

Effective date.

Section 4. This act shall become effective on the first day of January, one thousand nine hundred and thirty-four.

APPROVED—The 31st day of May, A. D. 1933.

GIFFORD PINCHOT

No. 276

AN ACT

Requiring certain persons, associations, copartnerships, and corporations to keep full accounts and records with respect to the sales and transactions relating to dairy products and to submit the same to inspection by the Secretary of Agriculture, and prescribing the effect of failure to comply with the orders of the Secretary of Agriculture; providing penalties, and prescribing remedies; and by further regulating the issuance and revocation of permits as provided by the act, approved the sixth day of May, one thousand nine hundred and twenty-five (Pamphlet Laws, five hundred forty-one), entitled "An act providing for the protection of the public health and the prevention of fraud and deception by 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," as amended.

Dairy products.

Section 1. Be it enacted, &c., That when used in this act—

Definitions.

A. The term "person" shall include individuals, partnerships, corporations, and associations.

B. The term "secretary" shall mean the Secretary of Agriculture.

C. The term "dairy products" shall mean milk, cream, skimmed milk, powdered milk, evaporated milk, condensed milk, butter, cheese, or any other article manufactured and produced in whole or in part from milk or cream, ice cream, and all other dairy products, whether or not frozen, refrigerated, or packed in ice, and whether or not mixed together or in combination with any other substance.

D. "Permit" shall mean the permit issued by the Department of Agriculture in accordance with the provisions of the act, approved the sixth day of May, one thousand nine hundred and twenty-five (Pamphlet Laws, five hundred forty-one), entitled "An act providing for the protection of the public health and the prevention of fraud and deception by 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," as amended, and the permit issued in accordance with said act shall, when hereafter issued by the Department of Agriculture, include the right in the holder thereof to engage in the business defined by

this act and made subject to the terms of this act, and such permit shall be subject to the terms of this act.

E. "Permittee" shall mean any person, copartnership, association, or corporation required to have a permit and engaged in the business of receiving dairy products to be sold, exchanged, delivered, or otherwise disposed of for a consideration or price, to be paid to the producer thereof by the holder of such permit, based entirely or in part upon the price received or derived from the sale or disposition of such dairy products, or any part thereof, by the holder of such permit; provided, however, that "permittee" shall not mean, and shall not be taken to include, any coöperative agricultural association not conducted for profit incorporated under the laws of this Commonwealth, or any similar association incorporated under the laws of any other state, or producers of milk engaged in the sale of their own products.

Section 2. No permittee shall make any fraudulent charge in respect of any dairy product received by him; nor make any false or misleading statement concerning the condition, quality, quantity, or disposition of or the condition of the market for any dairy product received by him, or fail or refuse truly and correctly to render an account promptly in respect of any transaction in any such product to the person from whom such product was received; nor represent, by word, act or deed, that any dairy product received by him was produced in a state, county or township other than the state, county or township where such dairy product was actually produced.

Fraudulent acts by permittee.

Section 3. Every permittee shall keep such accounts, records and memoranda as shall fully and correctly disclose the quantities of milk and other dairy products received, the grade designations thereof, and all sales and other disposition of the same, including the sales by grade and in bottles and in bulk, and the sales at retail and wholesale and for manufacturing or other purposes, together with the price or prices received therefor.

Permittee to keep accounts and records of products received.

If such accounts, records and memoranda are not so kept, the secretary shall immediately request such permittee to keep such accounts, records and memoranda, and upon failure of such permittee to comply within fifteen days after such request, the secretary shall have power to forthwith revoke the permit or permits of such permittee.

Revocation of permit upon failure to keep records.

Section 4. Any person or coöperative agricultural association selling or delivering dairy products to a permittee may complain, in writing, to the secretary against such permittee, setting forth, under oath, that he or it has reasonable grounds to believe that such permittee is violating or has violated any of the terms and provisions of this act within a period of one year

Complaint against permittee.

**Audit and inspection of records.**

prior to the date of such complaint, and may request an audit or inspection of the accounts, records and memoranda of such permittee provided for by section three hereof; and upon receipt of such complaint and request, together with the estimated costs and expenses of such audit and inspection, the secretary, or his duly authorized agents, shall, within one month of such complaint, audit and inspect such accounts, records and memoranda of all permittees complained of, and if any permittee refuses to permit such audit or inspection, or refuses to permit the secretary, or his duly authorized agent, the right of entry to and upon his premises for the purpose of such audit or inspection, the secretary shall have power to forthwith revoke the permit or permits issued to such permittee until such time as such permittee shall allow such audit and inspection. If upon such audit and inspection it shall appear to the secretary, or to his duly authorized agents, that any permittee has made any fraudulent charge in respect of any dairy product received by him, or has made any fraudulent or misleading entry or statements concerning the condition, quantity, quality, or disposition of or the condition of the market for any dairy product received by him, or has failed or refused truly and correctly to render an account in respect of any transaction in any such product to the person or coöperative agricultural association from whom such products were received, as required in section two of this act, said secretary shall forthwith notify the complainant and such permittee of his findings, and, unless such permittee shall have made reparation to the complainant, the secretary shall determine the amount of damage, if any, to which such person or coöperative agricultural association is entitled because of such violation, and shall make an order directing such permittee to pay to the person or coöperative agricultural association entitled thereto the amount so determined to be due, together with such costs and expenses of the audit and inspection as may have been advanced by the complainant as hereinbefore provided, on or before the date fixed in the order.

**Revocation of permit for refusal to allow audit.**

**Notice of findings.**

**Determination of damages.**

**Order of secretary.**

**Action to recover damages.**

If any permittee fails to comply with such order of payment within the time limit in such order, the complainant or any person for whose benefit such order was made may, within one year of the date of the order, proceed to recover from the permittee the liability and damages fixed by the secretary by action in assumpsit, in which action a copy of the findings and orders of the secretary, certified by the secretary under the seal of the Department of Agriculture, shall be competent evidence to prove the facts therein stated. Such action may be instituted in any county in which is located one or more plants of the permittee for which plant or plants a permit is required, or of the county where the plaintiff resides, or, if the plaintiff be a coöperative agricultural

association, of the county where such coöperative agricultural association has its principal place of business.

Section 5. The secretary, before the audit and inspection as hereinbefore provided, and upon ten days notice to the permittee, may require, upon forms of report to be prepared and furnished by the secretary, information regarding the sale and disposition of the dairy products received by such permittee and concerning which said permittee is required to keep accounts, records and memoranda as provided by section three of this act. The secretary, if, in his opinion, the information so reported be true, accurate and complete, may accept such information in lieu of the audit and inspection as required by section four of this act, and make his findings and orders thereon.

Information regarding sale and disposition of products.

Information in lieu of audit.

On or before the first day of March of each year, each permittee shall file with the secretary an annual report under oath, on forms to be prepared and supplied by the secretary, furnishing such information regarding purchases and sales of dairy products by such permittee during the preceding calendar year as shall by the secretary be deemed necessary for the administration of this act and for the promotion of the dairy industry of the State, and the data contained in said reports shall be compiled by the secretary and made available for public use in reports showing totals by municipality or area, and not by classification of permits or permittees.

Annual report by permittees.

Compilation of data.

The secretary shall hold and keep in strict confidence and not available for public use, except as hereinbefore provided, all information obtained by him under the provisions of this act. The findings and order of the secretary, as provided in section four hereof, shall contain only the data necessary to a complete adjustment of the matter at issue between the one filing the complaint and the permittee.

Confidential information.

Section 6. Whenever it shall be finally determined that any permittee has violated any of the provisions of this act and neglects or refuses to comply with the order of reparation of the secretary, the secretary shall have power, by order, to suspend the permit or permits of such permittee, as hereinbefore provided, for a period not exceeding one year.

Suspension of permit.

Section 7. Each section of this act, and each sentence, clause and phrase hereof, is declared to be independently operative, and if any section, sentence, clause or phrase shall be adjudged invalid by any court of competent jurisdiction, it shall not affect or invalidate the remainder of this act. It is hereby declared as a legislative intent that this act would have been adopted had such unconstitutional provision not been included herein.

Constitutional construction.

Section 8. This act shall take effect immediately upon final enactment.

When effective.

Section 9. This act shall not repeal the act, approved the sixth day of May, one thousand nine hundred and

Act of May 6, 1925 (P. L. 541), supplemented.

twenty-five (Pamphlet Laws, five hundred forty-one), entitled "An act providing for the protection of the public health and the prevention of fraud and deception by 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," as amended, but is hereby declared to be in addition and supplementary thereto.

Repeal.

All other acts or parts of acts inconsistent herewith are hereby repealed.

APPROVED—The 31st day of May, A. D. 1933.

This act requires milk dealers to keep records which will reflect the prices for the purchase and sale of milk received at their plant. This will enable the Department of Agriculture to discover any fraudulent practices in the purchase and sale of milk by weight or measure. With this part of the act I am in full accord.

The remaining provisions are clearly unconstitutional. The requirements that dealers shall promptly render accounts of transactions and submit annual reports to the Secretary of Agriculture are not mentioned in the title of the act. Furthermore, the power granted to the secretary to impose a civil liability upon dealers in an *ex parte* hearing is clearly an unconstitutional delegation of judicial power to an administrative officer.

However, the provisions of the bill are severable. As those sections relating to the keeping of records are within the purpose of the bill, I am approving it with full knowledge that the other provisions mentioned above cannot be sustained.

GIFFORD PINCHOT

No. 277

AN ACT

To further amend section one of the act, approved the fifteenth day of July, one thousand eight hundred and ninety-seven (Pamphlet Laws, two hundred ninety-two), entitled "An act to provide revenue by taxation."

Taxation.

Banks and savings institutions.

Section 1, act of July 15, 1897 (P. L. 292), as last amended by act of April 25, 1929 (P. L. 677), further amended.

Report to Department of Revenue.

Time of making.

Section 1. Be it enacted, &c., That section one of the act, approved the fifteenth day of July, one thousand eight hundred and ninety-seven (Pamphlet Laws, two hundred ninety-two), entitled "An act to provide revenue by taxation," as last amended by the act approved the twenty-fifth day of April, one thousand nine hundred and twenty-nine (Pamphlet Laws, six hundred seventy-seven), be, and the same is hereby, further amended to read as follows:

Section 1. Be it enacted, &c., That from and after the passage of this act, every bank or savings institution having capital stock, incorporated by or under any law of this Commonwealth, or under any law of the United States, and located within this Commonwealth, shall, on or before the [twentieth day of June] *fifteenth day of March* in each and every year, make to the Department