

135

# ENROLLED BILL

House Bill No. 135.

(By Mr. Bassel)

Passed March 6, 1931

In Effect Ninety days from Passage

# ENROLLED BILL

(H. B. No. 135)

[Passed March 6, 1931 ; in effect ninety days from passage.]

AN ACT to amend chapter nineteen, article eleven, of the code of West Virginia, by adding thereto sections five to seventeen, inclusive, regulating the weighing, testing, buying and selling of milk and cream ; providing for the examination and appointment of certified testers ; and the issuing of licenses and making of tests ; and providing penalties.

*Be it enacted by the Legislature of West Virginia:*

That chapter nineteen, article eleven, of the code of West Virginia, be amended by adding thereto sections five to seventeen inclusive, which sections shall read as follows :

Section 5. Every creamery, shipping station, milk factory, cheese factory, ice cream factory or milk condensary, or person, receiving, buying, paying for milk or cream, regardless of method of settlement shall be required to hold a permit for each and every place where milk or cream is received by weight or measure. The permit shall be issued to such cream-

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6 ery, shipping station, milk factory, cheese factory, ice cream  
7 factory, condensary, or person upon complying with the pro-  
8 visions of the law and upon filling out of an application blank  
9 furnished upon application to the commissioner of agriculture,  
10 and sending it together with the annual license fee of five  
11 dollars to him. The permit shall be valid until June thir-  
12 ty, following date of issue and shall be revoked by the com-  
13 missioner of agriculture for violation of the provisions of this  
14 act. This act shall not apply to individuals buying milk or  
15 cream for private use, or to hotels, restaurants, boarding houses,  
16 railroad dining cars or drug stores.

Sec. 6. It shall be unlawful for any person, association, co-  
2 partnership, or corporation, their agents or servants, engaged  
3 in the business of buying milk or cream on the basis of, or in  
4 any manner with reference to, the amount or percentage of  
5 butterfat contained therein, to underread, overread, or other-  
6 wise fraudulently manipulate the test, commonly known as the  
7 Babcock test used for determining the percentage of such fat  
8 in said milk or cream, or to falsify the record thereof, or to  
9 make the Babcock reading except when the fat has a temper-  
10 ature of one hundred thirty to one hundred forty-five degrees

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11 Fahrenheit, or to use for such test quantities other than seven-  
12 teen and six-tenths cubic centimeters in the case of milk, and  
13 nine grams or eighteen grams in the case of cream. In all tests  
14 of cream the cream shall be weighed and not measured into the  
15 test bottle.

Sec. 7. No person, association, copartnership, or corpora-  
2 tion, purchasing milk or cream, and paying for the same, on the  
3 basis of the percentage of butterfat contained therein, shall,  
4 if the percentage of butterfat is ascertained by the said "Bab-  
5 cock test," use any test glassware except standard Babcock test  
6 glassware which has been previously approved by the commis-  
7 sioner of agriculture. If the proportion of butterfat is de-  
8 termined by any method other than the "Babcock test," no  
9 utensil or instrument shall be used in such determination until  
10 the same has been inspected and approved by the commissioner  
11 of agriculture.

Sec. 8. Every person, association, copartnership, corpo-  
2 ration, or agent or servant thereof, engaged in the business of  
3 receiving or buying milk or cream on the basis of, or in any  
4 way with reference to, the amount of butterfat contained there-  
5 in, as determined by the Babcock test, shall have said test or

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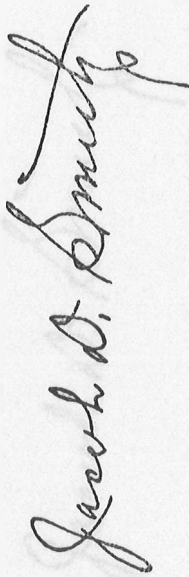
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6 tests made, only by a certified tester who shall directly supervise  
7 and be responsible for the same. For the purpose of this act,  
8 a certified tester is any person, who having furnished satis-  
9 factory evidence of good character, and having passed a satis-  
10 factory examination in milk and cream testing conducted by the  
11 commissioner of agriculture shall have received a certificate  
12 of proficiency from the commissioner of agriculture. Each ap-  
13 plicant for such certificate shall pay a fee of three dollars to the  
14 commissioner of agriculture in such manner as the regulation  
15 may prescribe, to defray the cost of the required examination  
16 and of the certificate. Examination of certified testers shall be  
17 held in each congressional district at a suitable place, at  
18 intervals decided upon by the commissioner of agriculture who  
19 shall issue temporary testing permits to applicants which shall  
20 be valid until the next scheduled examination. The commis-  
21 sioner of agriculture shall issue such certificate of proficiency  
22 in the name of the approved applicant and under serial num-  
23 ber, and shall maintain a correspondingly numbered register  
24 of all such certificates issued under this act. The commissioner  
25 of agriculture shall issue a license to said applicant, good until  
26 June thirty, following date of issue, on the payment of a fee

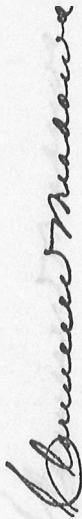
27 of two dollars. This license shall be renewed annually, with-  
28 out further examination, at the discretion of the commissioner  
29 of agriculture upon the payment of two dollars. Each certified  
30 tester shall post his license in plain view in the testing room in  
31 which he is employed. The commissioner of agriculture may  
32 revoke said license for failure to post it as above required or  
33 for any other just cause.

Sec. 9. Every person, association, copartnership, or cor-  
2 poration engaged in the business of buying milk or cream on  
3 the basis of or in any way with reference to the amount of  
4 butterfat contained therein shall have the samples taken for  
5 testing purposes either by a certified tester or by a person  
6 licensed or certified to weigh and sample milk and cream. For  
7 the purpose of this act a person certified to weigh and sample  
8 milk or cream is any person who, having furnished satisfac-  
9 tory evidence of good character and having passed a satisfac-  
10 tory examination in weighing and sampling milk and cream  
11 conducted by the commissioner of agriculture, shall have re-  
12 ceived a certificate of proficiency from the commissioner of agri-  
13 culture. Each applicant for such certificate shall pay a fee of  
14 one dollar and fifty cents to the commissioner of agriculture.

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15 The commissioner of agriculture shall issue such certificate of  
16 proficiency in the name of the approved applicant and under  
17 serial number. The commissioner of agriculture upon receipt  
18 of this certificate of proficiency, together with the payment of a  
19 fee of two dollars, shall issue a license to said applicant good for  
20 one calendar year. This license shall be renewed annually  
21 without further examination at the discretion of the commis-  
22 sioner of agriculture upon the payment of two dollars. Each  
23 licensed weigher and sampler shall post his or her license in  
24 plain view in the plant in which he or she is employed. The  
25 commissioner of agriculture may revoke said license for fail-  
26 ure to post it as above mentioned or for any other just cause.

Sec. 10. Any person, association, copartnership, or corpo-  
2 ration engaged in the business of buying milk or cream on the  
3 basis of, or in any way with reference to, the amount or per-  
4 centage of butterfat contained therein, as determined by the  
5 Babcock test, shall make such test of milk or cream bought from  
6 each person at least once every sixteen days. The milk or cream  
7 purchased from each person shall be represented by a compos-  
8 ite sample, taken from each of the several lots of milk or cream  
9 bought from said person, and shall cover a period of not more

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10 than sixteen days. The composite samples, to which a suitable  
11 preservative has been added, shall be made up of aliquot parts  
12 taken from each of the several lots of milk or cream bought from  
13 each person concerned, and composite samples of all persons  
14 concerned shall cover the same period of time. Each composite  
15 sample shall be held in an airtight bottle; such bottle shall be  
16 plainly labeled with the name or number of the person whose  
17 milk or cream the composite sample represents; and the rack  
18 or container where the samples are held shall be plainly labeled  
19 showing the date of the first and last day of the period of time  
20 covered by the said composite sample. After such samples have  
21 been tested their residues shall be kept intact on the premises for  
22 a further period of not less than twelve days, in order to make  
23 possible a check test. The commissioner of agriculture is here-  
24 by authorized to make check tests whenever in his judgment  
25 such tests are for the public welfare. Every person, firm, or  
26 corporation affected by the provisions of this act shall within  
27 five days after the day on which the test herein provided for has  
28 been made notify the seller of such milk or cream or his agent  
29 of the result of such test, stating the period of time during which  
30 said composite samples were taken. Notice under this section

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31 may be given by posting of the results of said tests continuously  
32 for ten days in a conspicuous place in receiving stations or in  
33 writing. Where a daily test is made on milk or cream and the  
34 average of these several tests used as a basis of settlement there  
35 shall also be a composite sample taken covering a period of first  
36 and last half of month and shall be held intact on the premises  
37 for a period of not less than ten days, in order that the commis-  
38 sioner of agriculture or his agents may make check tests when-  
39 ever in his judgment such tests are advisable for the public  
40 welfare.

*Amos M. Henderson*

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Sec. 11. No percentage of fat ascertained from a sample,  
2 containing milk or cream, that has been so <sup>tested</sup> ~~tested~~ as to cause  
3 it to test lower or higher than the test of the milk or cream  
4 from which it was taken, shall be used as a basis of payment  
5 for milk or cream purchased or sold. No composite sample shall  
6 be tested for use as a basis for payment of milk, which has been  
7 kept more than fifteen days after such composite sample has  
8 been completely taken.

Sec. 12. No person, association, copartnership, or corpora-  
2 tion purchasing or selling milk or cream, or both, by weight, and  
3 no agent or servant of any such person, association, copartner-

4 ship or corporation shall fraudulently use, as the basis of pay-  
5 ment for such purchase, any weight other than the true weight  
6 of the milk or cream so purchased or sold.

Sec. 13. Every person, association, copartnership, corpora-  
2 tion or agent or servant purchasing or receiving milk or cream  
3-9 from the producer thereof for manufacturing purposes or for  
10 reselling the same shall, at each time of payment to such pro-  
11 ducer for such milk or cream, or where the producer of such  
12 milk or cream is selling the same to such purchaser or re-  
13 ceiver by or through cooperative association or other agency  
14 and the payment thereof is being made by such purchaser or  
15 receiver to such cooperative or other agency shall at the time  
16 such purchaser or receiver makes each payment to such cooper-  
17 ative association or other agency, give each such producer so de-  
18 livering milk a statement showing the amount delivered daily  
19 during the time for which payment is made and the average per  
20 centum butterfat test of same, provided payment is made on the  
21 basis of the butterfat content; such statement to contain the  
22 name or number of the producer or seller of such milk or cream,  
23 the date of delivery thereof, and the amount so delivered; such  
24 statement to be given in the terms of the unit used as a basis

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25 for determining the value thereof: *Provided, however, That*  
26 such purchaser or receiver may in lieu of said monthly state-  
27 ment give daily to such producer or to his agent at the time of  
28 delivery of such milk or cream to such purchaser or receiver  
29 a written statement of the amount of milk or cream so received  
30 or purchased.

Sec. 14. The commissioner of agriculture and his agents are  
2 hereby authorized to enter the premises, and to examine the  
3 books and records and testing apparatus of any person, asso-  
4 ciation, copartnership, or corporation, for the purpose of carry-  
5 ing out the provisions of this act.

Sec. 15. The commissioner of agriculture shall be charged  
2 with the enforcement of the provisions of this act; and may  
3 make such rules and regulations as he may deem advisable in  
4 carrying out the provisions of this act as long as they are not  
5 inconsistent with this act. Nothing contained in this section  
6 shall be construed to prevent any individual from prosecuting  
7 anyone violating any of the provisions of this act. And it shall  
8 be the duty of every prosecuting attorney to whom the com-  
9 missioner of agriculture shall report any violation of the pro-  
10 visions of the act to cause proceedings to be commenced against

11 the person or persons so violating the provisions of this act and  
 12 to prosecute the same to final termination according to the laws  
 13 of the state of West Virginia.

Sec. 16. Any person violating any of the provisions of this  
 2 act shall be guilty of a misdemeanor, and, upon conviction there-  
 3 of, shall be sentenced to pay a fine of not more than one hun-  
 4 dred dollars, or imprisonment in the county jail for not more  
 5 than thirty days, or both, in the discretion of the court.

Sec. 17. All fees or other moneys collected by said com-  
 2 missioner of agriculture under the provisions of this act shall  
 3 be paid into the state treasury in the manner provided in article  
 4 two, chapter twelve of the code, and shall be carried in a  
 5 separate account and be used and expended only for the pur-  
 6 pose of carrying out the provisions of this act. The fees or  
 7 other moneys so paid into the state treasury shall constitute  
 8 and be treated as an excepted fund, and all of the provisions  
 9 of section two of said article two, chapter twelve of the code,  
 10 applicable to the funds therein excepted from the general pro-  
 11 visions for the deposit and payment of state funds, shall be  
 12 applicable to the fund derived from collections made pursuant  
 13 to the provisions of this act.

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*Bruce W. Mansur*

Chairman House Committee

All acts and parts of acts inconsistent with this act are here-  
2 by repealed.

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*Jacob D. Smith*  
Chairman Senate Committee.

*Lawrence W. Meadows*  
Chairman House Committee.

*J. Alfred Taylor*  
Speaker of the House of Delegates.

*P. H. Quinn*  
Clerk of the House of Delegates.

*M. B. White*  
President of the Senate.

*M. S. Holzer*  
Clerk of the Senate.

The within is *Approved*  
this *16th* day of *March* 1931.

*W. E. Bailey*  
Governor.

Filed in the office of the Secretary of State  
of West Virginia *MAR 16 1931*  
GEORGE W. STARR,  
Secretary of State.