

1983 Assembly Bill 399

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## 1983 Wisconsin Act 261

AN ACT to repeal 97.12 (1) (a) and 97.42 (12) (a); to renumber 97.42 (12) (b); to consolidate, renumber and amend 97.12 (1) (intro.) and (b); to amend 97.10 (3), 97.12 (2) (a) and (c), 97.28 (2), 97.42 (1) (b), (2) (b) and (11), 97.72 (1), 97.73 and 97.13 (6); and to create 97.01 (4m) and (14m), 97.09 (4), 97.12 (2) (d), (3) and (4) and 97.073 of the statutes, relating to regulating the salvaging of food, increasing the enforcement authority relating to food laws, granting rule-making authority and increasing and creating penalties.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 97.01 (4m) and (14m) of the statutes are created to read:

97.01 (4m) "Distressed food" means food, or packages or containers of food, that may have been damaged, or rendered unsafe or unsuitable for sale or use as food while being transported, stored, handled or sold or the food the label of which has been lost, defaced or obliterated.

(14m) "Salvaging distressed food" means reconditioning or preparing distressed food for sale or use as food, including cleaning, culling, sorting, scouring, labeling, packaging, processing or treating the food.

SECTION 2. 97.09 (4) of the statutes is created to read:

97.09 (4) The department may, by rule, establish and enforce standards governing the production, processing, packaging, labeling, transportation, storage, handling, display, sale, including retail sale, and distribution of foods that are needed to protect the public from the sale of adulterated or misbranded foods.

SECTION 3. 97.10 (3) of the statutes is amended to read:

97.10 (3) No person shall be subject to the penalties of s. 97.72 for having violated ~~this section sub. (1)~~, if he or she establishes a guaranty or undertaking signed by, and containing the name and address of the person residing in this state from whom ~~he~~ the article was received in good faith ~~the article~~, to the effect that such article is not adulterated or misbranded within the meaning of ss. 97.02 and 97.03.

SECTION 4. 97.12 (1) (intro.) and (b) of the statutes are consolidated, renumbered 97.12 (1) and amended to read:

97.12 (1) For the purpose of enforcing this chapter, the department and its agents ~~shall have free access~~ may, at reasonable hours ~~to~~, enter and inspect any farm, factory, warehouse ~~or~~, building, room, establishment or place at or in which foods are manufactured, processed, packed, packaged, stored or held for sale, ~~or to and may enter any vehicle being used to transport or hold such foods in commerce:~~ ~~(b) To~~. The department and its agents may also secure samples or specimens of any food after paying or offering to pay for such sample. It is the duty of the and any product or substance that may affect food, examine and copy relevant documents and records and obtain photographic and other evidence needed to enforce this chapter. The department to make examinations of shall examine any samples thus secured and shall conduct other inspections and examinations needed to determine whether or not there is a violation of this chapter. The department shall pay or offer to pay the market value of samples taken.

SECTION 5. 97.12 (1) (a) of the statutes is repealed.

SECTION 6. 97.12 (2) (a) and (c) of the statutes are amended to read:

97.12 (2) (a) Whenever any duly authorized inspector of the department has reasonable cause to believe that any food ~~so found and~~ examined by him or her is adulterated or misbranded and is dangerous to health or misleading to the injury or damage of the purchaser or consumer, ~~he~~ the inspector shall issue and deliver to the owner or custodian ~~thereof of the food~~ a holding order prohibiting the sale or movement of ~~such the~~ food for any purpose until the analysis or examination of the sample obtained has been completed. Such A holding order shall not may be effective for a period of not longer than 14 days from the time of its delivery thereof, but it may be reissued for one additional 14-day period if necessary to complete the analysis or examination of the food.

(c) Where the analysis or examination shows ~~such that the~~ food is adulterated or misbranded and is dangerous to health or misleading to the injury or damage of the purchaser or consumer, the owner or custodian ~~thereof of the food~~ shall be so notified in writing within the effective time of the holding order. Such notice shall have has the effect of a special order issued under s. 93.18. Upon receipt of such a notice the food subject to the holding order shall may not be sold or otherwise, moved, disposed of or brought into compliance with applicable standards without the approval of the department and shall only be sold or otherwise moved in a manner authorized by the department or under its direction. If such food is not brought into compliance, sold, moved or disposed of within 30 days, or other agreed upon period of time, from the date the owner or custodian received notice that the food was adulterated or misbranded, the department may issue an order directing the disposition of the food. Such an order has the effect of a special order issued under s. 93.18.

SECTION 7. 97.12 (2) (d), (3) and (4) of the statutes are created to read:

97.12 (2) (d) 1. Any person violating an order issued under this section may be fined not more than the maximum amount under subd. 2 or imprisoned not more than one year in the county jail or both.

2. The maximum fine under this paragraph equals \$10,000 plus the retail value of the product moved, sold or disposed of in violation of the order issued under this section.

(3) (a) The department may issue a special order as provided under s. 93.18 to any person engaged in the production, processing, sale or distribution of food if the department finds a violation of this chapter or the rules promulgated under this chapter. An order shall state the violations found and shall specify a fixed period of time for correction. If the department finds that a piece of equipment, a facility or a practice used is a danger to public health, it may order that the situation be abated or eliminated immediately and that the equipment, facility or practice not be used until the violation is cor-

rected and the correction is confirmed by the department. The department may, instead of issuing an order, accept written agreements of voluntary compliance which have the effect of an order.

(b) The department may, by summary order and without prior notice or hearing, suspend a license or permit issued under this chapter if the department finds that there has been a substantial failure to comply with the applicable requirements of this chapter and the rules promulgated under this chapter and that the continuation of the violations constitutes a serious danger to public health. The order shall be in writing, have the force and effect of an order issued under s. 93.18, and is subject to right of hearing before the department, if requested within 10 days after date of service. Hearings, if requested, shall be conducted within 10 days after receipt of a request for a hearing. Enforcement of the order shall not be stayed pending action on the hearing.

(4) Any person who does either of the following may be fined not more than \$5,000 or imprisoned not more than one year in the county jail or both:

(a) Assaults, restrains, threatens, intimidates, impedes, interferes with, or otherwise obstructs a department inspector, employe or agent in the performance of his or her duties.

(b) Gives false information to a department inspector, employe or agent with the intent to mislead the inspector, employe or agent in the performance of his or her duties.

SECTION 8. 97.28 (2) of the statutes is amended to read:

97.28 (2) "Food processing plant" means any place where food is manufactured or prepared for sale through the process of canning, extracting, fermenting, distilling, pickling, freezing, drying, smoking, grinding, mixing, stuffing, packing, bottling, cutting and packaging, or otherwise treating or preserving the same for sale as and for food or where distressed food is received for the purpose of salvaging it for sale or use as food. A license under this section shall not be required of any person licensed by the department as a bakery, confectionary, soda water bottler, meat or poultry processor, dairy plant or counter freezer as to business covered by the licenses, nor shall a license be required of retail merchants having a fixed or established place of business in this state if the merchant does not also sell at wholesale any food processed by the merchant or engage in the salvaging of distressed food, or in the grinding, mixing, stuffing, smoking or cooking of meat, fish, or poultry products or the preparation and processing of ready-to-eat (delicatessen) foods for sale at retail. This section does not apply to the operation of an establishment engaged in the processing of products inspected under the federal meat, poultry or egg products inspection acts, or to restaurants, vending machine commissaries or catering establishments licensed and inspected under subch. III of ch. 50 and where processing operations are limited to the retail preparation and processing of meals or lunches for sale directly to consumers or through vending machines. This section does not apply to beekeepers who are engaged in an agricultural pursuit under s. 94.761, or who are engaged in farming under s. 94.761 or 102.04 (3), provided the beekeeper markets only honey extracted from the comb, which is deemed to be raw honey, or naturally produced raw bee products, substantially all of which have been produced by the beekeeper. This section does not apply to charitable organizations that receive distressed food for the purpose of salvaging it for use as food. For the purposes of this section "charitable organization" has the meaning specified in s. 71.04 (5) (d) 2.

SECTION 9. 97.42 (1) (b), (2) (b) and (11) of the statutes are amended to read:

97.42 (1) (b) "Poultry" means any domesticated fowl, including but not limited to chickens, turkeys, geese, ducks, ~~pigeons~~ or guineas, but shall not include commercially produced game birds.

(2) (b) Paragraph (a) shall not apply to persons processing meat or poultry products, or meat or poultry food products for sale directly to consumers at retail on the premises where such products were processed if only inspected meat is permitted on the premises,

and sales to restaurants and institutions are restricted to 25% of the volume of meat sales or ~~\$18,000~~ \$28,800 annually, whichever is less. No person exempt from license under this paragraph shall sell any cured, smoked, seasoned, canned or cooked meat food products produced by that person to restaurants or institutions.

(11) EXEMPTION. This section shall not apply to owners of poultry with respect to poultry produced on the owner's farm, provided his or her sales do not exceed ~~250 turkeys or~~ 1,000 ~~other~~ fowl annually, and the birds are labeled and tagged to identify the name and address of the producer and are marked "NOT INSPECTED". Persons processing more than ~~250 turkeys or~~ 1,000 ~~other~~ fowl but less than ~~5,000 turkeys or~~ 20,000 ~~other~~ fowl shall be fully subject to the provisions of this section relating to licensing, sanitation, facilities and wholesomeness of product. If the department determines that the protection of consumers from unwholesome poultry products will not be impaired, it may exempt such persons from sub. (3) (a) and (b) provided the birds are labeled or tagged to identify the name and address of the producer and are marked "NOT INSPECTED".

SECTION 10. 97.42 (12) (a) of the statutes is repealed.

SECTION 11. 97.42 (12) (b) of the statutes is renumbered 97.42 (12).

SECTION 12. 97.72 (1) of the statutes is amended to read:

97.72 (1) ~~Each violation of~~ Any person who violates any of the provisions of this chapter for which a specific penalty is not prescribed shall be fined ~~not to exceed \$200 less than \$100~~ not more than \$1,000 or imprisoned ~~not to exceed more than 6 months~~, for the first offense; and for each subsequent offense, fined ~~not less than \$200~~ \$500 ~~nor more than \$500~~ \$5,000, or imprisoned ~~not less than 30 days nor more than 6 months~~ one year in the county jail or both. In addition to other penalties, a court may order a violator to pay restitution to any person injured by a violation of this chapter regardless of whether the violator is placed on probation under s. 973.09.

SECTION 13. 97.73 of the statutes is amended to read:

**97.73 Injunction.** In addition to penalties applicable to this chapter, the department may apply to any court of competent jurisdiction for a temporary or permanent injunction restraining any person from violating provisions of this chapter and rules or orders issued thereunder under this chapter.

SECTION 14. 972.13 (6) of the statutes is amended to read:

972.13 (6) The following forms may be used for judgments:

STATE OF WISCONSIN

.... County

In .... Court

The State of Wisconsin,

vs.

....(Name of defendant)

UPON ALL THE FILES, RECORDS AND PROCEEDINGS,

IT IS ADJUDGED That the defendant has been convicted upon the defendant's plea of guilty (not guilty and a verdict of guilty) (not guilty and a finding of guilty) (no contest) on the .... day of ....., 19.., of the crime of .... in violation of s. ....; and the court having asked the defendant whether the defendant has anything to state why sentence should not be pronounced, and no sufficient grounds to the contrary being shown or appearing to the court.

\*IT IS ADJUDGED That the defendant is guilty as convicted.

\*IT IS ADJUDGED That the defendant is hereby committed to the Wisconsin state prisons (county jail of .... county) for an indeterminate term of not more than .....

**\*IT IS ADJUDGED** That the defendant is ordered to pay a fine of \$.... (and the costs of this action).

**\*IT IS ADJUDGED** That the defendant pay restitution to ....

\*The .... at .... is designated as the Reception Center to which the ~~said~~ defendant shall be delivered by the sheriff.

**\*IT IS ORDERED** That the clerk deliver a duplicate original of this judgment to the sheriff who shall forthwith execute the same and deliver it to the warden.

Dated this .... day of ....., 19... **BY THE COURT** ....

Date of Offense .....,

District Attorney .....,

Defense Attorney ....

\*Strike inapplicable paragraphs.

STATE OF WISCONSIN,

.... County

In .... Court

The State of Wisconsin

vs.

....(Name of defendant)

On the .... day of ....., 19.., the district attorney appeared for the state and the defendant appeared in person and by .... the defendant's attorney.

**UPON ALL THE FILES, RECORDS AND PROCEEDINGS**

**IT IS ADJUDGED** That the defendant has been found not guilty by the verdict of the jury (by the court) and is therefore ordered discharged forthwith.

Dated this .... day of ....., 19... **BY THE COURT** ....

**SECTION 15.** 973.073 of the statutes is created to read:

**973.073 Restitution; food regulation violations.** A court may require the payment of restitution under s. 97.72 (1) regardless of whether the violator is placed on probation under s. 973.09.

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