

CHAPTER 257.

[H. B. 408.]

UNIFORM WASHINGTON FOOD, DRUG, AND
COSMETIC ACT.

AN ACT prohibiting adulteration, misbranding, and false advertising of food, drugs, devices, and cosmetics; providing for the registration of certain food, drugs, devices, and cosmetics, and repealing chapter 168, Laws of 1917, and chapter 211, Laws of 1907 as amended by chapter 36, Laws of 1923 (section 6137 to section 6139, inclusive, section 6144 to section 6154, inclusive, Remington's Revised Statutes; section 2535 to section 2548, inclusive, Pierce's Code, also Pierce's Perpetual Code 568-23 to -27).

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

Title. SECTION 1. This act may be cited as the Uniform Washington Food, Drug, and Cosmetic Act.

Legislative intent. SEC. 2. This act is intended to enact state legislation (a) which safeguards the public health and promotes the public welfare by protecting the consuming public from injury by product use and the purchasing public from injury by merchandising deceit, flowing from intrastate commerce in food, drugs, devices, and cosmetics; and (b) which is uniform, as provided in this act, with the Federal Food, Drug, and Cosmetic Act; and with the Federal Trade Commission Act, to the extent it expressly outlaws the false advertisement of food, drugs, devices, and cosmetics; and (c) which thus promotes uniformity of such law and its administration and enforcement, in and throughout the United States.

Definitions. SEC. 3. For the purposes of this act, terms shall apply as herein defined unless the context clearly indicates otherwise.

Federal act. SEC. 4. The term "Federal Act" means the Federal Food, Drug, and Cosmetic Act, approved on June 25, 1938. (Title 21 U. S. C. 301 et seq.; 52 Stat. 1040 et seq.)

SEC. 5. The term "intrastate commerce" means

any and all commerce within the State of Washington and subject to the jurisdiction thereof; and includes the operation of any business or service establishment. Interstate
commerce.

SEC. 6. The term "sale" means any and every sale and includes (a) manufacture, processing, packing, canning, bottling, or any other production, preparation, or putting up; (b) exposure, offer, or any other proffer; (c) holding, storing, or any other possessing; (d) dispensing, giving, delivering, serving, or any other supplying; and (e) applying, administering, or any other using. Sale.

SEC. 7. The term "director" means the Director of the Department of Agriculture of the State of Washington and his duly authorized representatives. Director.

SEC. 8. The term "person" includes individual, partnership, corporation, and association. Person.

SEC. 9. The term "food" means (a) articles used for food or drink for man or other animals, (b) chewing gum, and (c) articles used for components of any such article. Food.

SEC. 10. The term "drug" means (a) articles recognized in the official United States Pharmacopoeia, official Homoeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and (b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (c) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (d) articles intended for use as a component of any article specified in clause (a), (b), or (c); but does not include devices or their components, parts, or accessories. Drug.

SEC. 11. The term "device" (except when used in section (17) of this act and in sections 22 (j), 45, 87, and in section 65 as used in the sentence "(as Device.

compared with other words, statements, designs, or devices, in the labeling)”) means instruments, apparatus, and contrivances, including their components, parts and accessories, intended (a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or (b) to affect the structure or any function of the body of man or other animals.

Cosmetic.

SEC. 12. The term “cosmetic” means (a) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (b) articles intended for use as a component of any such article; except that such term shall not include soap.

Official compendium.

SEC. 13. The term “official compendium” means the official United States Pharmacopoeia, official Homoeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them.

Label.

SEC. 14. The term “label” means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this act that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

Immediate container.

SEC. 15. The term “immediate container” does not include package liners.

Labeling.

SEC. 16. The term “labeling” means all labels and other written, printed, or graphic matter (a) upon any article or any of its containers or wrappers, or (b) accompanying such article.

SEC. 17. If any article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

Misbranding.

Misleading label.

SEC. 18. The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body.

Representation of drugs.

SEC. 19. The term "new drug" means (a) any drug the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety of drugs, as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or (b) any drug the composition of which is such that such drug, as a result of investigations to determine its safety for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions: *Provided*, That no drug

New drug.

in use on the effective date of this act shall be regarded as a new drug.

Advertisement.

SEC. 20. The term "advertisement" means all representations, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

Contaminated with filth.

SEC. 21. The term "contaminated with filth" applies to any food, drug, device, or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

Prohibited acts.

SEC. 22. The following acts and the causing thereof are hereby prohibited:

(a) The sale in intrastate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded.

(b) The adulteration or misbranding of any food, drug, device, or cosmetic in intrastate commerce.

(c) The receipt in intrastate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the sale thereof in such commerce for pay or otherwise.

(d) The introduction or delivery for introduction into intrastate commerce of (1) any food in violation of section 53; or (2) any new drug in violation of section 75.

(e) The dissemination within this state, in any manner or by any means or through any medium, of any false advertisement.

(f) The refusal to permit (1) entry and the taking of a sample or specimen or the making of any investigation or examination as authorized by section 96; or (2) access to or copying of any record as authorized by section 99.

(g) The refusal to permit entry or inspection as authorized by section 100.

(h) The removal, mutilation, or violation of an embargo notice as authorized by section 29.

(i) The giving of a guaranty or undertaking in intrastate commerce, referred to in section 26, that is false.

(j) The forging, counterfeiting, simulating, or falsely representing, or without proper authority, using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under section 53. Prohibited acts.

(k) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of a food, drug, device, or cosmetic, or the doing of any other act with respect to a food, drug, device, or cosmetic, or the labeling or advertisement thereof, which results in a violation of this act.

(l) The using in intrastate commerce, in the labeling or advertisement of any drug, of any representation or suggestion that an application with respect to such drug is effective under section 505 of the Federal act or under section 75 of this act, or that such drug complies with the provisions of either such section.

SEC. 23. (a) In addition to the remedies hereinafter provided the Director is hereby authorized to apply to the Superior Court of Thurston County for, and such Court shall have jurisdiction upon prompt hearing and for cause shown to grant, a temporary or permanent injunction restraining any person from violating any provision of section 22, without proof that an adequate remedy at law does not exist. Injunctive relief.

(b) Whenever it appears to the satisfaction of the Court in the case of a newspaper, magazine, periodical, or other publication, published at regular intervals (1) that restraining the dissemination of a false advertisement in any particular issue of such publication would delay the delivery of such issue after the regular time therefor, and (2) that such delay would be due to the method by which the

manufacture and distribution of such publication is customarily conducted by the publisher in accordance with sound business practice, and not to any method or device adopted for the evasion of this section or to prevent or delay the issuance of an injunction or restraining order with respect to such false advertisement or any other advertisement, the Court shall exclude such issue from the operation of the restraining order or injunction.

Penalty.

SEC. 24. Any person who violates any provision of section 22 shall be guilty of a misdemeanor and shall on conviction thereof be subject to a fine of not more than two hundred dollars (\$200); but if the violation is committed after a conviction of such person under this section has become final, such person shall be subject to imprisonment for not more than thirty (30) days, or a fine of not more than five hundred dollars (\$500), or both such imprisonment and fine.

Penalty.

SEC. 25. Notwithstanding the provisions of section 24 of this act, in case of a violation of any provision of section 22, with intent to defraud or mislead, the penalty shall be imprisonment for not more than ninety (90) days, or a fine of not more than one thousand dollars (\$1,000), or both such imprisonment and fine.

Acts not punishable.

SEC. 26. No person shall be subject to the penalties of section 24:

(1) For having violated section 22 (c), if he establishes that he received and sold such article in good faith, unless he refuses on request of the Director to furnish the name and address of the person in the State of Washington from whom he received such article and copies of all available documents pertaining to his receipt thereof; or

(2) For having violated section 22 (a), (c), or (d), if he establishes a guaranty or undertaking signed by, and containing the name and address of,

the person in the State of Washington from whom he received such article in good faith, to the effect that such article complies with this act; or

(3) For having violated section 22 (e), if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person in the State of Washington from whom he received such advertisement in good faith, to the effect that such advertisement complies with this act; or

Acts not punishable.

(4) For having violated section 22 (i), if he establishes that he gave such guaranty or undertaking in good faith and in reliance on a guaranty or undertaking to him, which guaranty or undertaking was to the same effect and was signed by, and contained the name and address of, a person in the State of Washington.

SEC. 27. No publisher, radio broadcast licensee, advertising agency, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which the advertisement relates, shall be subject to the penalties of section 24 by reason of his dissemination of any false advertisement, unless he has refused on the request of the Director to furnish the name and address of the manufacturer, packer, distributor, seller, or advertising agency in the State of Washington, who caused him to disseminate such false advertisement.

Advertisers, radio stations.

SEC. 28. Whenever the Director shall find in intrastate commerce an article subject to this act which is so adulterated or misbranded that it is unfit or unsafe for human use and its immediate condemnation is required to protect the public health, such article is hereby declared to be a nuisance and the Director is hereby authorized forthwith to destroy such article or to render it unsaleable for human use.

Destruction of adulterated goods.

SEC. 29. Whenever the Director shall find, or shall have probable cause to believe, that an article

Embargo
against sale.

subject to this act is in intrastate commerce, which was introduced into such commerce in violation of sections 53 or 75, or which is so adulterated or misbranded as to label, that its embargo under this section is required to protect the consuming or purchasing public from substantial injury, he is hereby authorized to affix to such article a notice of its embargo and against its sale in intrastate commerce, without permission given under this act. But if, after such article has been so embargoed, the Director shall find that such article does not involve a violation of this act, such embargo shall be forthwith removed.

Petition
to affirm
embargo.

SEC. 30. When the Director has embargoed an article, he shall, forthwith and without delay in no event later than ten (10) days after the affixing of notice of its embargo, petition the Superior Court for an order affirming such embargo. Such Court shall then have jurisdiction, for cause shown and after prompt hearing to any claimant of such article, to issue an order which directs the removal of such embargo or the destruction or the correction and release of such article. An order for destruction or correction and release shall contain such provision for the payment of pertinent court costs and fees and administrative expenses, as is equitable and which the Court deems appropriate in the circumstances. An order for correction and release may contain such provision for bond, as the Court finds indicated in the circumstances.

Consolidation
of
actions.

SEC. 31. Two or more petitions under section 30 of this act, which pend at the same time and which present the same issue and claimant hereunder, shall be consolidated for simultaneous determination by one Court of jurisdiction, upon application to any Court of jurisdiction by the Director or by such claimant.

SEC. 32. The claimant in any proceeding by peti-

tion under section 30 of this act shall be entitled to receive a representative sample of the article subject to such proceeding, upon application to the Court of jurisdiction made at any time after such petition and prior to the hearing thereon.

SEC. 33. No state Court shall allow the recovery of damages from administrative action for condemnation under section 28 or for embargo under section 29 of this act, if the court finds that there was probable cause for such action. Damages.

SEC. 34. (a) It shall be the duty of each State Attorney, County Attorney, or City Attorney to whom the Director reports any violation of this act, or regulations promulgated under it, to cause appropriate proceedings to be instituted in the proper courts, without delay, and to be duly prosecuted as prescribed by law. Prosecution.

(b) Before any violation of this act is reported by the Director to any such attorney for the institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views to the Director, either orally or in writing, with regard to such contemplated proceeding. Notice of violation.

SEC. 35. Nothing in this act shall be construed as requiring the Director to report for the institution of proceedings under this act, minor violations of this act, whenever he believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning. Minor violations.

SEC. 36. All such proceedings for the enforcement, or to restrain violations, of this act shall be by and in the name of the State of Washington. Title of case.

SEC. 37. Whenever in the judgment of the Director such action will promote honesty and fair dealing in the interest of consumers, he shall promulgate regulations fixing and establishing for any food, Regulations.

Regulations.

under its common or usual name so far as practicable, a reasonable definition and standard of identity, a reasonable standard of quality, and/or reasonable standards of fill of container. In prescribing any standard of fill of container, consideration shall be given to and due allowance shall be made for product or volume shrinkage or expansion unavoidable in good commercial practice, and need for packing and protective material. In prescribing any standard of quality for any canned fruit or canned vegetable, consideration shall be given to and due allowance shall be made for the differing characteristics of the several varieties thereof. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the Director shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label.

Regulations shall conform to Federal standards.

SEC. 38. The definitions and standards of identity, the standards of quality and fill of container, and the label requirements prescribed by regulations promulgated under this section shall conform, in so far as practicable, with those prescribed by regulations promulgated under section 401 of the Federal act and to the definitions and standards promulgated under the meat inspection act approved March 4, 1907, as amended.

Definition of adulterated food.

SEC. 39. A food shall be deemed to be adulterated (1) if it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health; or (2) if it bears or contains any added poisonous or added deleterious substance which is unsafe within the meaning of section 57;

or (3) if it consists in whole or in part of any diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for food; or (4) if it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health; or (5) if it is in whole or in part the product of a diseased animal or of an animal which has died otherwise than by slaughter or which has been fed on the uncooked offal from a slaughterhouse; or (6) if its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health.

Definition of
adulterated
food.

SEC. 40. A food shall be deemed to be adulterated (1) if any valuable constituent has been in whole or in part omitted or abstracted therefrom; or (2) if any substance has been substituted wholly or in part therefor; or (3) if damage or inferiority has been concealed in any manner; or (4) if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

SEC. 41. A food shall be deemed to be adulterated if it bears or contains a coal tar color other than one that is harmless and suitable for use in food, as provided by regulations promulgated under section 406 (b) of the Federal act.

SEC. 42. A food shall be deemed to be adulterated if it is confectionery and it bears or contains any alcohol or non-nutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of one per centum (1%), natural gum, and pectin: *Provided*, That this section shall not apply to any confectionery by reason of its containing less than one-half of one per centum (1%) by volume of alcohol derived

solely from the use of flavoring extracts, or to any chewing gum by reason of its containing harmless non-nutritive masticatory substances.

Misbranded
food.

SEC. 43. A food shall be deemed to be misbranded (a) if its labeling is false or misleading in any particular; or (b) if it is offered for sale under the name of another food; or (c) if it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated; or (d) if its container is so made, formed or filled as to be misleading.

SEC. 44. If a food is in package form, it shall be deemed to be misbranded, unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: *Provided*, That under clause (2) of this section reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations promulgated by the Director.

Misbranded
food.

SEC. 45. A food shall be deemed to be misbranded if any word, statement, or other information required by or under authority of this act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

SEC. 46. If a food purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by section 37, it shall be deemed to be misbranded unless (1) it conforms to such definition and standard, and (2) its label bears the name of the food

specified in the definition and standard, and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food.

SEC. 47. If a food purports to be or is represented as a food for which a standard of quality has been prescribed by regulations as provided by section 37, and its quality falls below such standard, it shall be deemed to be misbranded unless its label bears in such manner and form as such regulations specify, a statement that it falls below such standard. Misbranded
food.

SEC. 48. If a food purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations as provided by section 37, and it falls below the standard of fill of container applicable thereto, it shall be deemed to be misbranded unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard.

SEC. 49. If a food is not subject to the provisions of section 46 of this act, it shall be deemed to be misbranded unless its label bears (1) the common or usual name of the food, if any there be, and (2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each: *Provided*, That, to the extent that compliance with the requirements of clause (2) of this section is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the Director.

SEC. 50. If a food purports to be or is represented for special dietary uses, it shall be deemed to be misbranded, unless its label bears such information concerning its vitamin, mineral and other dietary Misbranded
food.

properties as is necessary in order to fully inform purchasers as to its value for such uses, as provided by regulations promulgated by the Director, such regulations to conform insofar as practicable with regulations under section 403 (j) of the Federal act.

Misbranded food.

SEC. 51. If a food bears or contains any artificial flavoring, artificial coloring, or chemical preservative, it shall be deemed to be misbranded unless it bears labeling stating that fact: *Provided*, That to the extent that compliance with the requirements of this section is impracticable, exemptions shall be established by regulations promulgated by the Director. The provisions of this section and of sections 46 and 49, with respect to artificial coloring, shall not apply in the case of butter, cheese, or ice cream.

SEC. 52. Nothing in this act shall be construed to require the labeling or advertising to indicate the natural vitamin, natural mineral, or other natural dietary properties of dairy products or other agricultural products when sold as food.

Regulations for manufacture or packing.

SEC. 53. Whenever the Director finds after investigation that the distribution in intrastate commerce of any class of food may, by reason of contamination with micro-organisms during the manufacture, processing, or packing thereof in any locality, be injurious to health, and that such injurious nature cannot be adequately determined after such articles have entered intrastate commerce, he then, and in such case only, shall promulgate regulations providing for the issuance, to manufacturers, processors, or packers of such class of food in such locality, of permits to which shall be attached such conditions governing the manufacture, processing, or packing of such class of food, for such temporary period of time, as may be necessary to protect the public health; and after the effective date of such regulations, and during such temporary period, no person shall introduce or deliver for introduction into

intrastate commerce, any such food manufactured, processed, or packed by any such manufacturer, processor, or packer unless such manufacturer, processor, or packer holds a permit issued by the Director as provided by such regulations. Insofar as practicable such regulations shall conform with, shall specify the conditions prescribed by, and shall remain in effect only so long as those promulgated under section 404 (a) of the Federal act.

SEC. 54. The Director is authorized to suspend immediately upon notice any permit issued under authority of this section, if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the Director shall, immediately after prompt hearing and an inspection of the factory or establishment, reinstate such permit, if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued or as amended.

Suspension
of permit.

SEC. 55. Any officer or employee duly designated by the Director shall have access to any factory or establishment, the operator of which holds a permit from the Director, for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for such inspection shall be ground for suspension of the permit until such access is freely given by the operator.

Inspection
of premises.

SEC. 56. Food which is, in accordance with the practice of the trade, to be processed, labeled, or re-packed in substantial quantities at an establishment other than the establishment where it was originally processed or packed, is exempted from the affirmative labeling requirements of this act, while it is in transit in intrastate commerce from the one establishment to the other, if such transit is made in good faith for such completion purposes only; but it is

Food in
transit.

otherwise subject to all the applicable provisions of this act.

Regulations
when
poisonous
substance
added to
food.

SEC. 57. Any poisonous or deleterious substance added to any food, except where such substance is required in the production thereof or cannot be avoided by good manufacturing practice, shall be deemed to be unsafe for purposes of the application of clause (2) of section 39; but when such substance is so required or cannot be so avoided, the Director shall promulgate regulations limiting the quantity therein or thereon to such extent as he finds necessary for the protection of public health, and any quantity exceeding the limits so fixed shall also be deemed to be unsafe for purposes of the application of clause (2) of section 39. While such a regulation is in effect limiting the quantity of any such substance in the case of any food, such food shall not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within the meaning of clause (1) of section 39. In determining the quantity of such added substance to be tolerated in or on different articles of food, the Director shall take into account the extent to which the use of such substance is required or cannot be avoided in the production of each such article, and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances.

Compliance
with
Federal act.

SEC. 58. The regulations promulgated under section 57 of this act shall conform, insofar as practicable, with those promulgated under section 406 (a) of the Federal act.

SEC. 59. A drug or device shall be deemed to be adulterated (1) if it consists in whole or in part of any filthy, putrid, or decomposed substance; or (2) if it has been produced, prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may

have been rendered injurious to health; or (3) if it is a drug and its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health; or (4) if it is a drug and it bears or contains, for purposes of coloring only, a coal tar color other than one that is harmless and suitable for use in drugs for such purposes, as provided by regulations promulgated under section 504 of the Federal act.

Adulterated
drug.

SEC. 60. If a drug or device purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium, it shall be deemed to be adulterated. Such determination as to strength, quality or purity shall be made in accordance with the tests or methods of assay set forth in such compendium or prescribed by regulations promulgated under section 501 (b) of the Federal act. No drug defined in an official compendium shall be deemed to be adulterated under this section because it differs from the standard of strength, quality, or purity therefor set forth in such compendium, if its difference in strength, quality, or purity from such standard is plainly stated on its label. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homoeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia unless it is labeled and offered for sale as a homoeopathic drug, in which case it shall be subject to the provisions of the Homoeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia.

Adulterated
drug.

SEC. 61. If a drug or device is not subject to the provisions of section 60 of this act and its strength differs from, or its purity or quality falls below, that

which it purports or is represented to possess, it shall be deemed to be adulterated.

SEC. 62. A drug shall be deemed to be adulterated if any substance has been (1) mixed or packed therewith so as to reduce its quality or strength or (2) substituted wholly or in part therefor.

Misbranded
drug.

SEC. 63. A drug or device shall be deemed to be misbranded if its labeling is false or misleading in any particular.

SEC. 64. If a drug or device is in package form, it shall be deemed to be misbranded unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: *Provided*, That under clause (2) of this section reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations promulgated by the Director.

SEC. 65. A drug or device shall be deemed to be misbranded if any word, statement, or other information required by or under authority of this act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

Misbranded
drug.

SEC. 66. A drug or device shall be deemed to be misbranded if it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha eucaïne, barbituric acid, beta eucaïne, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marihuana, morphine, opium, paraldehyde, peyote, or sulphomethane; or any chemical derivative of such substance, which derivative has been

designated as habit forming by regulations promulgated under section 502(d) of the Federal act; unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning—May be habit forming."

SEC. 67. If a drug is not designated solely by a name recognized in an official compendium it shall be deemed to be misbranded unless its label bears (1) the common or usual name of the drug, if such there be; and (2), in case it is fabricated from two or more ingredients, the common or usual name of each active ingredient, including the quantity, kind, and proportion of any alcohol, and also including, whether active or not, the name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein: *Provided*, That to the extent that compliance with the requirements of clause (2) of this section is impracticable, exemptions shall be established by regulations promulgated by the Director.

SEC. 68. A drug or device shall be deemed to be misbranded unless its labeling bears (1) adequate directions for use; and (2) such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users: *Provided*, That where any requirement of clause (1) of this section as applied to any drug or device, is not necessary for the protection of the public health, the Director shall promulgate regulations exempting such drug or device from such require-

ments. Such regulations shall include the exemptions prescribed under section 502 (f) (1) of the Federal act, in so far as such exemptions are applicable hereunder.

Misbranded
drug.

SEC. 69. A drug or device shall be deemed to be misbranded if it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein: *Provided*, That the method of packing may be modified with the consent of the Director, as permitted under section 502 (g) of the Federal act. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homoeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homoeopathic drug, in which case it shall be subject to the provisions of the Homoeopathic Pharmacopoeia of the United States, and not to those of the United States Pharmacopoeia.

SEC. 70. If a drug or device has been found by the Secretary of Agriculture of the United States to be a drug liable to deterioration, it shall be deemed to be misbranded unless it is packaged in such form and manner, and its label bears a statement of such precautions, as required in an official compendium or by regulations promulgated under section 502 (h) of the Federal act for the protection of the public health.

SEC. 71. A drug shall be deemed to be misbranded if (1) its container is so made, formed, or filled as to be misleading; or (2) if it is an imitation of another drug; or (3) if it is offered for sale under the name of another drug; or (4) if it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof.

SEC. 72. A drug or device shall be deemed to be misbranded if it is a drug which by label provides, or which the Federal act or any applicable law requires by label to provide, in effect, that it shall be used only upon the prescription of a physician, dentist, or veterinarian, unless it is dispensed at retail on a written prescription signed by a physician, dentist, or veterinarian, who is licensed by law to administer such a drug.

SEC. 73. A drug or device which is, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at an establishment other than the establishment where it was originally processed or packed, is exempted from the affirmative labeling and packaging requirements of this act, while it is in transit in intrastate commerce from the one establishment to the other, if such transit is made in good faith for such completion purposes only; but it is otherwise subject to all the applicable provisions of this act.

Drugs in transit.

SEC. 74. A drug dispensed on a written prescription signed by a physician, dentist, or veterinarian (except a drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail) shall, if (1) such physician, dentist, or veterinarian is licensed by law to administer such drug, and (2) such drug bears a label containing the name and place of business of the dispenser, the serial number and date of such prescription, and the name of such physician, dentist, or veterinarian, be exempt from the requirements of sections 63 to 72 inclusive.

Drugs dispensed on prescription.

SEC. 75. No person shall introduce or deliver for introduction into intrastate commerce any new drug which is subject to section 505 of the Federal act unless an application with respect to such drug has become effective thereunder. No person shall introduce or deliver for introduction into intrastate com-

Application
for new
drugs.

merce any new drug which is not subject to section 505 of the Federal act, unless (1) it has been found, by appropriate tests, that such drug is not unsafe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; and (2) an application has been filed under this section of this act with respect to such drug: *Provided*, That the requirement of clause (2) shall not apply to any drug introduced into intrastate commerce at any time prior to the enactment of this act or introduced into interstate commerce at any time prior to the enactment of the Federal act: *Provided further*, That if the Director finds that the requirement of clause (2) as applied to any drug or class of drugs, is not necessary for the protection of the public health, he shall promulgate regulations of exemption accordingly.

Contents of
application.

SEC. 76. An application under section 75 shall be filed with the Director, and subject to any waiver by the Director, shall include (1) full reports of investigations which have been made to show whether or not the drug, subject to the application, is safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; (2) a full list of the articles used as components of such drug; (3) a full statement of the composition of such drug; (4) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug; (5) such samples of such drug and of the articles used as components thereof as the Director may require; and (6) specimens of the labeling proposed to be used for such drug.

SEC. 77. An application filed under section 75 shall become effective on the sixtieth (60) day after the filing thereof, unless the Director (1) makes such application effective prior to such day; or (2)

issues an order with respect to such application pursuant to section 78 of this act.

SEC. 78. If the Director finds, upon the basis of the information before him and after due notice and opportunity for hearing to the applicant, that the drug, subject to the application, is not safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof, he shall, prior to such effective date, issue an order refusing to permit such application to become effective and stating the findings upon which it is based.

Refusal of permit.

SEC. 79. An order refusing to permit an application under section 75 to become effective may be suspended or revoked by the Director, for cause and by order stating the findings upon which it is based.

SEC. 80. Orders of the Director issued under section 78 shall be served (1) in person by a duly authorized representative of the Director or (2) by mailing the order by registered mail addressed to the applicant or respondent at his address last known to the Director.

Order how served.

SEC. 81. A drug shall be exempt from the operation of section 75 which intended, and introduced or delivered for introduction into intrastate commerce, solely for investigational use by experts qualified by scientific training and experience to investigate the safety of drugs and which is plainly labeled "For Investigational Use Only."

Exempt drugs.

SEC. 82. The Superior Court of Thurston County shall have jurisdiction to review and to affirm, modify, or set aside any order issued under section 78 of this act, upon petition seasonably made by the person to whom the order is addressed and after prompt hearing upon due notice to both parties.

Review of order.

SEC. 83. A drug dispensed on a written prescription signed by a physician, dentist, or veterinarian (except a drug dispensed in the course of the con-

Drugs
issued on
prescription.

duct of a business of dispensing drugs pursuant to diagnosis by mail) shall, if (1) such physician, dentist, or veterinarian is licensed by law to administer such drug, and (2) such drug bears a label containing the name and place of business of the dispenser, the serial number and date of such prescription, and the name of such physician, dentist, or veterinarian, be exempt from the operation of section 75 to 82 inclusive.

Exempt
drugs.

SEC. 84. The provisions of section 75 shall not apply to any drug which is licensed under the Federal virus, serum, and toxin act of July 1, 1902; or under the Federal virus, serums, toxins, antitoxins, and analogous products act of March 4, 1913.

Adulterated
cosmetics.

SEC. 85. A cosmetic shall be deemed to be adulterated (a) if it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling thereof, or under such conditions of use as are customary or usual: *Provided*, That this provision shall not apply to coal tar hair dye, the label of which bears the following legend conspicuously displayed thereon: "Caution—This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying direction should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness", and the labeling of which bears adequate directions for such preliminary testing. For the purposes of this paragraph and paragraph (e) the term "hair dye" shall not include eyelash dyes or eyebrow dyes; or (b) if it consists in whole or in part of any filthy, putrid, or decomposed substance; or (c) if it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health; or

(d) if its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health; or (e) if it is not a hair dye and it bears or contains a coal tar color other than one that is harmless and suitable for use in cosmetics, as provided by regulations promulgated under section 604 of the Federal act.

SEC. 86. A cosmetic shall be deemed to be misbranded (a) if its labeling is false or misleading in any particular; or (b) if in package form, unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: *Provided*, That under clause (2) of this section reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Director.

Misbranded
cosmetics.

SEC. 87. A cosmetic shall be deemed to be misbranded (a) if any word, statement, or other information required by or under authority of this act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or (b) if its container is so made, formed, or filled as to be misleading.

SEC. 88. A cosmetic which is, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at an establishment other than the establishment where it was originally processed or packed, is exempted from the affirmative labeling requirements of this act, while it is in transit in intrastate commerce from the one establishment to the other, if such transit is made in good faith for such completion purposes only; but

Cosmetics in
transit.

it is otherwise subject to all the applicable provisions of this act.

SEC. 89. An advertisement of a food, drug, device, or cosmetic shall be deemed to be false, if it is false or misleading in any particular.

False advertisement.

SEC. 90. The advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis media, paralysis, pneumonia, poliomyelitis (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, venereal disease, shall also be deemed to be false; except that no advertisement not in violation of section 89 shall be deemed to be false under section 90 if it is disseminated only to members of the medical, veterinary, dental, pharmacal, and other legally recognized professions dealing with the healing arts, or appears only in the scientific periodicals of these professions, or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices: *Provided*, That whenever the Director determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the Director shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the Director may deem necessary in the interest of public health: *Provided further*, That this section shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious.

SEC. 91. The authority to promulgate regulations for the efficient enforcement of this act is hereby vested in the Director: *Provided, however,* That the Director shall designate the Washington State Board of Pharmacy to carry out all of the provisions of this act pertaining to drugs and cosmetics, with authority to promulgate regulations for the efficient enforcement thereof. } Vetoed.

SEC. 92. The purpose of this act being to promote uniformity of state legislation with the Federal act, the Director is hereby authorized (1) to adopt, insofar as applicable, the regulations from time to time promulgated under the Federal act; and (2) to make the regulations promulgated under this act conform, insofar as practicable, with those promulgated under the Federal act. } Purpose of act.

SEC. 93. Hearings authorized or required by this act shall be conducted by the Director or his duly authorized representative designated for the purpose. } Hearings.

SEC. 94. The Director shall hold a public hearing upon a proposal to promulgate any new or amended regulation under this act, which requires or prohibits any practice in intrastate commerce, except in the case of a proposal to adopt an applicable regulation promulgated under the Federal act. The Director shall give appropriate notice of such hearing. The notice shall state the time and place of the hearing to be held not less than thirty (30) days after the date of such notice, except in the case of an emergency found by the Director. After the hearing the Director shall issue an order, with respect to such proposal, which shall state the findings upon which such order is based. No regulation promulgated under this act, by order issued after such hearing, shall take effect prior to the ninetieth (90) day after the date of such order, except in the case of an emergency found by the Director. } Hearings on regulation.

SEC. 95. The Director shall have jurisdiction to review and to affirm, modify, or set aside any order issued under section 94, promulgating a new or amended regulation under this act, upon petition made at any time prior to the effective date of such regulation, by any person adversely affected by such order.

Investigation
of food,
drugs and
cosmetics.

SEC. 96. The Director shall cause the investigation and examination of food, drugs, devices, and cosmetics subject to this act. The Director shall have the right (1) to take a sample or specimen of any such article, for examination under this act, upon tendering the market price therefor to the person having such article in custody; and (2) to enter any place or establishment within this state, at reasonable times, for the purpose of taking a sample or specimen of any such article, for such examination.

Examination
of samples.

SEC. 97. Where a sample or specimen of any such article is taken for examination under this act the Director shall, upon request, provide a part thereof for examination by any person named on the label of such article, or the owner thereof, or his attorney or agent; except that the Director is authorized, by regulation, to make such reasonable exceptions from, and to impose such reasonable terms and conditions relating to, the operation of this section as he finds necessary for the proper administration of the provisions of this act.

SEC. 98. For the purpose of enforcing the provisions of this act, pertinent records of any administrative agency of the state government shall be open to inspection by the Director.

SEC. 99. For the purpose of enforcing the provisions of this act, carriers engaged in intrastate commerce, and persons receiving food, drugs, devices, or cosmetics in intrastate commerce or holding such articles so received, shall, upon the request of the Director, permit the Director at reasonable times, to

have access to and to copy all records showing the movement in intrastate commerce of any food, drug, device, or cosmetic, or the holding thereof during or after such movement, and the quantity, shipper, and consignee thereof; and it shall be unlawful for any such carrier or person to fail to permit such access to and the copying of any such records so requested when such request is accompanied by a statement in writing specifying the nature or kind of food, drug, device, or cosmetic to which such request relates: *Provided*, That evidence obtained under this section shall not be used in a criminal prosecution of the person from whom obtained: *Provided, further*, That carriers shall not be subject to the other provisions of this act by reason of their receipt, carriage, holding, or delivery of food, drugs, devices, or cosmetics in the usual course of business as carriers.

Access to records.

SEC. 100. For the purpose of enforcing the provisions of this act, the Director is authorized (1) to enter, at reasonable times, any factory, warehouse, or establishment subject to this act, or to enter any vehicle being used to transport or hold food, drugs, devices, or cosmetics in intrastate commerce; and (2) to inspect, at reasonable times, such factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, labeling, and advertisements therein.

Inspection in transit.

Warehouses.

SEC. 101. The Director may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this act, including the nature of the charge and the disposition thereof.

Publication of court orders.

SEC. 102. The Director may cause to be disseminated information regarding food, drugs, devices, or cosmetics in situations involving, in the opinion of the Director, imminent danger to health or gross

Publication
of investiga-
tions.

deception of, or fraud upon, the consumer. Nothing in this section shall be construed to prohibit the Director from collecting, reporting, and illustrating the results of his examinations and investigations under this act.

Partial
invalidity.

SEC. 103. If any provision of this act is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the act and the applicability thereof to other persons and circumstances shall not be affected thereby.

Interpreta-
tion.

SEC. 104. This act and the regulations promulgated hereunder shall be so interpreted and construed as to effectuate its general purpose to secure uniformity with Federal acts and regulations relating to adulterating, misbranding and false advertising of food, drugs, devices, and cosmetics.

Effective
date.

SEC. 105. This act shall take effect ninety (90) days after the date of its enactment, and all state laws or parts of laws in conflict with this act are then repealed: *Provided*, That the provisions of section 91 shall become effective on the enactment of this act, and thereafter the Director is hereby authorized to conduct hearings and to promulgate regulations which shall become effective on or after the effective date of this act as the Director shall direct: *Provided further*, That all other provisions of this act to the extent that they may relate to the enforcement of such sections, shall take effect on the date of the enactment of this act.

Acts
repealed.

SEC. 106. All acts or parts of acts in conflict with this act are hereby repealed; and specifically chapter 168, Laws of 1917, and chapter 211, Laws of 1907, as amended by chapter 36, Laws of 1923 (section 6137 to section 6139, inclusive, and section 6144 to section 6154, inclusive, of Remington's Revised Statutes; section 2535 to section 2548, inclusive, of Pierce's

Code, also Pierce's Perpetual Code 568-1 to -27), are hereby repealed.

Passed the House March 8, 1945.

Passed the Senate March 7, 1945.

Approved by the Governor March 19, 1945, with the exception of section 91 which is vetoed.

CHAPTER 258.

[H. B. 374.]

VETERAN AFFAIRS AND UNEMPLOYMENT.

AN ACT relating to veteran affairs and unemployment; preparation for rehabilitation and reconversion; creating employment statistics commissions; fixing their compensation; making an appropriation therefor; and declaring an emergency.

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

SECTION 1. As used in this act:

(1) "Service person" includes every person serving the United States in the army, navy, marines, nursing service, or transport service thereof and every person employed on behalf of the United States in war activity beyond the continental limits of the United States as of January 1, 1945; it also includes every person who has been honorably discharged from the army or navy of the United States since January 1, 1943;

(2) "Family" means a group of blood relatives occupying the same living quarters and includes adopted children;

(3) "Job" means employment of one person by another person at a fixed wage or on commission, but does not include casual employment;

(4) "Employment" means gainful occupation for at least twenty hours per week for at least four weeks per month;

Definitions.

Service person.

Family.

Job.

Employment.