64, 110 A. L. R. 644, 119 A. L. R. 243.

3–10a–14. Enforcement—Definitions.

The state board of agriculture shall enforce the provisions of this act and any stabilization and marketing plan or marketing agreement initiated pursuant to the provisions of this act, and for that purpose may make such rules and regulations as it deems necessary.

As used in this chapter:

(a) "Board" means any local control board created as herein authorized.

(b) "Fluid milk" includes any milk meeting the health requirements of the place where sold, which has been produced for human consumption as milk, and any such milk until sold as cream, or sold to be used in the manufacture of any dairy product.

(c) "Fluid cream" includes any cream produced from milk which meets the health requirements of the place where sold, which has been produced for human consumption as cream, and which also meets the health requirements for cream for human consumption of the place where sold and any such cream until sold to be used in the manufacture of any dairy product.

(d) "Dairy products" includes any product manufactured from milk or any derivative or product of milk.

(e) "Producer" means any person who operates a dairy herd or herds for the purpose of producing milk to be sold as fluid milk or fluid cream.

(f) "Distributor" means any person, firm or corporation, other than a retail store, irrespective of whether he is also a producer who acquires and sells fluid milk or fluid cream at wholesale or retail.

(g) "Retail store" means any person, or persons, owning or operating a retail grocery store, restaurant, confectionery or other similar business where fluid milk or cream in original packages or containers are sold at retail to the general public.

(h) "Marketing area" is any area within this state declared to be such in the manner described in this chapter.

(i) "Stabilization and marketing plan" means any plan providing for the control of marketing, processing, distribution, or sale of fluid milk or fluid cream within an area, which is formulated as prescribed in this chapter.

(j) "Marketing agreement" means any marketing agreement formulated under the provisions of this chapter.

(k) "Consumer" means any person who buys milk, cream or dairy products for consumption by himself or his household.

(l) "Commissioner" means commissioner of agriculture of the State of Utah.

(m) "State board" means the state board of agriculture. (Sec. 2.)

Comparable provisions.

Cal. Agric. Code, § 735.3, as amended by Laws of 1941 (includes clauses substantially the same as subds. (a), (d), (g), (h), (i), and (k) herein; other clauses are analogous to remaining subdivisions herein except that "marketing agreement" is not defined; also specifies four classes of fluid milk).

A. L. R. notes.

What amounts to sale of milk to "public" within statutory regulation as to milk, 111 A. L. R. 725.

3-10a-15. State Board—Witnesses—Records.

The state board shall have the power to hold hearings and conduct investigations relative to any subject included within this chapter, including power to swear witnesses and issue subpoenas.

A full and accurate record of business or acts performed or of testimony taken by the state board in pursuance of the provisions of this chapter shall be kept and placed on file in the office of the state board. (Sec. 3.)

3-10a-16. Commencement of Actions—Review.

Any order of the state board hereunder substantially affecting the rights of any interested party may be reviewed by any court of competent jurisdiction. Any such action must be commenced within ninety days after the effective date of the order complained of or within ninety days after the injurious effect complained of becomes reasonably apparent. (Sec. 4.)

3-10a-17. Id. Actions to Prevent Violations.

The state board may bring an action to enjoin the violation or the threatened violation of any provision of this chapter or of any order made pursuant to this chapter in the District Court in the county in which such violation occurs or is about to occur. There may be enjoined in one proceeding any number of defendants alleged to be violating the same provisions or orders, although their properties, interests, residence, or place of business may be in several counties and the violations separate and distinct. (Sec. 5.)

3-10a-18. Distribution Agreements with Other Authorities.

The state board, upon application and approval of the board, may confer, enter into agreements, or otherwise arrange with the constituted

authorities of this state, other states, or agencies of the United States with respect to plans relating to the stabilization and distribution of fluid milk and fluid cream within this state or as between this state and other states or the United States, and may exercise his powers hereunder to effectuate and enforce such plans. (Sec. 6.)

3–10a–19. Money Received—Disposition.

All money received by the state board hereunder shall be paid monthly into the state treasury to the credit of the contingent fund of the state board of agriculture. (Sec. 7.)

3–10a–20. Marketing Areas May Be Created—Local Control Boards.

Sixty-five percent or more of the producers who are producing fluid milk commercially for sale within any marketing area, and who produce not less than sixty-five percent of the total volume of fluid milk produced commercially for such marketing area, may make application to the state board for the appointment of a local control board, for the purpose of formulating and administering a stabilization and marketing plan for marketing fluid milk. The percentage of volume shall be determined on the basis of the quantity of fluid milk produced or by the number of pounds of milk fat produced, at the option of the applicants. A non-profit coöperative association of producers may make application on behalf of such members. Each member of such coöperative association providing milk for such marketing area shall be counted as an individual in determining the total number of producers producing milk for such marketing area. The application shall state the boundaries of the marketing area sought to be established, and such other information as may be necessary under the provisions of this chapter and as the state board may prescribe.

Accompanying each application shall be sufficient funds to reimburse the state board for such expenses as it may incur in carrying out necessary preliminary investigations.

Upon the receipt of such application, the state board shall determine whether the area sought to be established as a marketing area is such that conditions of production, distribution and sale are reasonably uniform and susceptible to the application of the stabilization and marketing plan. If the state board determines that the boundary of the marketing area described in the application should be changed or other modifications made, said application may be amended to incorporate such changes as are deemed necessary by the state board. (Sec. 8.)

Comparable provisions.
Cal. Agric. Code, § 736.1 (analogous provision as to formulation by director of agriculture of stabilization and marketing plan for specific area).

3–10a–21. Control Boards—Appointment of Members—Terms.

If and when the state board determines that the application is properly made, and that the area involved is such that a stabilization and marketing plan is feasible, it shall within thirty days after the date of receiving such application call a meeting of the producers supplying fluid milk to the marketing area at which meeting such producers shall

nominate in a manner prescribed by the state board, candidates for a local control board. The state board, from such nominees, shall appoint a local control board which shall consist of seven producers whose major interests in the dairy industry is the production of fluid milk for said marketing area; *provided,* that in such cases in which the state board is of the opinion that seven members will not give adequate representation to all factors in the marketing area the board may be increased to not more than thirteen members of like qualifications.

The terms of members of the board shall be two years but the term of three members of the board shall expire at the end of the first year. Board members shall hold office until the election and qualification of their successors. The members at their first meeting shall determine by lot the relative order in which their terms expire. Vacancies shall be filled by appointment by the state board for the unexpired term. The members of the board shall receive no compensation for their services but shall be allowed their necessary traveling and other expenses incurred in the performance of their official duties. (Sec. 9.)

Comparable provisions.
Cal. Agric. Code, § 736.2 (director of agriculture may appoint local control boards for marketing areas to assist and advise him in matters pertaining to production and marketing of fluid milk or fluid cream or both or to operation of stabilization and marketing plan).

3–10a–22. Id. To Formulate Marketing Plan.

The local control board shall formulate a stabilization and marketing plan not inconsistent with the provisions of this chapter. No distributor within such marketing area shall purchase milk from producers who do not comply with the provisions of this chapter and such plan. No such plan shall involve a limitation upon the production of fluid milk or fluid cream. (Sec. 10.)

Comparable provisions.
Cal. Agric. Code, § 735.4, as amended by Laws of 1941, subd. 3 (director of agriculture has authority to formulate stabilization and marketing plan and declare same effective after public hearing and reasonable notice to all producers and distributors of record with the director affected by such plan).

3–10a–23. Id. May Establish Minimum Prices.

Subject to the approval of the state board, the local control board may establish the minimum prices to be paid producers for milk and cream as defined above. In establishing the prices to be paid producers, due consideration shall be given to the economic relationship of butter and other dairy products to the price of fluid milk. In establishing prices the board shall ascertain, as far as feasible, what prices for fluid milk in the marketing area involved will best protect the dairy industry, and insure consumers a sufficient quantity of pure and wholesome milk in the public interest, and still return to the producers the cost of production, including a reasonable return on his invested capital. (Sec. 11.)

Comparable provisions.
Cal. Agric. Code, § 735.4, as amended by Laws of 1941, subds. 4 and 5 (director of agriculture has power to prescribe minimum prices to be paid by distributors in accordance with stabilization and marketing plan for fluid milk and fluid cream); § 736.12 (director of agriculture determines minimum wholesale and retail prices for the marketing area).

3–10a–24. Id. Fair Trade Practices—Unlawful Practices.

Any stabilization and marketing plan shall include standards of fair trade practices. In such standards of fair trade practices the following practices shall be prohibited and are declared unlawful:

(a) The payment or allowances of rebates, refunds, commissions or unearned discounts to any customer, whether in the form of money or otherwise.

(b) The giving away of milk or dairy products for the purpose of securing business, except to bona fide charities.

(c) The extension to certain purchasers of special prices or privileges not extended to all purchasers on like terms and conditions.

(d) Any discrimination between wholesale customers or between consumers as to prices at which fluid milk or fluid cream are sold.

(e) Any false or misleading advertising.

The plan may provide means for educational and sales stimulation programs, *provided* that such educational activities or programs are not unfairly detrimental to other products; and may contain such other provisions as may be necessary to effectuate the provisions of this chapter. (Sec. 12.)

3–10a–25. Id. Marketing Plan to Be Submitted to State Board.

Upon its formulation, the plan shall be submitted to the state board for its approval. If it finds that the plan is in conformity with the provisions of this chapter and will reasonably effectuate the purposes thereof, it shall declare the plan in effect without unnecessary delay.

Such plan when established may be amended by the local control board from time to time, but no such amendment shall take effect until approved by the state board.

The board may do all things that are necessary for the purpose of carrying out the provisions of the plan. The state board may order the local control board to desist from any course of conduct which is not in accordance with the provisions and purposes of this chapter.

(Sec. 13.)

3–10a–26. Fees—Appeals from Orders—Annulment of Orders.

The local control board may assess fees to be paid by producers of fluid milk for the marketing area.

From such assessments there shall be paid to the state board such sum, not to exceed one mill per pound of milk fat, as may be necessary to defray the expense incurred by the state board in carrying out the provisions of this section. The balance of such fees shall be retained by the board to be used by it to carry out the provisions of the plan.

Any person aggrieved by any order or regulation made effective by a board may appeal to the state board. Upon such appeal, the state board shall make an order granting the redress sought, either in whole or in part or denying the appeal. A failure on the part of the state board to grant the redress sought within thirty days shall be deemed a denial of the appeal. And the person so aggrieved shall have the right of appeal as a trial de novo in the district court within the district wherein he resides.

Any plan formulated under the provisions of this chapter and all orders and regulations respecting the same shall be annulled by the state board upon application of fifty-one per cent or more of such persons and volume as could have initiated such plan. (Sec. 14.)

3-10a-27. Fluid Cream—Subject to Provisions of Act.

The production and marketing of fluid cream may be subject to a marketing agreement as provided in this section. In the absence of such agreement, fluid cream may be controlled under a stabilization and marketing plan for fluid milk.

In order to carry out the policy of this chapter, the state board is empowered to enter into marketing agreements with producers, associations of producers or distributors of fluid cream for any marketing area. (Sec. 15.)

3-10a-28. Id. Application for Marketing Agreement.

Sixty-five percent or more of the persons engaged in, and who represent sixty-five percent of the volume of production and distribution of fluid cream for any marketing area, may make application to formulate a marketing agreement.

If the state board determines that the application is properly made and that the area involved is such that a control plan is feasible, it shall authorize such applicants to formulate a marketing agreement upon prepayment to it by applicants of preliminary expenses of the state board. (Sec. 16.)

Comparable provisions.
Cal. Agric. Code, § 736.1 (includes similar provision).

3-10a-29. Id. Provisions and Establishment of Marketing Agreements.

Such marketing agreement shall contain such provisions as may be necessary to carry out the policy of this chapter, and may include provisions:

(1) For the appointment of local control boards with such powers as are specified in this agreement.

(2) For the raising of funds, derived equitably from all producers and distributors participating in any marketing agreement, for the purpose specified in the marketing agreement, including means for educational and sales stimulation activities but in no case shall any assessment levied against any person exceed five mills per pound milk fat handled by him. From such assessments, there shall be paid to the state board such sum, not to exceed one mill per pound milk fat as may be necessary to defray the expenses incurred by the state board in carrying out the provisions of this section. The balance of fees shall be retained by the local control board to be used by it to carry out the marketing agreement.

(3) For the establishment of minimum wholesale prices for fluid cream in the area.

(4) For the establishment of a code of fair practices.

(5) Method by which agreement may be annulled.

Upon the signing of such marketing agreement it shall be forwarded to the state board. Upon receipt of such agreement, it shall determine if the agreement has been properly signed and is in accordance with the provisions and purposes of this chapter. If it determines that it is in such accordance, it shall make an order establishing a marketing agreement in the area affected, whereupon such an agreement shall become effective. If the state board determines that the agreement is not in such accordance, it shall reject it without prejudice to the formulation of a new agreement. Such agreement, when effective, may be amended in such manner as may be provided in such marketing agreement. After taking effect, the provisions of such agreement shall establish the standard of conduct for all persons engaged in any occupation or business regulated by such agreement. (Sec. 17.)

3–10a–30. License to Distribute—Fee.

After thirty days of the effective date of such marketing agreement or stabilization and marketing plan, no person shall act as a distributor in the area affected without first having obtained a license from the state board. The application shall state the name and address of the applicant and such other information as the state board may require and be accompanied by an annual fee of $3. (Sec. 18.)

Comparable provisions.

Cal. Agric. Code, § 737.5, as amended by Laws of 1941 (after 30 days after effective date of statute no distributor shall deal in fluid milk or fluid cream without first having obtained a license from the director of agriculture).

3–10a–31. Bonds of Distributors—Amount.

Before any license is issued to any distributor who purchases fluid milk or fluid cream from producers the applicant shall execute and deliver to the state board a surety bond in the minimum sum of $1,000 executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety. Said bond shall be upon a form approved by the state board, and shall be conditioned upon the payment in the manner required by this chapter, of all amounts due to producers for fluid milk and fluid cream purchased, by such licensee or applicant during the license year. Said bond shall be to the state in favor of every producer of fluid milk and fluid cream. In case of failure by a distributor to pay any producer or producers for fluid milk or fluid cream in the manner required by this chapter the state board shall proceed forthwith to ascertain the names and addresses of all producer-creditors of such distributor, together with the amounts due and owing to them and each of them by such distributor, and shall require all such producer-creditors to file a verified statement of their respective claims with it. Thereupon the state board shall bring an action on the bond on behalf of said producer-creditors. Upon any action being commenced upon said bond, the state board may require the filing of a new bond and immediately upon a recovery in any action upon such bond, such distributor shall file a new bond, and upon failure to file same within ten days in either case, such failure shall constitute grounds for the revocation or suspension of the license of such distributor. In the event that recovery upon the bond is not sufficient to pay all of the claims as finally determined and adjudged by

the court, any such amount recovered shall be divided pro rata among said producer-creditors.

The minimum bond of $1,000 shall be required of distributors purchasing an average weekly quantity of fluid milk not to exceed 1,000 pounds of milk fat. Distributors purchasing more than 1,000 pounds of milk fat per week shall post a bond whose penalty shall be $1,000 for every 1,000 pounds of milk purchased each week.

In the event that any distributor so increases his purchases of fluid milk or fluid cream during the license year that said purchases exceed the amount for which said distributor is bonded said distributor shall forthwith post such additional bond or bonds as may be required to comply with the provisions of this section.

The licenses and bonds, provided for in this section, shall be required for each distributor, and for the purposes of this section each subsidiary milk plant or branch milk plant, whether under separate ownership or not, shall be considered as an individual distributor. (Sec. 19.)

Comparable provisions.
Cal. Agric. Code, § 737.5 subd. b, as amended by Laws of 1941 (includes provisions substantially identical with first, third and fourth paragraphs herein).

3-10a-32. Producers—License Not Required.

A "producer" who supplies milk only to distributors for processing or distribution, and a retail store, as defined in this chapter, shall not be classed as a distributor and is not required to obtain a license. (Sec. 20.)

3-10a-33. Violation—Misdemeanor.

The violation of any provisions of this chapter, or of any provision of any stabilization and marketing plan or marketing agreement formulated under the provisions of this chapter, is a misdemeanor. (Sec. 21.)

3-10a-34. Distributors' Reports.

All such distributors shall make and file with the state board at least once each month such reports as the state board may require to enable it to enforce the provisions of this chapter. (Sec. 22.)

Comparable provisions.
Cal. Agric. Code, § 737.8 (identical provision as to distributors' report to director of agriculture).

3-10a-35. Access to Records and Premises of Distributors.

The state board, or its authorized agents, shall at all times during regular business hours, have access to all records pertaining to receipts and sales of fluid milk of distributors within any marketing area and in addition shall have access to all milk plants, warehouses or other building in which fluid milk is processed or handled. (Sec. 23.)

3-10a-36. Violations—Civil Liability.

Any person who violates any provision of a stabilization and marketing plan or marketing agreement shall be liable civilly in the sum of $500 for each and every violation to be recovered by the state board in any court of competent jurisdiction. All sums recovered under this

section shall be deposited in the state treasury to the credit of the contingent fund of the state board of agriculture. (Sec. 24.)

3–10a–37. Biennial Report of State Board.

The state board shall, within 30 days prior to each regular session of the legislature, submit to the governor a full and true report of the transactions under this chapter during the preceding biennium, including a complete statement of receipts and expenditures during such period. (Sec. 25.)

Comparable provisions.
Cal. Agric. Code, § 737.10 (identical provision as to report of director of agriculture to the Governor).

3–10a–38. Revocation of Distributor's License.

The state board may revoke the license of any distributor who has been convicted of a misdemeanor under this act or against whom a judgment has been rendered in any court of competent jurisdiction under this act. (Sec. 26.)

3–10a–39. Saving Clause.

If any provision of this act, or the application thereof to any person or circumstances is held invalid, the remainder of this act, or the application of such provision to any other person or circumstance, shall not be affected. (Sec. 27.)

3–10a–40. Id.

If any word, clause, sentence, paragraph, or section of this act shall be declared invalid by any court of competent jurisdiction the remainder of the act shall not be affected thereby and the legislature hereby declares that it would have passed the remaining parts of this act if it had known that such part or parts would be declared unconstitutional. (Sec. 28.)

3–10a–41. Exceptions.

Coöperative dairy associations and their members shall not be subject to the provisions of this act except the provisions of section 12 hereof. (Sec. 29.)

CHAPTER 10b

FAIR TRADE AND MARKETING OF AGRICULTURAL COMMODITIES

L. 1939, ch. 10; eff. May 9.

AGRICULTURAL FAIR TRADE ACT

3–10b–1. Policy of Act.
3–10b–2. Board of Agriculture to Administer.
3–10b–3. Seal—Description to Be Filed.
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3–10b–5. Employees — Administration.
3–10b–6. Unfair and Injurious Practices Defined—Unlawful.
3–10b–7. Powers of Board.
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3–10b–9. Members of Board May Administer Oaths—Issue Subpoenas, etc.
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3-10b-21. Conflicting Provisions Repealed.
3-10b-22. Short Title.

L. 1941, ch. 7; eff. May 13.

AGRICULTURAL COMMODITIES MARKETING ACT

3-10b-23. Declaration of Public Interest.
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3-10b-26. Commissioner to Administer Act — Marketing Orders — Rules for Issuance.
3-10b-27. Id. Board of Control—Duties.
3-10b-28. Marketing Orders—Uniform.
3-10b-29. Id. Provisions.
3-10b-30. Id. Expenses — Assessment —Collection and Disbursement.
3-10b-31. Id. Termination—Disposition of Funds.
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3-10b-33. Administration — Uniformity.
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3-10b-35. Violations — Misdemeanor.
3-10b-36. Complaints for Violation — Procedure.
3-10b-37. Assessments—Collection.

L. 1939, ch. 10; eff. May 9.

AGRICULTURAL FAIR TRADE ACT

AN ACT providing for the elimination of unfair trade practices affecting agriculture; securing fair returns to producers of agricultural products; naming the state board of agriculture as the administrative agency; defining additional powers and duties of the board; defining unfair discriminatory and injurious practices; setting forth rules and regulations governing the board; declaring unfair trade practices unlawful; providing for the procedure for the enforcement of this act; repealing laws in conflict herewith.

Be it enacted by the Legislature of the State of Utah:

3-10b-1. Policy of Act.

It is the declared policy of this state, as one means of improving the economic position of agricultural producers, to encourage, improve and promote such beneficial and effective producing, handling and marketing procedures and practices that will aid in providing adequate returns to producers while at the same time protecting the consumers of such products with an even and adequate flow of reliable agricultural products at fair and reasonable prices, also to prohibit and prevent injurious and unfair trade practices and to that end this act shall be liberally construed. (Sec. 1.)

Comparable provisions.

Cal. Agric. Code, § 1300.10 (declaration of state policy to aid agricultural producers in preventing economic waste in marketing of agricultural commodities, and seeking to abolish the evil, inter alia, of unfair methods of competition; for further comparisons with the California statute see the comparable provisions under 3-10b-6, 3-10b-8, 3-10b-23 et seq.).

Idaho Code, §§ 22-1401 to 22-1404 (brief statute authorizing department of agriculture to investigate cases wherein producer of agricultural products or livestock has suffered loss in marketing products by reason of fraud, injustice, extortion, manipulation or profiteering on the part of others, and to prosecute the offenders).

Iowa Code 1939, § 9915 (analogous provision in that it declares it to be unlawful to enter into agreement, contract or combination with any other dealer, etc., for fixing of prices at which any article of commerce or any com-

modity should be sold); § 9924 (unlawful to enter into agreement, contract or combination with any other grain dealer, etc., for fixing of prices to be paid for grain by different dealers or buyers).

Montana Laws 1941, Ch. 154 (statute enacted under the police power of the state to remedy unhealthful, unfair, unjust, destructive, demoralizing and uneconomic trade practices existing in the production, sale and distribution of poultry products, fruits and vegetables whereby the existence of producing industry in the state is imperiled).

Cross-references.

Milk control, 3–10a; combinations and monopolies, 73–1.

Decisions from other jurisdictions. —Iowa.

A mere selling agency, such as an agricultural co-operative association is not per se a monopoly. Clear Lake Co-op. Live Stock Shippers' Ass'n v. Weir, 200 Iowa 1293, 206 N. W. 297.

A statute providing for organization of associations not for pecuniary profit is not invalid as contradictory to Code 1924, § 9915 [Code 1939, § 9915] in that section 11 promotes monopolistic agreements, price fixing and elimination of competition. Clear Lake Co-op. Live Stock Shippers' Ass'n v. Weir, 200 Iowa 1293, 206 N. W. 297.

A statute giving department of agriculture control of sale, distribution, and use of all tuberculin, and providing that only a licensed veterinarian shall apply a tuberculin test to cattle is not invalid as creating a monopoly, but is a proper police regulation. Fevold v. Board of Sup'rs of Webster County, 202 Iowa 1019, 210 N. W. 139.

3–10b–2. Board of Agriculture to Administer.

The Utah state board of agriculture, hereinafter referred to as the board of agriculture or the board, shall administer and enforce the provisions of this act in addition to its other duties as prescribed by law. (Sec. 2.)

3–10b–3. Seal—Description to Be Filed.

The board shall have an official seal for authentication of its orders and proceedings, upon which shall be engraved, "State Board of Agriculture" and such design as the board shall prescribe. Courts in the state shall take judicial notice of the seal of the board, and in all cases copies of orders, proceedings or records in its office, certified by its executive secretary under its seal, shall be competent evidence. A description and an impression of such seal shall be filed with the secretary of state. (Sec. 3.)

3–10b–4. Rules and Regulations Governing Procedure Before Board.

Subject to the provisions of this act, the board shall adopt and publish rules and regulations governing procedure before it, and shall prescribe forms of notices and the manner of serving the same in all procedures coming before it, and may change the same from time to time in its discretion; and further, the board is hereby vested with, for the purposes of administering, conducting hearings upon, and enforcing this act, all rights, powers, privileges and immunities heretofore vested in the said board in connection with the administration, hearing and enforcement of other acts heretofore enacted and now existing under the statutes and laws of Utah. (Sec. 4.)

3–10b–5. Employees—Administration.

The Utah state board of agriculture may employ subject to the approval of the state department of finance, such executive aid, clerical help or other employees as may be needed for the proper administration of this act, and shall fix their compensation in accordance with standards adopted by the state department of finance. The members of the

board and its employees shall be entitled to receive from the state their actual and necessary expenses while traveling on the business of the board when approved by the department of finance and the members of the board with the approval of the governor may confer and meet with officers of other states and officers of the United States on any matters pertaining to their official duties. Such expenses must be itemized and sworn to by the person who incurred the expense and must be approved by the board. (Sec. 5.)

History.
As amended by L. 41, ch. 2, eff. July 1, making several material changes.

3-10b-6. Unfair and Injurious Practices Defined—Unlawful.

It shall be unlawful for any person engaged in the production, processing, handling, marketing, sale or distribution of agricultural products or commodities to engage in or employ practices in the course thereof, which are unfair, discriminatory or injurious to the producers of such or similar products, or to the consumers generally thereof, by any act, conduct, representation, method of competition or agreement, directly or indirectly, such as:

1. Discrimination in price between different producers of agricultural commodities of like grade and quality.

2. Use deceptive, inaccurate, or unauthorized brands, labels, containers or weight or grade designations on agricultural products or commodities.

3. Make, or use, or permit the use of any false, fraudulent or misleading statements, representations, advertisements or designations by work, act, make, publication, stencil or label concerning the character, kind, grade, quality, condition, degree of maturity, or state or county of origin of any agricultural products or commodity.

4. Sell, offer for sale or advertise for sale, any agricultural product at less than the cost thereof from the producers or wholesaler to such vendor plus six per cent, or the replacement cost thereof plus six per cent, whichever is the lower; *provided,* that this subsection shall not apply to agricultural coöperative associations operating under the provisions of the uniform agricultural coöperative associations act.

5. Give, offer to give or advertise the intent to give away any article, agricultural product or commodity in connection with the sale or offering for sale of such agricultural products.

6. After the grade of any particular agricultural product has been established as herein provided for, then in any and all advertisements, notices, signs or announcements wherein the price of such product is mentioned, to fail to specify in such advertisement, notice, sign or announcement the grade thereof in as prominent a manner as the price is displayed or announced. (Sec. 6.)

Comparable provisions.
Cal. Agric. Code, § 1300.12, as amended by Laws of 1941, subd. b (referring to "Unfair Practices Act").

A. L. R. notes.
Constitutionality of statute prohibiting giving of premiums or trading stamps with purchases of commodities, 124 A. L. R. 341; price fixing by legislature or administrative body, 119 A. L. R. 985; right of manufacturer, producer or wholesaler to control retail price, 103 A. L. R. 1331, 104 A. L. R. 1452, 106 A. L. R. 1486, 110 A. L. R. 1413, 125 A. L. R. 1335; validity, construction and application of statutory provision prohibiting sale of commodities below cost, 118 A. L. R. 506, 128 A. L. R. 1126.

3–10b–7. Powers of Board.

It shall be the duty of the board and it shall have full power, jurisdiction and authority:

Standards and Grades of Quality—Containers.

1. To fix and establish standards and grades of quality and condition of vegetable, fruit, hay, grain, seed, livestock products, cheese, ice cream and other dairy products, poultry products and all other agricultural products such as in its judgment the usages of the trade may warrant and permit, and to find and adopt regulations fixing the dimensions and standards for containers to be used in connection with the shipment, sale or offering for sale of any and all agricultural products; such standards and grades shall, as nearly as may be, conform to the standards and grades that have been or may be fixed, established or promulgated by the United States secretary of agriculture; *provided, however,* that if there is no standard or grade of any agricultural products fixed by the United States secretary of agriculture, the Utah state board of agriculture shall fix grades and standards of such products which shall indicate the quality and condition thereof. The rules and regulations of the board with respect to the grading and standardizing of agricultural products shall state when they are to take effect and a copy thereof together with a copy of the notice provided therefor hereinafter shall be filed in the office of the secretary of state at least thirty days before the date set for taking effect. The said rules and regulations shall be prepared in pamphlet form in such number as will supply the public demand and the board shall publish notice of the filing thereof in some newspaper of general circulation in the state of Utah, showing that such rules and regulations have been adopted, and the effective date thereof.

Rules of Government of Board.

2. To prescribe rules and regulations for its own government and the transaction of business.

General Supervision Over Marketing.

3. To have and exercise general supervision over the marketing, sale, advertising, storage, transportation, trade practices and sales methods used in the selling and marketing of agricultural products within the state.

Surveys—Publication of Data.

4. To make or cause to be made such surveys of costs of production, maintenance of soil fertility, marketing, storing, transporting, financing, grading and handling, and also to collect, collate and publish statistical and other information relating to agricultural trade and business as are advisable, desirable or necessary to be used as a basis for determining the proper administration of this act or which are helpful or material to an understanding of the purposes and enforcement of this act; and make, find, fix, determine and publish or broadcast the costs of production and the costs of processing, handling, storing, advertising

and marketing the agricultural products and commodities together with the various and several classifications thereof, and to advise producers concerning fair prices and best possible markets.

Adjusting Production to Requirements.

5. To coöperate with and assist any agricultural producer, coöperative or association in adjusting production or market deliveries to the existing or potential market requirements, and in effecting rules, regulations, agreements and organizations, tending to stabilize agricultural prices to producers at as near as possible the cost of production plus a reasonable profit.

Protecting Consumer Interests.

6. To take action under this act to protect the interests of consumers to the end that grades, packs, containers, quality, quantity and weight shall be as advertised or offered for sale.

Rules and Regulations.

7. To make, issue, and publish rules and regulations in conformance with the intents and purposes of this act and findings made hereunder, to assist and aid in the administration and enforcement hereof and to protect the best interests of the producers and consumers of agricultural products.

Public Hearings.

8. To conduct or hold public hearings to aid and assist the said board in reaching and making a determination of the cost or costs of production, handling or marketing of agricultural products or commodities and the efficient methods of marketing the same within the state of Utah; said hearings to be held and conducted at such times, places, and intervals and upon such notice as the board may, in its sole discretion, determine or deem to be advisable. (Sec. 7.)

3–10b–8. Procedure for Enforcement of Act.

Unlawful Practices.

1. Unfair or injurious practices as defined herein in handling, selling, storing, financing, marketing, grading or in any other act in connection with the movement of farm produce from the farm to the consumer are declared unlawful, and may be enjoined as hereinafter provided.

Board to Prevent Unlawful Practices.

2. The board is empowered and directed to prevent persons, partnerships or corporations from using unfair or injurious practices in agricultural commerce or trade.

Order to Desist—Request for Hearing—Complaint.

3. Whenever the board shall have reason to believe that any person, partnership or corporation has been or is violating the provisions of this act or is using unfair methods of competition in the handling of

agricultural products in commerce or trade and it shall appear to the board that it would be to the interest of the public to stop such violations or unfair methods of competition it shall issue and serve upon the person, partnership or corporation an order directing such person, partnership or corporation to cease and desist from using such violations or methods of competition; the person, partnership or corporation upon which the order is served may within ten days after receiving such order, request that a hearing be had before the board. If such request is made, the board shall serve upon such person, partnership or corporation a complaint stating its charges and a notice specifying the day and place of the hearing which shall be at least ten days after the service of said complaint and notice.

Continued Violations—Suit to Enjoin—Jurisdiction of District Courts.

4. If after such hearing the board shall be of the opinion that the acts, conduct, representations, violations or methods of competition in question are prohibited by this act or regulations promulgated hereunder or if no hearing is requested and if the person, partnership or corporation charged with using such unfair or injurious acts, conduct, representations, violations or methods of competition shall fail to cease the operation thereof or after discontinuing the same, shall again commence such acts, conduct, representations, violations or methods, the board shall cause a suit to be commenced in the district court in the state of Utah, in its name as the state board of agriculture and the name of the state of Utah, within the county wherein the acts, conduct, representations or methods of competition in question were used or where such person, partnership, or corporation resides and carries on business, to enjoin and restrain such person, partnership or corporation from conducting such unfair acts, conduct, representations, violations or methods of competition. The district courts of this state shall have jurisdiction of such suits and the trial thereof shall be de novo.

District Attorneys to Conduct Proceedings.

5. It shall be the duty of the several district attorneys of this state in their respective districts to conduct such proceedings as are herein provided when requested to do so by the board.

Actions to Vacate or Amend Orders.

6. Any member of the board who is dissatisfied with its decision, at his own or another's but not the board's expense, or any party required by such order of the board to cease and desist from violating any provision of this act, may, within thirty days after notice is given of the order, commence a suit within the district court of the state of Utah against the board as defendant within the county wherein such acts, conduct, representations or method of competition were used or wherein the person, partnership or corporation resides to set aside, vacate or amend such order and the hearing shall be by a trial de novo in the district court wherein it shall have authority to either set aside, vacate, amend or affirm such order of the board.

Appeals.

7. Any party feeling aggrieved by a decision rendered by the district court under the provisions of this act may prosecute an appeal to the supreme court of the state of Utah and the rules of the code of civil procedure shall be applicable to such appeal.

Compliance with Act Deemed Not in Restraint of Trade.

8. No individual, corporation, partnership or association by complying with the terms of this act or regulations hereunder, shall be deemed to be engaged in a conspiracy, or a combination in restraint of trade, or an illegal monopoly, or be deemed to be formed or to be operating for the purpose of lessening competition or of fixing prices arbitrarily; nor shall compliance of individuals, corporations, partnerships or associations with the terms hereof, or regulations promulgated hereunder, be construed as an unlawful restraint of trade, or as a part of a conspiracy or combination to accomplish an improper or illegal purpose or act. Adjustment of current and prospective production of agricultural commodities and its relation to the prospective volume of consumption, selling prices and existing or potential surpluses shall be encouraged and abetted by the Board to the end that every market may be served from the most convenient productive areas under a program of orderly marketing that will assure the maintenance of adequate and properly commensurate prices to producers.

Service and Return of Process.

9. Complaints, orders, notices, and other processes of the board under this section may be served by anyone duly authorized by the board either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer, or a director of the corporation to be served; or (b) by leaving a copy thereof with a suitable person over the age of 14 years at the principal office or place of business of such person, partnership, or corporation; or (c) mailing by registered mail a copy thereof addressed to such person, partnership or corporation at his or its principal place of business or office. The verified return by the person so serving said complaint, order, notice or other process setting forth the manner of said service shall be proof of the same, and the return postoffice receipt for said complaint, order, notice or other process registered and mailed as aforesaid shall be proof of the service of the same. (Sec. 8.)

Comparable provisions.

Cal. Agric. Code, § 1300.24, subd. d (comparable to 3–10b–8, subd. (8), in that it expressly declares that in civil or criminal action or proceeding for violation of Cartwright Act, the Unfair Practices Act, the Fair Trade Act, or any rule of statutory or common law against monopolies or combinations in restraint of trade, proof that the act complained of was done in compliance with provisions of statute dealing with marketing of agricultural products or a marketing order issued under the statute, and in furtherance of provisions and purposes of the statute, shall be a complete defense to such action or proceeding).

3-10b-9. Members of Board May Administer Oaths—Issue Subpoenas, etc.

Each of the members of the board for the purpose mentioned in this title shall have power to administer oaths, certify to official acts, issue subpoenas, compel attendance of witnesses, and the production of papers, books, accounts, documents and evidence. (Sec. 9.)

3-10b-10. Witness Fees and Mileage.

Each witness who shall appear before the board by its order shall receive for his attendance the fees and mileage provided for witnesses in civil causes in the district court, which shall be audited and paid by the state in the same manner as other expenses are audited and paid, upon the presentation of properly verified vouchers approved by the commissioner of agriculture. No witness shall be entitled to compensation from the state for attendance or travel, unless the board shall certify that his testimony was material to the matter investigated and unless subpoenaed by the board. (Sec. 10.)

3-10b-11. Depositions.

The board or any part may in any investigation cause depositions of witnesses to be taken as in civil actions. (Sec. 11.)

3-10b-12. Full Record of Proceedings to Be Kept.

A full and complete record, excerpt, or transcript of proceedings, shall be kept of all proceedings had before the board on any investigation. (Sec. 12.)

3-10b-13. Investigations—Powers of Agents.

For the purpose of making any investigation required in the performance of the duties and the exercise of the powers by the board as herein designated, the board may have power to appoint, by an order in writing, any member of the board, or any other competent person who is a resident of the state, as an agent, whose duties shall be prescribed in such order. In the discharge of his duties such agent shall have every power of an inquisitorial nature granted in this act to the board, and the same powers as a referee appointed by a district court with regard to taking evidence. The board may conduct any number of such investigations contemporaneously through different agents, and may delegate to such agents the taking of evidence bearing upon any investigation or hearing. The recommendations made by such agents shall be advisory only and shall not preclude the taking of further evidence or further investigation if the board so orders. (Sec. 13.)

3-10b-14. Special Prosecutors.

The board may direct a representative to act as special prosecutor in any action, proceeding, investigation, hearing or trial relating to matters within its jurisdiction. Upon the request of the board, the attorney-general, district attorney or the county attorney of the county in which any investigation, hearing or proceeding had upon the provisions of this title is pending, shall aid therein and prosecute, under the

supervision of the board, all necessary actions or proceedings for the enforcement of this title. Such proceedings may be by way of petition setting forth the facts relied upon and praying that violations of the board's orders or of this title shall be enjoined or otherwise prohibited. (Sec. 14.)

3-10b-15. Substantial Compliance Deemed Sufficient.

A substantial compliance with the requirements of this title shall be sufficient to give effect to the orders of the board, and they shall not be declared inoperative, illegal, or void for any omission of a merely technical nature. (Sec. 15.)

3-10b-16. Violating Restraining Orders—Warrant of Arrest.

In case of the violation of any restraining order or injunction granted after due notice under the provisions of this act, the court or judge thereof may summarily try and punish the offender. The proceedings may be commenced by filing with the clerk of the court an information under oath setting out the facts constituting such violation upon which the court or judge shall cause a warrant to issue under which the defendant shall be arrested. Either party may demand the production and oral examination of witnesses. (Sec. 16.)

3-10b-17. Definitions.

As used in this act, unless the context or subject matter requires otherwise:

1. "Agricultural products" includes floricultural, horticultural, viticultural, forestry, nut, seed, ground stock, dairy, poultry, bee and any and all farm products or refinements thereof.

2. "Agricultural commerce or trade" includes the sale, purchase, bartering, offering for sale or barter, exchanging, financing, shipping, storing, handling, processing and marketing of agricultural products or commodities. (Sec. 17.)

3-10b-18. Expenditures—Approval.

The board may make necessary expenditures with the approval of the state department of finance to obtain statistical and other information provided for herein. (Sec. 18.)

History.
As amended by L. 41, ch. 2, eff. July 1, inserting "with the approval of the state department of finance".

3-10b-19. Annual Report of Board.

The board shall make and submit to the governor an annual report containing a full and complete account of the transactions of its office, together with such facts, suggestions and recommendations as it may deem necessary. It shall be made and submitted as soon after October 1, of each year, as may be feasible in order to bring the report down to that date and shall be published as are the reports of other departments of this state. (Sec. 19.)

3-10b-20. Partial Invalidity—Saving Clause.

If any word, clause, sentence, paragraph or section of this act shall be declared invalid by any court of competent jurisdiction, the remain-

der of the act shall not be affected thereby and the legislature hereby declares that it would have passed the remaining parts of this act if it had known that such part or parts would be declared unconstitutional. (Sec. 20.)

3–10b–21. Conflicting Provisions Repealed.

All laws or acts in conflict with the provisions of this act or otherwise delegating authority for the enforcement hereof, to the extent of such conflict, are repealed. (Sec. 21.)

3–10b–22. Short Title.

This act may be known and cited as the "Agricultural Fair Trade Act." (Sec. 22.)

L. 1941, ch. 7; eff. May 13.

AGRICULTURAL COMMODITIES MARKETING ACT

AN ACT relating to agricultural commodities and concerning the production, sale and distribution of agricultural commodities; stating a declaration of policy and defining terms; providing for the stabilization and marketing of agricultural commodities; providing for the issuance for that purpose by the commissioners of agriculture of marketing orders for the purposes of regulating the handling in intrastate commerce of agricultural commodities; providing for the conditions upon which such orders may be issued, including the hearings with respect thereto; providing for the administration of this act and creating boards of control for the administration of such marketing orders; fixing the powers and duties of such boards; providing for the collection and disbursements of such marketing orders; providing for the making of rules and regulations covering the administration of marketing orders by such boards of control and for the administration of this act; and providing penalties for the violation of this act, and any rules and regulations made pursuant thereto; and to repeal all acts and parts of acts in conflict herewith.

Be it enacted by the Legislature of the State of Utah:

3–10b–23. Declaration of Public Interest.

It is declared that the disruption of the orderly exchange of commodities in intrastate commerce impairs the purchasing power of farmers and destroys the value of agricultural assets which support the credit structure of the state and that these conditions affect transactions in agricultural commodities with a public interest, and burden and obstruct the normal channels of intrastate commerce. (Sec. 1.)

Comparable provisions.
Cal. Agric. Code, § 1300.10, subd. c (marketing of agricultural commodities is declared to be affected with a public interest).

Cross-references.
Milk control, 3–10a; combinations and monopolies, 73–1.

3–10b–24. Declaration of Policy.

It is declared to be the policy of the legislature:

(a) Through the exercise of the powers conferred upon the commissioner of agriculture under this title, to establish and maintain such

orderly marketing conditions for agricultural commodities in intrastate commerce as will establish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period; and, in the case of all commodities for which the base period is the pre-war period, August, 1909, to July, 1914, will also reflect current interest payments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate, as contrasted with such interest payments and tax payments during the base period. The base period in the case of all agricultural commodities where necessary information on prices received for such commodities is available shall be the pre-war period, August, 1909, to July, 1914, otherwise the base period shall be the post-war period, August, 1919, to July, 1929, or part of such period.

(b) To protect the interest of the consumer by (1) approaching the level of prices which it is declared to be the policy of the legislature to establish in subsection (a) of this section by gradual correction of the current level at as rapid a rate as the commissioner of agriculture deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (2) authorizing no action under this title which has for its purpose the maintenance of prices to farmers above the level which it is declared to be the policy of the legislature to establish in sub-section (a) of this section. (Sec. 2.)

Comparable provisions.
Cal. Agric. Code, § 1300.10 (declaration as to existent unreasonable and unnecessary economic waste of agricultural wealth of the state and of the need to develop more efficient methods in marketing of agricultural commodities); § 1300.11 (statement of beneficial objectives; correlate marketing with market demands; establish orderly marketing; develop new and larger markets; eliminate or reduce economic waste; restore and maintain adequate purchasing power).

3-10b-25. Definitions.

(a) Agricultural Commodity as used in this act means all fruits, vegetables, eggs, live and dressed poultry and turkeys produced in the state of Utah.

(b) Producer means any person in this state in the business of producing or causing to be produced for market any agricultural commodities, *provided* producers shall not include producers who sell direct to the consumer agricultural products which they themselves have produced.

(c) Handler means any person engaged in the operation of selling, marketing or distributing, in intrastate commerce, or affecting intrastate commerce, agricultural commodities which are produced in Utah, but no regulation under this act shall apply to the sale of such agricultural commodities to the ultimate consumer.

(d) Person means an individual, firm, corporation, association, or any other business unit.

(e) Commissioner means a commissioner of agriculture of the state of Utah.

(f) To handle means to engage in the business of a handler, as herein defined. (Sec. 3.)

Comparable provisions.
Cal. Agric. Code, § 1300.12, as amended by Laws of 1941 (includes similar definitions).

3–10b–26. Commissioner to Administer Act—Marketing Orders—Rules for Issuance.

(a) The commissioner of agriculture shall administer and enforce the provisions of this act and the provisions of marketing orders hereunder regulating the handling of agricultural commodities in intrastate commerce.

(b) In order to effectuate the declared policy of this act, the commissioner of agriculture shall have the power, after due notice and opportunity for hearing, to issue marketing orders, in conformance with the provisions of this act, for the purpose of regulating the handling in intrastate commerce of designated agricultural commodities. Due notice shall be construed to mean such notice as, in the judgment of the commissioner, shall give notice to the growers and handlers of the particular agricultural products as to which it is proposed to issue the order, and the opportunity to be heard on their part shall be in such manner as may be determined by the commissioner. In making his determination of whether or not such a marketing order will effectuate the declared policy of this act, the commissioner shall take into consideration any and all facts available to him with respect to the following economic factors:

(1) The quantity and quality of such agricultural commodity available for distribution.

(2) The quantity of such agricultural commodity normally required by consumers.

(3) The cost of producing such agricultural commodity as determined by available statistics and surveys.

(4) The purchasing power of consumers as indicated by reports and indices.

(5) The level of prices of commodities, services and articles which the farmers commonly buy.

(6) The level of prices of other commodities which compete with or are utilized as substitutes for such agricultural commodity.

(c) (1) No marketing order or amendment thereto, issued pursuant to this act, shall become effective unless and until the commissioner determines the issuance of such order is approved and favored by at least two-thirds of the producers who, during a representative period, have produced for market the commodities specified therein in commercial quantities within the production area specified in such marketing order, and who, during such respective period, have produced at least two-thirds of the volume of such commodity sold within the marketing area specified in such marketing order, and by handlers who during such period handled not less than fifty percent of the volume of the commodity covered by the marketing order.

(2) Any order issued pursuant to this section shall become effective in the event that, notwithstanding the refusal or failure of handlers of more than 50 per centum of the volume of the commodity covered by such order which is produced or marketed within the production or marketing area defined in such order to approve a marketing order

relating to such commodity on which a hearing has been held, the commissioner of agriculture, with the approval of the governor, determines:

(a) That the refusal or failure to approve a marketing order (upon which a hearing has been held) by the handlers of more than 50 per centum of the volume of the commodity specified therein, which is produced or marketed within the production or marketing area specified therein tends to prevent the effectuation of the declared policy of this act with respect to such commodity; and

(b) That the issuance of such order is the only practical means of advancing the interests of the producers of such commodity pursuant to the declared policy and is approved or favored by at least two-thirds of the producers who, during a representative period determined by the commissioner, have been engaged, within the production area specified in such marketing order, in the production for market of the commodity specified therein, or who, during such representative period, have produced for market at least two-thirds of the volume of such commodity produced for market within the production area specified in such marketing order.

(c) In finding whether such order is assented to pursuant to the provisions of this act, the commissioner may consider the expression of the board of directors of any non-profit agricultural coöperative marketing association which is authorized by its articles of incorporation or by a meeting of its members to so express the approval or disapproval of the producers who are members of or stockholders in such non-profit agricultural marketing association. (Sec. 4.)

Comparable provisions.
Cal. Agric. Code, § 1300.13 (director of agriculture is required to administer and enforce statutory provisions).

3–10b–27. Id. Board of Control—Duties.

(a) Any marketing order issued pursuant to this act shall provide for the establishment of a board of control to administer such order in accordance with its terms and provisions. The members of the board shall be appointed by the commissioner from nominations submitted by the industry and shall hold office until the expiration of term or until such appointment is withdrawn by the commissioner for cause. The number of producers or handlers upon any such board shall be such number of producers or handlers as the commissioner finds is necessary to properly administer such order; *provided* that said board of control shall not exceed five members; *provided* that not more than two of whom shall be handlers.

(b) No member of any such board shall receive a salary, but each shall be entitled to his actual expenses incurred while engaged in performing his duties herein authorized. The duties of any such board shall be administrative only and may include only the following:

(1) To administer such marketing order in accordance with its terms and provisions.

(2) To recommend to the commissioner administrative rules and regulations relating to the marketing order.

(3) To receive and report to the commissioner complaints or violations of the marketing order.

(4) To recommend to the commissioner amendments to the marketing order.

(5) To appoint such employees as it may deem necessary, and determine the salaries and define the duties of such employees.

(6) To submit to the commissioner for his approval an estimated budget of expense necessary for the operation of any order established by authority of this act, and also submit for approval a method of assessing and collecting such funds as the commissioner may find necessary for the administration of such marketing order.

(7) To assist the commissioner in the collection of such necessary information and data as the commissioner may deem necessary to the proper administration of this act. (Sec. 5.)

Comparable provisions.
Cal. Agric. Code, § 1300.15 (marketing order must provide for establishment of advisory board to assist director of agriculture in administration of the order).

3–10b–28. Marketing Orders—Uniform.

Marketing orders issued by the commissioner under this act may be limited in their application by prescribing the marketing areas or portions of the state in which a particular order shall be effective. *Provided* that no marketing order shall be issued by the commissioner unless it embraces all persons of a like class in a given area who are engaged in a specific and distinctive agricultural industry or trade within this state. (Sec. 6.)

3–10b–29. Id. Provisions.

In accordance with the provisions, restrictions and limitations set forth herein, any marketing order issued by the commissioner pursuant to this act may contain any or all of the following provisions for regulating the handling of any agricultural commodities produced within this state, but no others:

(a) Provisions for determining the existence and extent of the surplus of any agricultural commodities, or of any grade, size or quality thereof, and providing for the control and disposition of such surplus, and for equalizing the burden of such surplus elimination or control among the producers or handlers affected.

(b) Provisions for limiting the total quantity of any agricultural commodities, or of any grade or grades, size or sizes, or quality or portions or combinations thereof, which may be sold, distributed or otherwise handled in intrastate commerce by any and all persons engaged in such distribution or handling, during any specified period or periods. The total quantity of any such commodity so regulated and permitted to be distributed or otherwise handled shall not be less than the quantity which the commissioner finds is reasonably necessary to supply the market demands of consumers of such commodity.

(c) Provisions for allotting the quantity of any agricultural commodities, or of any grade, size, or quality thereof, which each handler may purchase or acquire from, or handle on behalf of, any and all producers thereof, in intrastate commerce, during any specified period or periods under a uniform rule, applicable to all handlers so regulated, based upon the amounts produced or sold by such producers in a prior

period which the commissioner finds to be representative, or upon the current season's production or sales of such products, or both, to the end that the total quantity of such commodity, or of any grade or grades, size or sizes or quality or portions or combinations thereof, so purchased or handled in intrastate commerce, shall be apportioned equitably among the producers thereof.

(d) Provisions for allotting the quantity of any agricultural commodities, or of any grade or grades, size or sizes, quality or portions or combinations thereof, which each handler may distribute or handle in intrastate commerce under a uniform rule, applicable to all handlers so regulated, based upon the quantities of such commodity or of any grades, size or quality thereof, of the current season's crop, which each such handler has available for such distribution or handling, or upon the quantities of such commodity or of any grade, size or quality thereof so distributed or handled by each such handler in a prior period which the commissioner finds to be representative, or based upon both, to the end that the total quantity of such commodity, or any grade or grades, size or sizes or portions or combinations or quality thereof, distributed or handled in intrastate commerce during any specified period or periods shall be equitably apportioned among all such handlers thereof.

(e) Provisions regulating the period, or periods, during which any agricultural commodity, or any grade or grades, size or sizes or quality or portions or combinations of such commodity, may be distributed or otherwise marketed within this state by any and all persons.

(f) Provisions for the establishment of surplus or reserve pools of any agricultural commodities, or of the representative value of such commodity, or of any grade or grades, size or sizes, or quality or portions or combinations thereof, and providing for the sale of such surplus commodity and the equitable distribution among the persons interested therein of the net returns derived from the sale of such commodity or such distribution of such representative value of such commodity.

(g) Provisions for the establishment of uniform grading and inspection of any agricultural commodities delivered by producers to handlers or others engaged in the handling thereof and for the establishment of grading standards of quality, conditions, size or pack for any agricultural commodity, and the inspection and grading of such commodity in accordance with such grading standards so established. Such grading standards for any such commodity shall not be established below any minimum standards now prescribed by law for such commodity.

(h) Provisions for the advertising and sales promotion to create new or larger markets for agricultural commodities grown in the state of Utah, *provided* that any such plan shall be directed toward increasing the sale of such commodity without reference to a particular brand or trade name; and no funds raised from those producing or handling one commodity shall be used to advertise another commodity.

Provided further, that no advertising or sales promotion program shall be authorized by the commissioner which shall make use of false or unwarranted claims in behalf of any such product, or disparage the quality, value, sale or use of any other agricultural commodity.

(i) Provisions for price posting:

Providing that any grade or grades, size or sizes, or quality or portion, or combination thereof, shall be first sold only at prices filed in the manner provided for in such order.

(j) Provision to require the labeling, marking or branding of any agricultural commodities in conformity with the regulations as specified in any marketing order, issued under authority of this act.

(k) Provision for establishing convenient stations for inspection, weighing or receiving payment for any agricultural commodities sold or delivered by producers or handlers in conformity with any marketing order issued under authority of this act.

(l) Provision allowing a board of control to coöperate with any other state or federal agency whose activities may be deemed beneficial to the purpose of this act. (Sec. 7.)

Comparable provisions.
Cal. Agric. Code, § 1300.14, as amended by Laws of 1941 (statement of contents of marketing order).

3–10b–30. Id. Expenses—Assessment—Collection and Disbursement.

(a) Each order issued by the commissioner under this title shall provide that each handler subject thereto shall pay to any board of control established under such order such handler's pro rata share (as approved by the commissioner) of such expenses as the commissioner may find will necessarily be incurred by such board during any period specified by him, for the maintenance and functioning of such board. The pro rata share of the expenses payable by a coöperative association of producers shall be computed on the basis of the quantity of the agricultural commodity or product thereof covered by such order which is distributed, sold, or shipped in intrastate commerce by such coöperative association of producers. Any such board may maintain in its own name, or in the names of its members, a suit against any handler, subject to an order for the collection of such handler's pro rata share of expenses.

(b) The commissioner of agriculture may require that a board of control shall reimburse the commissioner for such funds only as are expended by the commissioner in performing his duties, as provided in this act, but shall include only reimbursement by a board of control of funds actually expended in connection with the particular order administered by such board.

(c) Any board of control established pursuant to this act is authorized to incur such expenses as are necessary to carry out its functions. Such board shall receive and disburse all funds received by it pursuant to paragraph (a) of this section. Any funds remaining at the end of a fiscal year over and above the necessary expenses of said board of control may be divided among all persons from whom such funds were collected, and such amounts due shall be credited to each person for payment of assessments during the succeeding season.

(d) Assessments made and moneys collected under the provisions of this section shall be divided into assessments and funds for administrative purposes and assessments and funds for advertising purposes. Such assessments and funds shall be used solely for the purpose for which they are collected. (Sec. 8.)

3–10b–31. Id. Termination—Disposition of Funds.

(a) The commissioner shall suspend or terminate any marketing order, or any provision of any marketing order, whenever he finds that such provision or order does not tend to effectuate the declared purposes of this act within the standards and subject to the limitations and restrictions herein imposed, *provided* that such suspension or termination shall not be effective until the expiration of the current marketing season. If the commissioner finds that the termination of any marketing order is requested in writing by more than fifty per cent of the producers, who are engaged within the designated production area in the production for market of the commodity specified in such marketing order, *provided* that such termination shall be effective only if announced on or before such date prior to the end of the current marketing period as may be specified in such order.

(b) Upon the termination of any marketing order, the board of control then functioning shall continue as joint trustees of all accounts, funds and property of said board for the purpose of liquidating the affairs of the board. The trustees shall continue in such capacity until discharged by the commissioner. Any moneys remaining after the accounts of the board have been settled shall be returned to the persons pro rata in proportion to their contributions. (Sec. 9.)

3–10b–32. Board of Control—Members' Liability.

The members of any such board of control duly appointed by the commissioner, including employes of such board, shall not be held responsible individually in any way whatsoever to any producer, distributor, or other handler, or any other person, for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person or employe, except for their own individual acts of dishonesty or crime. No such person or employe shall be held responsible individually for any act or omission of any other member of such board. The liability of the members of such board shall be several and not joint and no member shall be liable for the default of any other member. (Sec. 10.)

Comparable provisions.
Cal. Agric. Code, § 1300.21 (substantially identical).

3–10b–33. Administration—Uniformity.

The commissioner is authorized to confer with and coöperate with the legally constituted authorities of other states and of the United States, for the purpose of obtaining uniformity in the administration of federal and state marketing regulations, licenses or orders, and said commissioner is authorized to conduct joint hearings, issue joint or concurrent marketing orders, for the purposes and within the standards set forth in this act, and may exercise any administrative authority prescribed by this act to effect such uniformity of administration and regulation. (Sec. 11.)

3–10b–34. Conflicting Laws Repealed.

All acts or parts of acts in conflict herewith are repealed. (Sec. 12.)

3-10b-35. Violations—Misdemeanor.

Every person who violates any provision of this act, or any provision of any marketing order issued by the commissioner of agriculture pursuant hereto, or any rule or regulation adopted pursuant hereto shall be guilty of a misdemeanor. Each day during which any of such violations shall continue shall constitute a separate offense. (Sec. 13.)

3-10b-36. Complaints for Violation—Procedure.

(a) Upon the filing of a verified complaint charging violation of any provisions of this act or of any provision of any marketing order issued by the commissioner hereunder, or of any rule or regulation adopted pursuant hereto, and prior to the institution of any court proceeding authorized hereinafter, the commissioner may, in his discretion refer the matter to the attorney general or any district attorney of this state for action pursuant to the provisions of this act, or call a hearing to consider the charges set forth in such verified complaint. In such case the commissioner shall cause a copy of such complaint, together with a notice of the time and place of hearing of such complaint, to be served personally, or by mail, upon the person or persons named as respondent or respondents therein. Such service shall be made at least three days before said hearing shall be held in the city or town in which is situated the principal place of business of the respondent, or in which the violation complained of is alleged to have occurred, or at the office of the commissioner at his discretion. At the time and place designated for such hearing, the commissioner shall hear the parties to said complaint and shall enter in the office of the commissioner, his findings based upon facts established at such hearing.

(b) If the commissioner finds that no violation has occurred he shall forthwith dismiss such complaint and notify the parties to such complaint.

(c) If the commissioner finds that a violation has occurred he shall so enter his findings and notify the parties to such complaint. Should the respondent or respondents thereafter fail, neglect or refuse to desist from such violation, within the time specified by the commissioner, the commissioner may thereupon file a complaint against such respondent or respondents in a court of competent jurisdiction as set forth hereinafter.

(d) Each district attorney of this state, may, upon his own initiative, and shall upon any complaint of any person, if, after investigation he believes a violation to have occurred, bring an action in the proper court in his district in the name of the people of this state in any court of competent jurisdiction in the state of Utah against any person violating any provision of this act or of any marketing order issued by the commissioner hereunder, or any rules or regulations adopted pursuant hereto.

(e) The commissioner through the attorney general of this state may, upon his own initiative, and shall upon complaint of any person, if, after investigation he believes a violation to have occurred, bring an action in the name of the people of this state in the proper court of the state of Utah for an injunction against any person violating any provisions of this act or of any marketing order issued by the commissioner hereunder, or of any rule or regulation adopted pursuant hereto.

(f) The court may issue a temporary restraining order and preliminary injunction as in other actions for injunctive relief and upon trial of such action, and if judgment be in favor of plaintiff, the court shall permanently enjoin the defendant from further violations.

(g) The judgment, if in favor of the plaintiff, shall provide that the defendant pay to the plaintiff the cost of such action.

(h) Any such action may be commenced either in the county where defendant resides, or where any act or omission or part thereof complained thereof occurred. (Sec. 14.)

3-10b-37. Assessments—Collection.

Any assessment herein levied, in such specified amount as may be determined pursuant to the provisions of this act shall constitute a personal debt of every person so assessed and shall be due and payable when payment is called for thereby. In the event of failure of such person or persons to pay any such assessment upon the date so determined, the commissioner may file a complaint against such person or persons in a state court of competent jurisdiction for the collection thereon, as provided in Section 14. (Sec. 15.)

Comparable provisions.
Cal. Agric. Code, § 1300.20, as amended by Laws of 1941 (includes substantially identical provision).

CHAPTER 11

COLD STORAGE

Tit. 3, c. 11
Ref. to
S.L. '45, c. 142
Item 75, p. 286

3-11-1. Definitions, Regulations.
3-11-2. License — Inspection — Fees.
3-11-3. Revocation of License for Failure to Comply.
3-11-4. Licensee to Keep Records—Report Monthly.
3-11-5. Commissioner to Have Access —Inspection.
3-11-6. Diseased or Unfit Food Not to Be Stored — Mechanical Failure to Be Reported.
3-11-7. Date of Receipt and Removal —Tags—Evidence.
3-11-8. Maximum Storage Time — Extension—Report.
3-11-9. Sales—Cold Storage Goods to Be Marked.
3-11-10. Restorage and Transfer—Unlawful Acts.
3-11-11. Penalty.

3-11-1. Definitions, Regulations.

For the purpose of this chapter "cold storage" shall mean the storage or keeping of articles of food at a temperature sufficiently low to properly preserve such food in a cold storage warehouse, refrigerated locker plant, or combination of the two; "cold storage warehouse" shall mean any place artificially cooled to or below a temperature above zero or 45 degrees Fahrenheit, in which articles of food are placed and held for thirty days or more; "refrigerated locker plant" shall mean any location in which space in individual lockers is rented to individuals for the storage of food and which is artificially cooled to and maintained at a temperature of 10 degrees Fahrenheit or below; "sharp frozen" shall mean the freezing of food in a room in which the temperature is zero degrees Fahrenheit or below; "article of food" shall include any article used by man for food, drink, confectionery, or condiment, or which

enters into the composition of the same, whether simple, blended, mixed, or compound. All locker plants shall be equipped with a sharp freezing room or compartment and all articles of food shall be sharp frozen before being placed in the locker room. Each cold storage room or sharp freezing room or compartment shall be equipped with an approved accurate automatic recording thermometer device with a chart on which a continuous record of the temperature shall be recorded at all times. These charts shall be dated and signed by the licensee or his agent as operator and shall be preserved for such period of time as the commissioner of agriculture or an agent of the state board of agriculture shall direct, and shall be given to the commissioner whenever requested by him or an agent of the board. Such device and the period of time covered by the record on each chart shall be subject to the approval of the state board of agriculture. (C. L. 17, § 840.)

History.
As amended by L. 41, ch. 5, eff. May 13, adding last four sentences of section and also making other material changes.

Comparable provisions.
The Uniform Act to Regulate Cold Storage of Certain Articles of Food was approved in 1914. The Conference of Commissioners on Uniform State Laws and Proceedings decided in 1929 not to present this act to legislatures for enactment, pending further development of the science. The act was adopted, however, in Illinois, Maryland, Massachusetts, Tennessee, Utah and Wisconsin.

Illinois Uniform Cold Storage Act, Ill. Rev. Stats. 1941, Ch. 56½, § 80 (similar in purport; applicable to cold storage warehouses; Ch. 56½, §§ 93.1–93.20 deal with "locker," "locker plant," "branch locker plant", "sharp frozen food"; §§ 80–93 pertain to cold storage warehouses).

A. L. R. notes.
Validity, construction, and enforcement of "cold storage acts" and regulations, 29 A. L. R. 1442, 37 A. L. R. 1531.

3–11–2. License—Inspection—Fees.

No person shall maintain or operate a cold storage warehouse, a "refrigerated locker plant" or any combination of the two, without a license so to do issued by the state board of agriculture. Any person desiring such a license shall make written application to the state board of agriculture for that purpose, stating the location of the warehouse or refrigerated locker plant. The state commissioner of agriculture thereupon shall cause an examination to be made of such establishment, and if it is found by him to be in a proper sanitary condition and otherwise properly equipped for its intended use, the board shall issue a license authorizing the applicant to operate the same as a cold storage warehouse or refrigerated locker plant until December 31 of the year in which the license is issued. The license shall be issued upon payment by the applicant of a license fee of $10, except that the license fee for refrigerated locker plants shall be $5 per year for plants having four hundred lockers or less. All license fees shall be payable in advance for each year, *provided* that any license issued for plants beginning operation after July 1 shall be one-half of the amounts above specified. (C. L. 17, § 841.)

History.
As amended by L. 41, ch. 5, eff. May 13, adding part of section beginning with "except" in fifth line from bottom and also making other material changes.

Comparable provisions.
Ill. Rev. Stats. 1941, Ch. 56½, § 81 (substantially the same as to cold storage warehouses; applicable to person, firm or corporation; department of agri-

culture supervises operation of the act; license fee, $25 per annum).

Cross-references.
Municipal license, 15-8-39; warehouseman's lien, 52-4-5, 99-0-27 et seq.; warehouse receipts, Title 99; doing business without license, 103-26-68.

3-11-3. Revocation of License for Failure to Comply.

In case any cold storage warehouse or refrigerated locker plant or any part thereof shall at any time be found by the commissioner of agriculture to be in an insanitary condition or not properly equipped for its intended use, or not operated in accordance with the requirements of the law or regulations of the board of agriculture, he shall notify the licensee of such condition, and upon the failure of the licensee to put such cold storage warehouse or refrigerated locker plant in a sanitary condition or to properly equip the same for its intended use, or to operate it in compliance with the requirements of the law or the regulations of the board of agriculture, within a time to be designated by the commissioner he shall revoke such license. (C. L. 17, § 842.)

History.
As amended by L. 41, ch. 5, eff. May 13, making several material changes.

Comparable provisions.
Ill. Rev. Stats. 1941, Ch. 56½, § 82 (substantially the same as to cold storage warehouses).

3-11-4. Licensee to Keep Records—Report Monthly.

Every licensee of a cold storage warehouse shall keep accurate records of the articles of food received in and of the articles of food withdrawn from his cold storage warehouse, *provided* that this shall not apply to refrigerated locker plants, and the commissioner shall have free access to such records at any time. Every such licensee shall submit a monthly report to the commissioner, setting forth in itemized particulars the quantities and kinds of articles of food in his cold storage warehouse. Such monthly report shall be filed on or before the 5th day of each month, and the reports so rendered shall show the condition existing on the last day of the preceding month, and a summary of such report shall be prepared by the commissioner and shall be open to public inspection on or before the 10th day of each month. (C. L. 17, § 843.)

History.
As amended by L. 41, ch. 5, eff. May 13, inserting "of a cold storage warehouse" in first line and proviso which begins in third line, and making other minor changes.

Comparable provisions.
Ill. Rev. Stats. 1941, Ch. 56½, § 83 (substantially the same as to cold storage warehouses; exception thereto, provision is not applicable to individual locker or compartment of capacity not to exceed 25 cubic feet which is leased, rented, or where right of possession and use thereof is given to another).

3-11-5. Commissioner to Have Access—Inspection.

The commissioner shall inspect and supervise all cold storage warehouses or refrigerated locker plants and make such inspection of articles of food therein as he may deem necessary to secure the proper enforcement of this chapter, and he shall have access to all cold storage warehouses or refrigerated locker plants at all reasonable times. The state

board of agriculture may appoint such persons as it deems qualified to make any inspection under this chapter. (C. L. 17, § 844.)

History.
As amended by L. 41, ch. 5, eff. May 13, inserting "or refrigerated locker plants."

Comparable provisions.
Ill. Rev. Stats. 1941, Ch. 56½, § 84 (substantially identical as to cold storage warehouses).

3-11-6. Diseased or Unfit Food Not to Be Stored—Mechanical Failure to Be Reported.

No article of food intended for human consumption shall be knowingly placed, received or kept in any cold storage warehouse or refrigerated locker plant, if diseased, tainted, otherwise unfit for human consumption or in such condition that it will not keep wholesome for human consumption. No article of food, or other article for use other than for human consumption shall be placed, received or kept in any cold storage warehouse or refrigerated locker plant unless previously marked in accordance with forms to be prescribed by the commissioner in such a way as to indicate plainly the fact that such article of food is not to be sold or used for human food, and also unless it has been certified in writing by a qualified inspector of the Utah state department of agriculture or the United States department of agriculture, that such article is of such a nature that it will not contaminate in any way the articles of human food which are or may be stored in such establishment.

The operator of every cold storage warehouse or refrigerated locker plant shall immediately notify the commissioner of agriculture upon the occurrence of any shutdown of his plant because of failure of refrigeration equipment or any other reason. (C. L. 17, § 845.)

History.
As amended by L. 41, ch. 5, eff. May 13, adding part of section which follows "food" in tenth line and also making certain material changes in preceding part of section.

Comparable provisions.
Ill. Rev. Stats. 1941, Ch. 56½, § 85 (similar in purport as to cold storage warehouses).

3-11-7. Date of Receipt and Removal—Tags—Evidence.

No person shall place, receive or keep in any cold storage warehouse articles of food unless the same shall be plainly marked, stamped or tagged, either upon the container in which they are packed or upon the article of food itself, with the date when placed therein; and no person shall remove or allow to be removed such article of food from any cold storage warehouse unless the same shall be plainly marked, stamped or tagged, either on the container in which it is inclosed or upon the article of food itself, with the date of such removal; and such marks, stamps and tags shall be prima facie evidence of such receipt and removal and of the dates thereof. (C. L. 17, § 846.)

Comparable provisions.
Ill. Rev. Stats. 1941, Ch. 56½, § 86 (similar in purport as to cold storage warehouses; exception as to individual compartment or locker of dimensions and under circumstances explained in note under 3-11-4).

3-11-8. Maximum Storage Time—Extension—Report.

No person shall keep or permit to remain in any cold storage warehouse any article of food which has been held in cold storage either within or without the state for a longer aggregate period than twelve months, except with the consent of the commissioner as hereinafter provided, and except that articles of food which are quick frozen and held continuously at a temperature at or below 10 degrees Fahrenheit may be held in such plant for a period of not to exceed twenty-four months. The commissioner shall upon application during the twelfth month extend the period of storage beyond twelve months for any particular article of food, provided the same is found upon examination to be in proper condition for further cold storage. The length of time for which such further storage is allowed shall be specified in the order granting the permission. A report in each case in which such extension of storage may be permitted, including information relating to the reason for the action of the commissioner, the kinds and amounts of the articles of food for which the storage period was extended, and the length of time for which this continuance was granted, shall be filed, open to public inspection, in the office of the commissioner, and shall be included in his annual report. Such extension shall be not more than sixty days; a second extension of not more than sixty days may be granted upon reexamination, but the entire extended period shall not be more than one hundred and twenty days in all. (C. L. 17, § 847.)

History.
As amended by L. 41, ch. 5, eff. May 13, adding part of first sentence beginning with "and except" in fifth line.

Comparable provisions.
Ill. Rev. Stats. 1941, Ch. 56½, § 87 (similar in purport as to cold storage warehouses).

3-11-9. Sales—Cold Storage Goods to Be Marked.

It shall be unlawful to sell or to offer for sale any article of food which has been held for a period of thirty days or more in cold storage either within or without the state without notifying the persons purchasing or intending to purchase the same that it has been so held, by the display of a placard plainly and conspicuously marked "Cold Storage Goods" on the bulk mass or articles of food; and it shall be unlawful to advertise for sale cold storage goods without stating in the advertisement that such goods are cold storage products. It shall be unlawful to sell or offer for sale any cold storage butter unless the words "Cold Storage Goods" are plainly printed in type, in letters not less than one-fourth inch in height, in a conspicuous place on the outside of each wrapper or carton. It shall be unlawful for any dealer to sell or offer for sale cold storage eggs unless the words "Cold Storage Goods" are plainly and conspicuously printed in type, in letters not less than one-fourth inch in height, in a conspicuous place upon each carton.
(L. 23, p. 115, § 848.)

Comparable provisions.
Ill. Rev. Stats. 1941, Ch. 56½, § 88 (unlawful to sell or offer for sale any article of food which has been held in cold storage for period of one year or over within or without the state without placarding same "Cold Storage Goods" or "Refrigerated Goods;" also

unlawful to advertise or represent as fresh any article of food which has been held in cold storage for 30 days or over; eggs are not specifically mentioned; fruits, vegetables, poultry, meats, fish and sea foods may be labeled as frozen or frosted).

3-11-10. Restorage and Transfer—Unlawful Acts.

It shall be unlawful to return to any cold storage warehouse any article of food which has been once released from storage for the purpose of placing it on the market for sale. It shall be unlawful to transfer any article of food from one cold storage warehouse to another, if such transfer is made for the purpose of avoiding any provision of this chapter; and such transfer shall be unlawful unless all prior stampings, markings and taggings upon such articles shall remain thereon.

(C. L. 17, § 849.)

History.
As amended by L. 41, ch. 5, eff. May 13, making no apparent change.

Comparable provisions.
Ill. Rev. Stats. 1941, Ch. 56½, § 89 (identical).

3-11-11. Penalty.

Any person violating any provision of this chapter is guilty of a misdemeanor and shall be punished for the first offense by a fine not exceeding $100, and for the second or any subsequent offense by a fine not exceeding $299 or by imprisonment of not more than six months, or by both such fine and imprisonment in the discretion of the court.

(C. L. 17, § 851.)

Tit. 3, c. 12
Ref. to
S.L. '45, c. 142
Item 75, p. 286

CHAPTER 12

HOTELS AND LODGING HOUSES

3-12-1 to 3-12-13. (Repealed.)
L. 1941, ch. 32; eff. July 1.
3-12-14. Hotel Defined.
3-12-15. Inspection Certificate.
3-12-16. Id. Annual Fees.
3-12-17. Id. Application for.
3-12-18. Id. Revocation — Annual Inspection State Board of Health.
3-12-19. Sanitary Requirements.
3-12-20. Id. Ventilation.
3-12-21. Id. Plumbing, Lavatories, etc.
3-12-22. Id. Public Wash Room Required.
3-12-23. Fire Escapes Required.
3-12-24. Sanitary Requirements—Individual Towels.
3-12-25. Id. Beds, Bedding, Rooms.
3-12-26. Violations—Misdemeanor.
3-12-27. Sections Repealed.
3-12-28. Effective Date.

3-12-1 to 3-12-13. (Repealed by L. 41, ch. 32, § 14, eff. July 1. See 3-12-27.)

L. 1941, ch. 32; eff. July 1.

AN ACT relating to the supervision of hotels and lodging houses by the state board of health, and repealing Chapter 12, Title 3, Revised Statutes of Utah, 1933.

Be it enacted by the Legislature of the State of Utah:

3-12-14. Hotel Defined.

Every building or other structure with all buildings in connection kept, used, maintained as, or advertised as, or held out to the public to be, a place where sleeping accommodations are furnished for pay to

transient or permanent guests, in which five or more rooms are used for the accommodation thereof, shall for the purpose of this chapter be deemed a hotel. (Sec. 1.)

Comparable provisions.

Cal. Health and Safety Code, § 19400, Iowa Code 1939, § 2802, subd. 1 (similar; added phrase, "whether with or without meals;" number of rooms not specified).

Idaho Code § 38-1301 (eight or more rooms for accommodation of guests; sleeping accommodations furnished for hire to transient guests whether with or without meals).

Mont. Rev. Codes, § 2485 (includes similar definition; added thereto are phrases "whether with or without meals;" and "shall maintain an office and register").

Cross-references.

Innkeeper's liability, 39-0-1; crimes, 103-29; sales of intoxicants, 46-0; transfer of powers and duties respecting hotels and lodging houses to state board of health, 35-1-22 et seq.

Decisions from other jurisdictions.

—Iowa.

The business of an innkeeper is such that, although conducted by private parties for their own emolument, the public has such interest therein that it is properly the subject of regulation by law, and those engaged in it are subject to restrictions and limitations which do not apply to persons engaged in other kinds of business. Bowlin v. Lyon, 67 Iowa 536, 25 N. W. 766, 56 Am. Rep. 355.

A. L. R. notes.

Authority of clerk or other employee to waive innkeeper's regulation as to baggage or valuables, 56 A. L. R. 316.

Improper motive or purpose in going to hotel as affecting one's status as guest, or invitee of a guest, for purpose of determining degree of care owed by proprietor, 16 A. L. R. 1388.

Liability of innkeeper for indignity to one occupying room without being registered, 29 A. L. R. 481.

Liability of innkeeper for injury by object thrown or falling from room occupied by guest, 42 A. L. R. 1088.

Liability of innkeeper for injury to guest using stairway, 41 A. L. R. 967.

Liability of innkeeper for interference with guest, 17 A. L. R. 139.

Liability of innkeeper for property left by departing guest who intends to return, 22 A. L. R. 1194.

Status and rights of one renting room in club, 32 A. L. R. 1016.

What constitutes a boarding house, 19 A. L. R. 538.

What constitutes an hotel or inn, 19 A. L. R. 513; 53 A. L. R. 988.

What information must be given by a guest upon delivering articles into custody of innkeeper, 53 A. L. R. 1048.

3-12-15. Inspection Certificate.

No hotel shall be kept, maintained or conducted without first procuring an inspection certificate therefor, and no such certificate shall be transferable. No holder of a certificate under this chapter shall be relieved thereby from compliance with the ordinance of any town, city or county in which the building for which such certificate is issued is located. (Sec. 2.)

3-12-16. Id. Annual Fees.

The annual fee for such inspection certificate shall be $2 for hotels with twenty rooms or less; $5 for hotels with more than twenty rooms and not exceeding fifty rooms; and $10 for hotels with more than fifty rooms and not exceeding one hundred rooms; $15 for hotels with more than one hundred rooms; which shall be paid to the state board of health before the inspection certificate is issued. All such fees collected by the state board of health shall be paid over quarterly to the state treasurer. (Sec. 3.)

3-12-17. Id. Application for.

The state board of health shall upon request therefor furnish to any person desiring to conduct a hotel the necessary application blank for

inspection certificate, which the applicant shall fill in, stating the full name and address of the owner or agent of the building or the lessee or manager of such hotel, together with a full description of the building and property used or to be used for such business and the location of the same. Said application upon its return to the state board of health shall be accompanied by the proper inspection certificate fee. (Sec. 4.)

3-12-18. Id. Revocation—Annual Inspection State Board of Health.

The state board of health shall inspect or cause to be inspected at least once each year every hotel in this state, and for that purpose he shall have the right of entry and access thereto at any reasonable time. Whenever upon such inspection it shall be found that the business or property is not being conducted or used in the manner and condition required by the provisions of this chapter, it shall thereupon be the duty of the state board of health to revoke the inspection certificate. (Sec. 5.)

3-12-19. Sanitary Requirements.

Every hotel shall be properly lighted, plumbed and ventilated with strict regard for the health, comfort and safety of the guests. Proper lighting shall be construed to mean both daylight and artificial illumination; proper plumbing shall be construed to mean that all plumbing and drainage shall be constructed and maintained according to approved sanitary principles; and proper ventilation shall be construed to require at least one door and one window in each sleeping room. (Sec. 6.)

1. Improper lighting.

Whether or not electric generating system complied with statutory requirements for proper lighting, whether premises were reasonably safe as to guest who fell downstairs when lights failed as he was starting down, and whether failure of lighting system was proximate cause of guest's injuries, were questions of fact for the jury. Carpenter v. Syrett, 99 U. 208, 104 P.2d 617.

Contributory negligence of guest who fell downstairs when lights failed was question for jury. Carpenter v. Syrett, 99 U. 208, 104 P.2d 617.

A. L. R. notes.

Liability of innkeeper for injury to guest from defective lighting appliance, 6 A. L. R. 590.

3-12-20. Id. Ventilation.

No room shall be used for a sleeping room which does not open to the outside of the building or to light wells, air shafts or courts. (Sec. 7.)

3-12-21. Id. Plumbing, Lavatories, etc.

In all cities, towns and villages where a system of waterworks is maintained for public use every hotel therein operated shall be equipped with suitable water closets for the accommodation of its guests, which shall be connected by proper plumbing with the sewerage system, if there is one, otherwise with a septic tank or cesspool, and equipped with means of flushing such water closets with the water of such system so as to prevent sewer gas or effluvia from arising therefrom. All lavatories, bathtubs, sinks, drains and urinals in hotels must be connected and equipped in a similar manner. In all cities, towns and villages not having a system of waterworks every hotel shall have properly constructed privies, which shall have tightly built backs, shall be kept clean

and free from filth, and shall have separate apartments for the sexes, each being properly designated. (Sec. 8.)

Cross-references.
Cities may regulate plumbing, 15-8-46.

A. L. R. notes.
Innkeeper's liability for injury to guest due to condition of plumbing or conditions in bathroom or shower room, 118 A. L. R. 1103.

3-12-22. Id. Public Wash Room Required.

Every hotel shall be provided with a main public wash room convenient and easy of access to guests. (Sec. 9.)

A. L. R. notes.
Innkeeper's liability for injury to guest due to condition of plumbing or conditions in bathroom or shower room, 118 A. L. R. 1103.

3-12-23. Fire Escapes Required.

Every hotel that is more than two stories high or any part of which is more than two stories high shall be equipped with an iron stairway or fire escape on the outside of the building, connected on each floor above the ground floor and to the cornice of the building with openings from each floor, which shall be well fastened and secured, having landings, not less than six feet in length and three feet in width, guarded by an iron railing not less than thirty inches in height. Such landings shall be connected by iron stairs not less than two feet wide with steps with not less than six inch treads and placed at an angle of not more than forty-five degrees. The way of egress to each fire escape shall be at all times kept free and clear of any and all obstructions. At every opening to every fire escape a red light shall be kept burning at night. There shall be one fire escape for each fifteen sleeping rooms on each floor. There shall be posted and maintained in conspicuous places in each hall and guest room, except in the hall and rooms on the ground floor, plainly printed notices reading "Fire escapes are indicated by red lights." Cities and towns may pass ordinances in relation to fire escapes on hotels in addition to but not in conflict with the provisions of this section. (Sec. 10.)

Comparable provisions.
Idaho Code, § 38-1304 (similar).

Cross-references.
Cities may regulate fire escapes, 15-8-53.

A. L. R. notes.
Liability of innkeeper to guest for injury due to fire, 37 A. L. R. 158.

3-12-24. Sanitary Requirements—Individual Towels.

In each bedroom or in each public wash room of every hotel between the hours of 6:30 A. M. and 9 P. M. daily there shall be furnished at least two clean individual towels for each guest, and such towels shall be at least ten inches wide and fifteen inches long after being washed. (Sec. 11.)

3-12-25. Id. Beds, Bedding, Rooms.

All hotel keepers shall provide each bed, bunk, cot or other sleeping place for the use of guests with pillow slips and under and over sheets.

Each over sheet shall be not less than ninty-nine inches long after being washed and of sufficient width to completely cover the mattress and springs. Such sheets and pillow slips shall be made of white cotton or linen and after being used by one guest they shall be washed and ironed before they are furnished to another guest; a clean set being furnished to each guest. All bedding, including mattresses, quilts, blankets, pillows, sheets and comforts, used in any hotel must be thoroughly aired and kept clean; and no bedding, including mattresses, quilts, blankets, pillows, sheets or comforts, shall be used which is worn out or unfit for further use. Any room in any hotel infested with bedbugs or vermin shall be fumigated, disinfected and renovated until such bedbugs or other vermin are exterminated. The floors, walls and ceilings of all rooms in all hotels shall be kept clean and free from dirt and filth. (Sec. 12.)

Comparable provisions.

Cal. Health and Safety Code, § 19440 (sufficient supply of bedding); § 19441 (clean sheets and pillow slips when bed is assigned to different person); § 19442 (sheets on single bed to be at least 50 inches wide and 98 inches long; on other beds, 81 by 98 inches); § 19443 (clean bedding, free from filth or dirt); § 19444 (no worn out or unfit bedding to be used); § 19472 (bedbugs and other vermin to be exterminated); § 19473 (walls, floor, ceiling, doors and other parts of room used for sleeping purposes to be kept free from dirt or filth).

Idaho Code, § 38–1310, Mont. Rev. Codes, § 2487 (bedrooms must be kept free from vermin; bedding shall be clean and sufficient; sheets at least eight feet in length).

Iowa Code 1939, § 2834 (similar as to bedding; sheets 96 inches in length); § 2835 (bedbugs and other vermin to be exterminated).

3–12–26. Violations—Misdemeanor.

Any person violating any of the provisions of this chapter is guilty of a misdemeanor. (Sec. 13.)

3–12–27. Sections Repealed.

Chapter 12, Title 3, Revised Statutes of Utah, 1933, is repealed. (Sec. 14.)

3–12–28. Effective Date.

This act shall take effect on July 1, 1941, at 12:01 a. m. or upon the proclamation of the governor prior to that date. (Sec. 15.)

Tit. 3, c. 13
Ref. to
S.L. '45, c. 142
Item 75, p. 286

CHAPTER 13

Tit. 3, c. 13
New matter
S.L. '45, c. 137
Secs. 1-2
p. 270

WEIGHTS AND MEASURES

3–13–1. U. S. Standards Adopted.
3–13–2. Office and Working Standards —Custody.
3–13–3. Safe-keeping—Certification.
3–13–4. City Weights and Measures—Inspection—Certification.
3–13–5. General Supervision—Inspection at State Institutions.
3–13–6. Powers and Duties of Commissioner of Agriculture.
3–13–7. Correct Devices to Be Sealed and Marked.
3–13–8. Incorrect Devices to Be Condemned.
3–13–9. City Sealer—Appointment—Salary.
3–13–10. Id. Bond.
3–13–11. City Standards—Certification.
3–13–12. Powers and Duties of City Sealers.
3–13–13. City Sealer to Report to Commissioner.
3–13–14. Violators Subject to Arrest.
3–13–15. Interference with Inspectors, a Misdemeanor.
3–13–16. False Impersonation, a Misdemeanor.

3-13-17. Sales of Coal, etc., Only by Weight.
3-13-18. Id. Of Food Products—Package to Indicate Net Contents.
3-13-19. Id. Of Dry Goods—Container to Indicate Amount.
3-13-20. Id. Of Butter, Oleomargarine, Only by Weight—Labeling.
3-13-21. Id. Of Bread, Only by Weight—Labeling.
3-13-22. Id. Liquids, Nonliquids, Fruits—Containers.
3-13-23. Sales of Berries and Small Fruit—Containers.
3-13-24. "Weight" Means "Net Weight."
3-13-25. Use of False Weights or Measures, a Misdemeanor.
3-13-26. Definitions.

3-13-1. U. S. Standards Adopted.

The weights and measures received from the United States under a resolution of Congress approved June 14, 1836, and such new weights and measures as shall be received from the United States as standard weights and measures in addition thereto or in renewal thereof, and such as shall be supplied by the state in conformity therewith, and certified by the National Bureau of Standards, shall be the state standards of weights and measures. (C. L. 17, § 6276.)

Comparable provisions.

Cal. Bus. and Prof. Code, § 12303 (substantially the same).

Idaho Code, § 69-201 (similar).

Iowa Code 1939, § 3227 (similar).

Mont. Rev. Codes, § 4212 (weights and measures accepted and used by United States government, except as specified by state statutes, are the lawful standard weights and measures of the state).

Cross-references.

Municipal powers, 15-8-45; counties, 19-5-32; weighings at coal mines, 55-3-1; inspection of mine scales, 55-3-5; weights and measures used by public utilities, 76-4-17 to 20.

Decisions from other jurisdictions.

— California.

The law regulating weights and measures is founded upon experience and the soundest policy and is, like all such enactments, designed for the better protection of the rights of parties acquired under contracts; and the legislature contemplated that contracts are to be conclusively presumed to have been made in reference to the statute, unless the parties themselves have agreed or indicated in their contracts that their execution is to be governed by some usage of trade or custom prevailing in the community where they were made, or their terms are to be performed. Hale Bros. v. Milliken, 5 Cal. App. 344, 90 P. 365.

Where it appeared that a statute applied throughout the state to all the counties, cities and municipalities thereof, being therefore uniform in its operation, the fact that it did not make it compulsory upon the respective counties and municipalities to appoint such sealers did not render it lacking in the uniformity necessary to a compliance with section 11 of Article I of the Constitution, nor make it a special law within meaning of subdivisions 9, 28 and 29 of section 25, Article IV. Scott v. Boyle, City and County Auditor, 164 Cal. 321, 128 P. 941.

The statute seeks to provide a uniform system for the regulation of the measurement and graduation of merchandise, manufactured articles and commodities sold and manufactured throughout the state. Milliken v. Myers, City Auditor, 25 Cal. App. 510, 144 P. 321.

— Iowa.

Whether the weight in question, in a prosecution for using false weights, was actually false is one of fact as to which testimony may be given by those who have compared the weight with other weights; a comparison with the standard weight provided by the state would be conclusive, but is not the only evidence admissible on the question. State v. Frolic, 95 Iowa 424, 64 N. W. 264.

3-13-2. Office and Working Standards—Custody.

In addition to the state standards of weights and measures provided for above there shall be supplied by the state at least one complete set of copies thereof to be kept at all times in the office of the commissioner of agriculture and to be known as office standards, and such other weights, measures and apparatus as may be found necessary to carry

out the provisions of this chapter to be known as working standards. Such weights, measures and apparatus shall be verified by the commissioner of agriculture upon their initial receipt and at least once in each year thereafter; the office standards by direct comparison with the state standards and the working standards by comparison with the office standards. When found accurate upon these tests the office and working standards shall be certified to by the commissioner. The office standards shall be used in making all comparisons of weights, measures, and weighing and measuring devices, submitted for test in the office of the commissioner, and the state standards shall be used only in verifying the office standards and for scientific purposes.

(C. L. 17, § 6277.)

Comparable provisions.
Cal. Bus. and Prof. Code, § 12305 (similar).
Idaho Code, § 69–101 (includes similar provision).

3–13–3. Safe-keeping—Certification.

The commissioner shall take charge of the standards adopted by this chapter as the standards of the state, and cause them to be kept in his office at the state capitol, from which they shall not be removed except for repairs or for certification, and he shall take all other necessary precautions for their safe-keeping. He shall maintain the state standards in good order, and shall submit them at least once in ten years to the National Bureau of Standards for certification. He shall keep a complete record of the standards, balances and other apparatus belonging to the state, and shall take a receipt for the same from his successor in office.

(C. L. 17, § 6280.)

Comparable provisions.
Cal. Bus. and Prof. Code, § 12304 (similar).
Idaho Code, § 69–101 (includes similar provision).
Mont. Rev. Codes, § 4236 (state sealer of weights and measures has general supervision of weights and measures of the state).

3–13–4. City Weights and Measures—Inspection—Certification.

3-13-4
Rel. matter
S.L. '45, c. 137
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The commissioner shall at least once in five years try and prove by the office standards all standard weights, measures and other apparatus which may belong to any city required to appoint a sealer and to purchase and keep standards of weights and measures by the provisions of this chapter, and shall certify to such when found to be accurate. The commissioner shall at least once in two years visit such cities for the purpose of inspecting the work of the local sealers, and in the performance of such duties he may inspect the weights, measures, balances or any other weighing or measuring device of any person, and shall have the same powers as the local sealer of weights and measures. The board of agriculture shall issue from time to time regulations for the guidance of city sealers, and said regulations shall govern the procedure to be followed by such officers in the discharge of their duties.

(C. L. 17, § 6281.)

Comparable provisions.
Iowa Code 1939, § 3266 (inspection provision).

Decisions from other jurisdictions. — Iowa.
Cities have power to enact ordinances

regulating inspection, weighing, and measuring of commodities sold in load lots, if reasonable in scope. Huss v. City of Creston, 224 Iowa 844, 278 N. W. 196, 116 A. L. R. 242.

3-13-5. General Supervision—Inspection at State Institutions.

The commissioner shall have general supervision of the weights and measures, and weighing or measuring devices, offered for sale, sold or in use in the state. He shall at least once annually test all scales, weights and measures used in checking the receipts or disbursements of supplies in every institution for the maintenance of which moneys are appropriated by the legislature, and he shall report in writing his findings to the supervisory board and to the executive officer of the institution concerned. (C. L. 17, § 6282.)

3-13-6. Powers and Duties of Commissioner of Agriculture.

When not otherwise provided by law the commissioner, where there is no city sealer, shall inspect and test all weights and measures, and weighing or measuring devices, kept, offered or exposed for sale, sold or used, by any person in proving the size, quantity, extent, area or measurement of quantities, things, produce or articles for distribution or consumption, purchased or offered or submitted by such person or persons for sale, hire or award; and he shall from time to time weigh or measure and inspect packages or amounts of commodities of whatsoever kind kept for the purpose of sale, offered for sale or sold. He shall at least once each year and as much oftener as he may deem necessary see that all weights, measures and weighing or measuring devices used are correct. He may for the purpose above mentioned and in the general performance of his official duties enter and go into or upon, without formal warrant, any stand, place, building or premises, or stop any dealer and require him, if necessary, to proceed to some place which the commissioner may specify for the purpose of making the proper tests. (C. L. 17, § 6283.)

3-13-7. Correct Devices to Be Sealed and Marked.

Whenever the commissioner compares weights or measures, or weighing or measuring instruments, and finds that they correspond, or causes them to correspond, with the standards in his possession, he shall seal or mark such weights, measures or weighing or measuring instruments with appropriate devices. (C. L. 17, § 6284.)

Comparable provisions.
Cal. Bus. and Prof. Code, § 12505 (similar in purport).

3-13-8. Incorrect Devices to Be Condemned.

The commissioner shall condemn and seize, and may destroy, incorrect weights or measures, or weighing or measuring devices, that in his judgment are not susceptible of satisfactory repair; but such as are incorrect and yet may be repaired he shall mark or tag "Condemned for repairs." The owner or user of any weights or measures, or weighing or measuring devices, so marked or tagged shall have the same repaired or corrected within ten days unless upon satisfactory showing the commis-

sioner shall extend such time, and he shall neither use nor dispose of the same in any way, but shall hold the same at the disposal of the commissioner. Any weights or measures, or weighing or measuring devices, that have been condemned for repairs and have not been repaired as required above shall be confiscated by the commissioner.

(C. L. 17, § 6285.)

Comparable provisions.

Cal. Bus. and Prof. Code, § 12506; and § 12507, as amended by Laws of 1941 (similar; owner or user of "out of order" weighing or measuring instruments is given 30 days in which to have them repaired or corrected).

Mont. Rev. Codes, § 4251 (similar in purport).

3-13-9. City Sealer—Appointment—Salary.

There shall be a city sealer of weights and measures in cities of not less than twenty-five thousand population according to the latest official state or United States census, to be appointed by the city commission. He shall be paid a salary to be determined by the city commission, and no fee shall be charged by him or by the city for the inspecting, testing or sealing or the repairing or adjusting of weights or measures, or weighing or measuring devices. Whenever the city commission shall deem it necessary one or more deputy sealers of weights and measures may be appointed and their salaries fixed as above. All deputies appointed shall have the same powers and may perform the same duties as the city sealer when acting under his instructions and direction.

(C. L. 17, § 6287.)

Comparable provisions.

Cal. Bus. and Prof. Code, §§ 12207, 12208 (these sections pertaining to city sealers were repealed); § 12200, as amended by Laws of 1941 (creating in each county the office of county sealer of weights and measures).

3-13-10. Id. Bond.

The city sealer of weights and measures shall forthwith on his appointment give a bond in the penal sum of $1000, with sureties to be approved by the appointing power, for the faithful performance of the duties of his office. (C. L. 17, § 6288.)

3-13-11. City Standards—Certification.

The city commission of each city required to appoint a sealer under the provisions of this chapter shall procure at the expense of the city and shall keep at all times a set of weights and measures and other apparatus as complete and of such materials and construction as the commissioner of agriculture may direct. All such weights, measures and other apparatus having been tried and accurately proven by the commissioner of agriculture shall be sealed and certified to by him as hereinbefore provided, and shall be then deposited with and preserved by the city sealer as public standards for such city. (C. L. 17, § 6289.)

Comparable provisions.

Cal. Bus. and Prof. Code, § 12209 ("every sealer" is required to preserve copies of standards of weights and measures in his possession; and to keep them in safe and suitable place when not actually in use; and to file annually a written report).

3–13–12. Powers and Duties of City Sealers.

Where not otherwise provided by law the city sealer shall have the same powers and shall perform the same duties within his city as are granted to and imposed upon the commissioner of agriculture by sections 3–13–6 to 3–13–8. (C. L. 17, § 6290.)

Comparable provisions.

Cal. Bus. and Prof. Code, § 12210 (each sealer is required, within his county, to inspect, try and test all mechanical weighing devices, measurement instruments, etc.); § 12211 (required to weigh or measure, from time to time, packages or amounts of commodities sold).

3–13–13. City Sealer to Report to Commissioner.

The city sealer shall keep a complete record of all his official acts and shall make an annual report, duly sworn to, on the 30th day of November to the commissioner of agriculture on blanks furnished by the latter, and also any special reports that the latter may request. (C. L. 17, § 6291.)

Comparable provisions.

Cal. Bus. and Prof. Code, § 12209 ("every sealer" must file written report annually).

3–13–14. Violators Subject to Arrest.

The commissioner of agriculture and his deputies and inspectors, and the city sealers and deputy sealers of weights and measures, are hereby made special policemen, and are authorized and empowered to arrest without formal warrant any violator of the statutes in relation to weights and measures, and to seize for use as evidence, without formal warrant, any false or unsealed weight or measure, or weighing or measuring device, or package or amount of commodity, found to be used or retained, offered or exposed for sale, or sold, in violation of law. (C. L. 17, § 6292.)

Comparable provisions.

Cal. Bus. and Prof. Code, § 12213 ("each sealer" may without formal warrant, enter any place or premises or stop any vehicle and may require the apprehended person to proceed with the commodity in question to some place which the sealer may specify for purpose of making proper tests).

Iowa Code 1939, § 3271 (provision as to punishment of one engaged in purchase or sale of any commodity by weight or measurement who has in his possession any inaccurate scales, weights or measures); § 3274 (commodities weighed on scale bearing inspection card issued by the department shall not be required to be reweighed by any city or town ordinance, nor shall their sale, at the weights so ascertained, be prohibited or restricted by such ordinance).

Decisions from other jurisdictions.

— Iowa.

In a prosecution for using false weights, evidence that the defendant's scales were inaccurate at other times than on the occasion referred to in the indictment is admissible as tending somewhat to show guilty knowledge. State v. Jamison, 110 Iowa 337, 81 N. W. 594.

3–13–15. Interference with Inspectors, a Misdemeanor.

Any person who hinders or obstructs in any way the commissioner or any inspector or deputy, or any city sealer or deputy sealer of weights and measures, in the performance of his official duties is guilty of a misdemeanor. (C. L. 17, § 6293.)

3–13–16. False Impersonation, a Misdemeanor.

Any person who impersonates in any way the commissioner or any inspector or deputy, or any city sealer or deputy sealer of weights and

measures, by the use of his seal or a counterfeit of his seal or otherwise is guilty of a misdemeanor, and shall be punished by a fine of not less than $100 or imprisonment not exceeding one year or by both such fine and imprisonment. (C. L. 17, § 6294.)

3-13-17. Sales of Coal, etc., Only by Weight.

It shall be unlawful to sell or offer to sell any coal, coke or charcoal in any other manner than by weight. It shall be unlawful for any person to deliver any coal, coke or charcoal unless each delivery is accompanied by a delivery ticket in duplicate on each of which shall be in ink or other indelible substance distinctly expressed in pounds the gross weight of the load, the tare weight of the delivery vehicle and the quantity or quantities of coal, coke or charcoal contained in the vehicle used in such deliveries, with the name of the purchaser thereof and the name of the dealer from whom purchased. One of such tickets shall be surrendered to the commissioner of agriculture, his deputy or inspector, or to a city sealer or deputy sealer of weights and measures, upon demand for his inspection; and a ticket or weight slip issued by him when he desires to retain the original shall be delivered to the purchaser of the coal, coke or charcoal at the time of the delivery of the fuel, and the other ticket shall be retained by the seller of the fuel. When the buyer carries away the purchase a delivery ticket showing the actual number of pounds delivered to him must be given to him at the time the sale is made.

(C. L. 17, § 6295.)

Cross-references.
Weighing coal, 55–3.

A. L. R. notes.
Validity of statute or ordinance requiring commodities to be sold in a specified quantity or weight, 6 A. L. R. 429, 26 A. L. R. 28, 32 A. L. R. 676.

3-13-18. Id. Of Food Products—Package to Indicate Net Contents.

3-13-18 Rel. matter S.L. '45, c. 137 Secs. 1, 2 p. 270

It shall be unlawful to keep for the purpose of sale or to sell, or to offer or expose for sale, any food products in package form unless the net quantity of the contents is plainly and conspicuously marked on the outside of the package in terms of weight, measure or numerical count; *provided, however,* that reasonable variations or tolerances shall be permitted; such reasonable variations or tolerances, and also exemptions as to small packages, shall be established by rules and regulations made by the board of agriculture; *and provided further,* that this section shall not be construed to apply to those commodities in package form, the manner of the sale of which is specifically regulated by the provisions of other sections of this chapter. The word "package" as used in this section shall be construed to include the package, carton, case, can, box, barrel, bottle, phial or other container put up by the manufacturer; or when put up by the vendor prior to the order of the commodity, if such container may be labeled, branded or stenciled or otherwise marked, or if it may be suitable for labeling, branding or stenciling or marking otherwise, making one complete package of the commodity. The word "package" shall also be construed to include both the wholesale and the retail package, with the exception of shipping cases when their contents are properly marked. (C. L. 17, § 6296.)

3-13-19. Id. Of Dry Goods—Container to Indicate Amount.

It shall be unlawful to keep for the purpose of sale, to offer or expose for sale, or to sell, any commodity composed in whole or in part of cotton, wool, linen or silk, or any other textile material, on a spool or similar holder, or in a container or band, or in a bolt or roll, or in a ball, coil or skein, or in any similar form, unless the net amount of the commodity in terms of weight or measure shall be definitely, plainly and conspicuously marked on the principal label, if there is such a label; otherwise, on a wrapping, band or tag attached thereto. The words "spool or similar holder, container, or band, bolt or roll, or ball, coil or skein" shall be construed to include the spool or similar holder, container or band, bolt or roll, or ball, coil or skein, put up by the manufacturer, or when put up prior to the order of the commodity by the vendor. It shall be held to include both the wholesale and the retail package.

(C. L. 17, § 6297.)

A. L. R. notes.

Construction of statute or ordinance as to containers, 35 A. L. R. 782; validity of statute or ordinance as to "containers," 5 A. L. R. 1068, 101 A. L. R. 862.

3-13-20. Id. Of Butter, Oleomargarine, Only by Weight—Labeling.

It shall be unlawful for any person to sell or offer to sell any butter, or renovated or process butter, or oleomargarine, in any other manner than by weight. It shall be unlawful for any person to put up, pack or keep for the purpose of sale, to offer or expose for sale or to sell, any butter, or renovated or process butter, or oleomargarine, in the form of prints, bricks or rolls in any other than the following sizes, to-wit: one-quarter pound, one-half pound, one pound, one and one-half pound, or multiples of one pound. Each print, brick or roll shall bear a definite, plain and conspicuous statement of its true net weight on the principal label, where there is such a label; otherwise, on the outside wrapper thereof; such statement shall be in gothic type not less than twelve-point. The prints, bricks or rolls referred to in this section shall be construed to include those prints, bricks or rolls put up by the manufacturer or producer, or put up by the vendor prior to the order of the commodity. (C. L. 17, § 6298.)

A. L. R. notes.

Validity of statute or ordinance requiring commodities to be sold in a specified quantity or weight, 6 A. L. R. 429, 26 A. L. R. 28, 32 A. L. R. 676.

3-13-21. Id. Of Bread, Only by Weight—Labeling.

All bread kept for the purpose of sale, offered or exposed for sale, or sold, shall be sold by weight. To each loaf of bread shall be attached a label plainly showing its correct weight and the name of the manufacturer thereof; the size of the label and type to be used to be specified by the board of agriculture. It shall be unlawful for any person to make or keep for the purpose of sale, to offer or expose for sale, or to sell, any bread other than such as shall be marked in accordance with the provisions of this section. (C. L. 17, § 6299.)

A. L. R. notes.

Validity of statute or ordinance requiring commodities to be sold in a specified quantity or weight, 6 A. L. R. 429, 26 A. L. R. 28, 32 A. L. R. 676.

3-13-22. Id. Liquids, Nonliquids, Fruits—Containers.

It shall be unlawful to sell, except for immediate consumption on the premises, liquid commodities in any other manner than by weight or liquid measure, or commodities not liquid in any other manner than by measure of length, by weight or by numerical count; *provided, however,* that nothing in this section shall be construed to prevent the sale of vegetables, fruits and produce in the standard barrel adopted by the United States government, or of berries and small fruit in boxes as provided in section 3-13-23, or of articles usually sold by the head or bunch. For the purpose of this section the term "commodities not liquid" shall be construed to include goods, wares and merchandise which have heretofore been sold by measure of length, by weight, by measure of volume or by numerical count, or which are susceptible of sale in any of these ways. (C. L. 17, § 6300.)

A. L. R. notes.

Construction of statute or ordinance in relation to containers, 35 A. L. R. 782; validity of statute or ordinance as to "containers," 5 A. L. R. 1068, 101 A. L. R. 862; validity of statute or ordinance requiring commodities to be sold in a specified quantity or weight, 6 A. L. R. 429, 26 A. L. R. 28, 32 A. L. R. 676.

3-13-23. Sales of Berries and Small Fruit—Containers.

It shall be unlawful to sell or offer to sell any berries or small fruits in any other manner than by weight or in the containers described in this section. It shall be unlawful to procure or keep for the purpose of sale, to offer or expose for sale, or sell or give away, any baskets or other open containers for berries or small fruits holding one quart or less, or to procure or keep for the purpose of sale, to offer or expose for sale, or to sell, berries or small fruits in baskets or in other open containers holding one quart or less of any other than the following capacities when level full: one quart, having a capacity of 67.2 cubic inches and containing not less than twenty-four ounces; one pint, having a capacity of 33.6 cubic inches and containing not less than twelve ounces; one half-pint, having a capacity of 16.8 cubic inches and containing not less than six ounces; except that the weights used in the sale of red currants shall be twenty-one ounces for quarts, 10.5 ounces for pints and 5.3 ounces for half-pints. It shall be unlawful to use unclean or insanitary berry cups, crates, boxes, sacks or other containers. It shall be unlawful for any dealer or vendor to transfer berries or small fruits from one container to another, or from containers in which said fruits or berries are packed by the producer. (L. 27, p. 10, § 6301.)

History.

As amended by L. 35, ch. 6, eff. May 14, inserting, after "ounces" in thirteenth line, clause beginning with "except", and making several changes in weights and certain minor changes in phraseology in preceding part of section.

A. L. R. notes.

Construction of statute or ordinance as to containers, 35 A. L. R. 782; validity of statute or ordinance as to "containers," 5 A. L. R. 1068, 101 A. L. R. 862; validity of statute or ordinance requiring commodities to be sold in a specified quantity or weight, 6 A. L. R. 429, 26 A. L. R. 28, 32 A. L. R. 676.

3-13-24. "Weight" Means "Net Weight."

Whenever any commodity is sold on a basis of weight it shall be unlawful to employ any other weight in such sale than the net weight of the commodity; and all contracts concerning goods sold on a basis of weight shall be understood and construed accordingly. Whenever the weight of a commodity is mentioned in this chapter, it shall be understood and construed to mean the net weight of the commodity.

(C. L. 17, § 6302.)

3-13-25. Use of False Weights or Measures, a Misdemeanor.

Any person who offers or exposes for sale, sells, or uses in the buying or selling of any commodity or thing, or who offers or exposes for hire or reward, or hires or retains in his possession, a false weight or measure, or weighing or measuring device, which has not been sealed by the commissioner of agriculture or by a sealer of weights and measures within one year, or who disposes of any condemned weight or measure, or weighing or measuring device, contrary to law, or removes any tag placed thereon by the commissioner of agriculture or by a sealer of weights and measures; or who sells or offers or exposes for sale less than the quantity he represents, or takes or attempts to take more than the quantity he represents when as the buyer he furnishes the weight, measure, or weighing or measuring device, by means of which the amount of the commodity is determined; or who keeps for the purpose of sale, offers or exposes for sale, or sells, any commodity in a manner contrary to law; or who violates any provision of this chapter for which a specific penalty has not been provided; or who sells or offers for sale, or uses or has in his possession for the purpose of selling or using, any device or instrument to be used to, or calculated to, falsify any weight or measure is guilty of a misdemeanor. (C. L. 17, § 6303.)

3-13-26. Definitions.

The words "weights, measures, or weighing or measuring devices," shall include all weights, scales, beams, measures of every kind, instruments and mechanical devices, for weighing or measuring, and any appliances and accessories connected with any or all such instruments. The words "sell" or "sale" include barter and exchange.

(C. L. 17, § 6304.)