Food and Drugs Act 1967

CONSOLIDATED ACTS OF SAMOA 2008

FOOD AND DRUGS ACT 1967

Arrangement of Provisions

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THE FOOD AND DRUGS ACT 1967

1967 No.6

AN ACT to consolidate and amend the law relating to the sale of food and drugs.

(24 July 1967)

(Commencement date: 24 July 1967)

1. Short title - This Act may be cited as the Food and Drugs Act 1967.

2. Interpretation - In this Act, unless the context otherwise requires:

"Advertisement" means any words, whether written, printed, or spoken, and any pictorial representation or design or device used to explain the use or notify the availability or promote the sale of any food or drug; and includes any trade circular, any label, and any advertisement in any trade journal.

"Agent", in relation to any food or drug, includes any person who, not being the owner of the food or drug or a person appointed or employed as the agent or servant of the owner, is, with the consent or concurrence of the owner, for the time being in possession or control of the food or drug.

"Analyst" means an analyst appointed under this Act.

"Appliance" includes the whole or any part of any utensil, machinery, instrument, apparatus, or article used or intended for use in or for the making, keeping, preparing, or supplying of any food.

"Chief Executive Officer" means the Chief Executive Officer of the Ministry of Health appointed under the Health Ordinance 1959, and includes any person lawfully acting in the place of the Chief Executive Officer.

"Cosmetic" means any substance or mixture of substances used or intended for use for the purposes of cleansing, beautifying, improving, or altering the hair, skin, or complexion of human beings, and includes any perfume, any deodorant, and any dusting power.

"Dentifrice" means any substance or mixture of substances used or intended for use for the purpose of cleansing the mouths or teeth (natural or artificial) of human beings; and includes any denture fixative.

"Drug" means:

(a) Any substance or mixture of substances used or intended for use, whether internally or externally, for the purposes of the prevention, diagnosis, or treatment of any disease, ailment, disorder, deformity, defect, or injury of the human body;

(b) Any substance or mixture of substances used or intended for use for the purpose of altering the nutrition or structure of the human body;

(c) Any substance or mixture of substances used or intended for use for the purposes of influencing, inhibiting, or modifying any physiological process in human beings, or the desires or emotions connected with any such physiological process, or the desire for tobacco;

(d) Any disinfectant, germicide, antiseptic, or preservative used for any purpose;

(e) Any anaesthetic;

(f) Any laundry soap, any toilet soap, cream, or lotion, and any synthetic detergent;

(g) Any cosmetic;

(h) Any dentifrice; and

(i) Any chemical contraceptive.

"Employee", in relation to the Public Service, means a person employed therein whether on the permanent staff or as a probationer or temporarily whether full time or part time and whether remunerated by salary, wages, fees or commission or giving honorary service.

"Food" includes any article which is used for food or drink by human beings, or which enters into or is used in the composition or preparation of any such article, and also includes flavouring matters and condiments.

"Gazette" means the *Samoa Gazette*.

***"*Inspector"** means an officer appointed as an inspector of Health under the Health Ordinance 1959.

"Milk" means cows' milk or goats' milk and includes cream; and also includes reconstituted milk or reconstituted cream, but does not include dried milk, condensed milk or condensed cream, or milk intended for manufacture into butter, cheese, casein, dried milk, condensed milk or condensed cream.

"Minister" means the Minister of Health.

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"New drug" means any substance or preparation within the meaning of paragraphs (a) or (b) or (c), or (e) or (i) of the definition of the term "drug" in this section which has not previously been used in Samoa; but does not include any narcotic within the meaning of the Narcotics Act 1967 or any radioactive substance.

"Officer" means an officer of the Ministry or any person appointed as an officer for the purposes of this Act.

"Package" includes anything in or by which goods for carriage or for sale may be cased, covered, enclosed, contained, or packed; and, in the case of goods sold or carried or intended for sale or carriage in more than one package, includes every such package.

"Prescribed" means prescribed by any regulations.

"Radioactive substance" means any substance which:

(a) Emits alpha particles and has a half life of less than 1,000,000 years and undergoes more than 100 atomic disintegrations per gram per second; or

(b) Has been artificially produced and emits beta or gamma rays and undergoes more than 37,000 atomic disintegrations per second.

"Regulations" means regulations made under this Act.

"Substance" means any natural or artificial substance, whether in solid or liquid form or in the form of gas or vapour; and includes any manufactured article or any article which has been subjected to any artificial treatment or process.

3. Medical devices or contrivances and tobacco - The provisions of this Act relating to drugs, so far as they are applicable, shall extend and apply to:

(a) Any device or contrivance sold for the purpose of producing the effect that would be produced by a drug within the meaning of any of the provisions of paragraphs (a) to (e) of the definition of the term "drug" in section 2; and

(b) Tobacco, cigars and cigarettes.

4. What constitutes "sale" - (1) In this Act, unless the context otherwise requires "sale" includes barter, and also includes offering or attempting to sell, or receiving for sale, or having in possession for sale, or exposing for sale, or sending or delivering for sale, or causing or allowing to be sold, offered, or exposed for sale, and refers only to sale for human consumption or use, and "sell" has a corresponding meaning.

(2) For the purposes of this Act any article of food being part of or supplied with any meal or food which payment is made or required to be made, and which is supplied for consumption in any shop, hotel, restaurant, or eating house, or at any stall or other place, shall be deemed to have been sold or offered or exposed for sale.

(3) For the purposes of this Act, every person shall be deemed to sell or to intend to sell any food or drug if he or she sells or intends to sell for human consumption or use any article of which the food or drug is a constituent.

(4) When any food or drug is sold or offered or exposed for sale it shall be deemed to be sold or, as the case may require, offered or exposed for sale, for human consumption or use, unless the contrary is proved.

(5) For the purposes of this Act, the sale of any food or drug for
the purpose of being mixed with any other food or drug, or with a food or drug of the same kind, shall be deemed to be a sale for human consumption or use if the bulk or

product produced by the mixing, or any part thereof, is intended to be sold for human consumption or use.

(6) The purchase and sale, under the provisions of this Act, of a sample of any food or drug for the purpose of analysis shall be deemed to be a purchase and sale of the food or drug for human consumption or use, unless the seller proves that the bulk from which the sample was taken was offered, exposed, or intended for sale for purposes other than human consumption or use. Where under this Act a sample of any milk is taken from any container, and the milk so taken is found on analysis to be adulterated, the sample shall be deemed for the purposes of this Act to be a sample of any bulk of which the milk in that container forms part, notwithstanding that the milk in that container was intended to be mixed with milk in any other container or containers before being sold.

5. What constitutes "adulteration" - For the purposes of this Act, any food or drug shall be deemed to be adulterated:

(a) If it contains or is mixed or diluted with any substance which diminishes in any manner its nutritive or other beneficial properties as compared with the food or drug in a pure and normal state and in an undeteriorated and sound condition, or which in any other manner operates or may operate to the prejudice or disadvantage of the purchaser or consumer; or

(b) If it contains or is mixed or diluted with any substance of a commercial value lower than that of the food or drug in a pure and normal state and in an undeteriorated and sound condition; or

(c) If any substance or ingredient has been extracted or omitted therefrom, and by reason of such extraction or omission the nutritive or other beneficial properties of the food or drug as sold are less than those of the food or drug in its pure and normal state, or the purchaser or consumer is or may be in any other manner prejudiced.

6. Appointment of analysts and officers - (1) There may from time to time be appointed, by the Public Service Commission, such analysts and officers as are required for the purposes of this Act. Every officer of the Ministry appointed under the Health Ordinance 1959 shall, for the purposes of this Act, be deemed to be an officer appointed under this subsection.

(2) The Minister may from time to time when needed in his opinion for the purposes of this Act appoint any person not being an officer of the Public Service as an analyst or employee in a part time capacity and to be remunerated by way of fees or commission only. No person appointed under this subsection shall by virtue of such appointment become an officer of the Public Service, and nothing in the legislation relating to the Public Service shall apply with respect to any appointment made under this subsection.

(3) Analysts and officers under this Act shall have the powers and shall perform the duties set out in this Act, and shall have such other powers and shall perform such other duties as may be necessary to carry into effect the provisions of this Act or as may be prescribed.

7. Administration of Act - This Act shall be administered by the Chief Executive Officer and the Ministry under the control of the Minister.

SALE OF FOOD AND DRUGS

8. Offences in relation to sales - (1) Subject to such exceptions as may be prescribed, every person commits an offence who sells any adulterated food or adulterated drug without fully informing the purchaser, at the time of the sale, of the nature of the adulteration, unless the package in which it is sold has conspicuously printed thereon a true description of the composition of the food or drug so sold.

(2) Every person commits an offence who sells any food or drug:

(a) Containing any substance of which the addition is prohibited by any regulation; or

(b) Which does not comply with any standard prescribed therefor by any regulation; or

(c) Containing a greater proportion of any substance than is permitted by any regulation.

(3) Every person commits an offence who sells any food or drug in any package which bears or has attached thereto any false or misleading statement, word, brand, label, or mark purporting to indicate the nature, quality, strength, purity, composition, weight, origin, age, effects, or proportion of the article contained in the package or of any ingredient thereof.

(4) Every person commits an offence who sells any food containing methyl alcohol.

(5) Every person commits an offence who sells any food or drug containing more than 3 parts of proof spirit percent, unless the person is licensed so to do pursuant to any regulations.

(6) Every person commits an offence who sells any food which is unsound or unfit for human consumption.

(7) Every person commits an offence who sells any food or drug containing any extraneous thing which is harmful or dangerous, or which is offensive.

(8) Subject to the provisions of subsection (9), every person who commits any offence against this section shall be liable, in the case of the first offence, to a fine not exceeding 1 penalty unit, or, in the case of any subsequent offence (whether of the same or a different nature), to a fine not exceeding 4 penalty units.

(9) If any such offence as aforesaid, whether it is the first or any subsequent offence, is wilfully committed, the person so committing it shall be liable:

(a) In the case of an individual, to a fine not exceeding 4 penalty units or to imprisonment for a term not exceeding 3 months.

(b) In the case of a body corporate, to a fine not exceeding 10 penalty units.

9. No defence that act not wilfully committed - In a prosecution for selling any food or

drug contrary to the provisions of this Act, or of any regulations, it shall be no defence that the defendant did not act wilfully, unless the defendant also proves that he or she took all reasonable steps to ensure that the sale of the article would not constitute an offence against this Act or against any regulations.

10. Reliance on written warranty a good defence - (1) Subject to the provisions of this section, it shall be a good defence in any prosecution for an offence against section 8 if the defendant proves:

(a) That the defendant purchased the article sold by him or her in reliance on a written warranty or other written statement as to the nature of the article purchased, signed by or on behalf of the person from whom the defendant purchased the article; and

(b) That if the article had truly conformed to the warranty or statement the sale of the article by the defendant would not have constituted the offence charged against him or her; and

(c) That the defendant had no reason to believe or suspect that the article sold by him or her did not conform to the warranty or statement; and

(d) That at the time of the commission of the alleged offence the article was in the same state as when the defendant purchased it.

(2) No warranty or statement shall be any defence under this section unless:

(a) It was given or made by or on behalf of a person resident in Samoa or a company having a registered office in Samoa or a firm having a place of business in Samoa; and

(b) The signature thereto is written by hand; and

(c) The defendant proves that at the time he or she received the warranty or statement the defendant took reasonable steps to ascertain, and did in fact believe, that the signature was that of the person from whom he or she purchased the article, or, as the case may be, of some person purporting to sign on behalf of the person from whom the defendant purchased the article.

(3) No warranty or statement shall be any defence in any prosecution unless the defendant has, within 7 days after service of the summons, delivered to the prosecutor a copy of the warranty or statement, with a written notice stating that he or she intends to rely thereon and specifying the name and address of the person from whom he or she received it, and has also within the same time sent by post like notice of his or her intention to that person.

(4) When the defendant is a servant or agent of the person who purchased the article under such a warranty or statement as aforesaid, the defendant shall be entitled to the benefit of this section in the same manner and to the same extent as his or her employer or principal would have been if he or she had been the defendant.

11. Offences in relation to advertisement - (1) Every person commits an offence against this Act who, being the seller of any food or drug, or the servant or agent of the seller, publishes or causes to be published any advertisement relating or calculated or likely to cause any person to believe that it relates to the food or drug, or to any ingredient thereof, which:

(a) Directly or by implication qualifies or is contrary to any particulars required by any regulation to be marked on or attached to packages containing any such food or drug; or

(b) Is prohibited by any regulation from being marked on or attached to packages containing any such food or drug; or

(c) Is calculated or likely to deceive a purchaser with respect to the properties of the food or drug.

(2) For the purposes of this section an advertisement shall be deemed to be published if it is:

(a) Inserted in any newspaper or other periodical publication printed or published in Samoa; or

(b) Contained in any document which is sent to any person through the Post Office or otherwise; or

(c) Delivered to any person or left upon premises in the occupation of any person; or

(d) Brought to the notice of members of the public in Samoa in any other manner whatsoever.

12. Liability of persons named on labels - Where any food or drug in connection with which there is a breach of any of the provisions of this Act or of any regulation is sold in an unopened package, every person who appears from any statement or label thereon or attached thereto to be the person who has manufactured, imported, or prepared the food or drug, or to be the person who is the owner of the rights of manufacture thereof or has enclosed it in the package, or to be the agent of any such person as aforesaid, shall, unless

he or she proves the contrary, be deemed to have so manufactured, imported, prepared, or enclosed the food or drug or, as the case may require, to be such agent as aforesaid, and shall be liable in the same manner and to the same extent as if he or she had actually sold the food or drug.

13. Sales by agent or servant - (1) For the purposes of this Act every person shall be deemed to sell any food or drug who actually sells the food or drug, whether on his or her own account or as the agent or servant of any other person.

(2) In the case of a sale by an agent or servant his or her principal or employer shall, without prejudice to any liability under this Act of the agent or servant, be liable under this Act in the same manner and to the same extent as if the principal or employer had effected the sale personally.

NEW DRUGS

14. Distribution of new drugs postponed - (1) Every person who proposes to import into or manufacture in Samoa any new drug shall deposit with the Chief Executive Officer a notice in writing setting out the information specified in subsection (3).

(2) Except with the prior consent in writing of the Chief Executive Officer, no person shall sell, or distribute by way of gift, loan, or sample or in any manner whatsoever, or advertise for sale, or advertise the availability of, any new drug until after the expiry of at least 90 days from the date of the deposit with the Chief Executive Officer of such notice

as aforesaid.

(3) The information to be set out in each notice in writing under this section is as follows:

(a) The full name and address of the applicant; and

(b) If he or she is not the manufacturer, the full name and address of the manufacturer; and

(c) The name under which the drug is or will be marketed; and

(d) A quantitative statement of the ingredients of the drug, using descriptive or non-proprietary names; and

(e) A specimen or copy of every label used or proposed to be used on packages containing the drug, or the wording thereof; and

(f) A description of the form or forms of the drug; and

(g) The proposed or recommended quantity and frequency of dose, and the manner in which the drug will be recommended to be administered, applied or otherwise used; and

(h) The purposes for which the drug will be recommended to be used, and the claims intended to be made in respect of its usefulness; and

(i) Reports of any tests made to establish the safety of the drug for the purposes for which and in the manner in which it is intended to be used; and

(j) Reports of any tests made to control the strength, quality, purity or safety of the drug; and

(k) The intended method of marketing the drug in Samoa; and

(l) If the drug is to be manufactured, prepared or packed in Samoa the place where that is intended to be done.

(4) In any proceedings for an offence against this section the drug to which the proceedings relate shall be presumed to be new drug until the contrary is proved.

15. Distribution of changed drugs postponed - (1) Where at any time after the commencement of this Act a material change is made by the manufacturer of any drug, whether in Samoa or elsewhere, in:

(a) The purpose for which the drug is intended to be used, or the recommended dosage, or the recommended manner of administration; or

(b) The labelling of the drug or of any package containing it; or

(c) The pharmaceutical form of the drug; or

(d) The strength, quality, or purity of the drug; or

(e) The methods of manufacture, or the facilities for testing the strength, quality, purity or safety of the drug,-

the importer into Samoa of the drug, or its manufacturer in Samoa, shall deposit with the Chief Executive Officer a notice in writing describing the change and giving particulars, so far as they are known to the importer, of any effect that the change might have on the safe consumption or use of the drug.

(2) Except with the prior consent in writing of the Chief Executive Officer, no person shall sell any drug in respect of which any such change as aforesaid has been made, or distribute it by way of gift, loan or sample or in any manner whatsoever, until after the

expiry of at least 90 days from the date of the deposit with the Chief Executive Officer of such notice as aforesaid.

16. Exemption for drug required by medical practitioner - Nothing in section 14 or section 15 shall prevent the supply by any person to any medical practitioner, on his or her request, of any drug required by him or her for the treatment of a patient under his or her care, or the administration by any medical practitioner of any drug to any such patient.

FURTHER SPECIAL PROVISIONS AS TO DRUGS

17. Further particulars - (1) The Chief Executive Officer may, by notice in writing, at any time after the receipt of a notice under section 14 or section 15, require the maker of the application or the giver of the last-mentioned notice to give further information or particulars as to the drug.

(2) Every person to whom notice is given under this section shall comply therewith as soon as possible after receipt thereof, so far as the person is able to do so.

18. Duty of importer or manufacturer to report untoward effects of drug - (1) If at any time the importer into Samoa of any drug, or the manufacturer in Samoa of any drug, has reason to believe that any substantial untoward effects have arisen from the use of the drug, whether in Samoa or elsewhere, he or she shall forthwith notify the Chief Executive

Officer of the nature of those effects and the circumstances in which they have arisen, so far as they are unknown to the importer.

(2) Subsection (1) shall not apply in any case where particulars of such effects and circumstances as aforesaid have been published in the English language in any medical or pharmaceutical publication or periodical which in the ordinary course is circulated among or distributed to members of the medical and pharmaceutical professions in Samoa.

19. Offences - Every person who contravenes or fails to comply with any of the provisions of sections 14, 15, 16, 17 or 18 or any requirement thereunder commits an offence and is liable to a fine not exceeding 6 penalty units and, if the offence is a continuing one, to a further fine not exceeding 3 penalty units for every day on which the offence has continued.

POWERS AND DUTIES OF OFFICERS

20. Powers of entry and inspection, etc. - (1) Any officer may:

(a) At all reasonable times enter into and inspect any place where there is any food or drug which the officer has reasonable ground for believing to be intended for sale; and

(b) Mark, seal, or otherwise secure, weigh, count, or measure any food or drug of which the sale, preparation, or manufacture is or appears to be contrary to any provision of this Act or any regulation; and

(c) Seize any food or drug, wherever found, which is or appears to be unwholesome, unclean, damaged, deteriorated, perished, or injurious to health, or which contains any decomposed organic substance; and

(d) Destroy any food or drug, wherever found, which is decayed or putrefied; and

(e) Inspect any food or drug, wherever found, which the officer has reasonable ground for believing to be intended for sale, and select and take or obtain samples thereof for the purposes of examination or analysis without complying with the provisions of sections 24 and 25:

PROVIDED THAT no proceedings in respect of any such food or drug shall be taken for any offence mentioned in section 8 unless the provisions of the said sections 24 and 25 have been complied with.

(2) Any person claiming anything seized under this section may within 48 hours after the seizure complain thereof to any District Court Judge or Faamasino Fesoasoani, and the complaint may be heard and determined before a District Court Judge or Faamasino Fesoasoani, who may either confirm or disallow the seizure either wholly or in part, and may order the article seized to be restored either wholly or in part.

(3) If within 48 hours after any such seizure as aforesaid no complaint has been made, or if the seizure is confirmed pursuant to subsection (2), the article seized shall become the property of the Government, and shall, subject to the provisions of subsection (4), be destroyed or otherwise disposed of so as to prevent the use of it for human consumption.

(4) Nothing in subsection (3) shall prevent:

(a) The keeping by the Government of any food or drug seized under this section for such period as may be necessary for its production in any proceedings under this Act; or

(b) The release or return by any officer of any food or drug seized under this section if the officer is satisfied that the food or drug is fit for sale or if any conditions or stipulations imposed by the officer for the purpose of making it fit for sale have been complied with to his or her satisfaction.

21. Power of Chief Executive Officer to require information - (1) If in the opinion of the Chief Executive Officer there is reasonable ground for suspecting that any person is in possession of any food or drug or other substance for the purpose of sale, or for the purpose of manufacturing or preparing any food or drug for sale, in breach of any provision of this Act or of any regulation, the Chief Executive Officer may require that person to produce for the Chief Executive Officer's inspection, or to produce to any officer specially authorised by the Chief Executive Officer in that behalf, any books or documents dealing with the reception, possession, purchase, sale, or delivery of any such food or drug or other substance.

(2) The Chief Executive Officer may make or cause to be made copies of or extracts from any such books or documents, and the copies or extracts, certified as such by any specially authorised officer, shall be deemed to be true and correct copies or extracts unless the contrary is proved.

(3) For the purposes of this subsection, the term "manufacturer", in relation to a food or drug, means the person who, as owner, packs the food or drug for sale or causes it to be so packed. For the purpose of enabling the making of regulations, the Chief Executive Officer may from time to time, by notice in writing to the manufacturer in Samoa of any compounded food or drug which is sold under a trade name, or to the importer into Samoa of any such food or drug, require such manufacturer or importer to state correctly in writing to the Chief Executive Officer the nature of the ingredients of the food or drug and the proportions in which those ingredients are contained in it.

(4) The disclosure of any information pursuant to subsection (3) shall not prejudice any application subsequently made for a patent.

(5) Every person commits an offence against this Act who refuses or neglects to comply with any requisition made pursuant to this section.

(6) Every officer who does not maintain the secrecy of all matters which come to his or her knowledge in the performance of official duties under this section, or who communicates any such matter to any person, except for the purpose of carrying into effect the provisions of this Act, commits an offence and shall be liable to a fine not exceeding 1 penalty unit.

22. Power to require name and address of seller - (1) Any officer acting in the exercise of any of the officer’s other powers under this Act may require any person who is in possession of any food or drug for sale, or for delivery upon sale, to state correctly his or

her name and address and, so far as the person is aware of them, the name and address of the person from whom he or she obtained the food or drug.

(2) Every person commits an offence against this Act who refuses or neglects to comply with any requisition made pursuant to this section.

23. Examination of Customs entries - For the purposes of this Act, any officer shall have the right at all times, subject to the convenience of the Collector or other responsible officer of Customs, to inspect any Customs entry relating to any goods imported or proposed to be imported into Samoa, or to inspect any certificate or invoice relating to those goods, if and so long as any such document is in the possession or control of the Collector or other responsible officer as aforesaid.

ANALYSIS OF FOOD AND DRUGS

24. Procuring of samples for analysis - (1) On payment or tender to any person selling or making any food or drug, or to his or her agent or servants, of the current market value of the samples referred to in this section, any officer may at any place demand and select and take or obtain samples of the food or drug for the purpose of analysis.

(2) Any such officer may require the said person or his or her agent or servant to show and permit the inspection of the package in which the food or drug is at the time kept, and to take therefrom the samples demanded.

(3) Where any food or drug is kept for retail sale in an unopened package, no person shall be required by any officer to sell less than the whole of the contents of the package.

(4) Every person commits an offence who refuses or neglects to comply with any demand or requisition made by an officer pursuant to this section, unless the person proves that he or she had no knowledge or reason to believe that the sample demanded was required for the purpose of analysis.

(5) For the purposes of this section every person who is in possession of any food or drug which in the opinion of an officer is intended for sale shall, until the contrary is proved, be deemed to be the seller thereof or, as the case may require, the agent or servant of the seller.

25. How samples to be taken - (1) Where it is intended to submit for analysis any sample procured under section 24, the officer procuring it shall, before or forthwith after procuring it, inform the seller or his or her agent or servant selling the article that the officer intends to have the sample analysed.

(2) The officer shall thereupon divide the sample into 3 parts, and shall mark and seal or fasten up each part in such manner as its nature will permit, and shall leave one part with the seller or his or her agent or servant.

(3) The officer shall subsequently deliver another part to an analyst, and shall retain the third part.

(4) Delivery to an analyst under this section may be effected either personally or by registered or insured parcel post, or by sending it in an insured parcel by any road, sea, or air service.

(5) When any food or drug is contained in a package in such quantity that its division into 3 parts as aforesaid would, in the opinion of the officer, furnish parts insufficient for accurate analysis, additional packages which purport to contain a similar food or drug under the same brand or label may be taken or obtained, and the contents of 2 or more packages may be mixed together and the mixture divided and submitted for analysis as provided in this section.

(6) Notwithstanding anything in this section, where:

(a) A sample of milk, cream, ice cream, or any other perishable food being a product of milk is procured only for bacteriological analysis; or

(b) A sample of milk is procured only for examination by the freezing point test for added water; or

(c) A sample of milk is procured for bacteriological analysis and examination by the freezing point test as aforesaid,-

the officer may deliver the whole sample to the analyst instead of dividing it into parts,

unless the seller or his or her agent or servant requires him to leave a part, in which case the officer shall divide the sample into 2 parts and, after marking and sealing them as aforesaid, leave one part and deliver the other to the analyst:

PROVIDED THAT where the food is bottled milk or bottled cream or packaged ice cream or any other frozen confection and the officer is required to leave a part as aforesaid, it shall be sufficient compliance with that requirement if the officer selects, marks, and seals 2 bottles of milk or cream or 2 packages which purport to contain similar ice cream or a similar frozen confection under the same brand or label, as the case may require, and leave one of them with the seller or his or her agent or servant.

26. Analysis of sample and certificate of analyst - (1) The certificate of the analyst shall be in the prescribed form and if not so prescribed in such form as the analyst thinks fit.

(2) Where any method of analysis for the analysis of any food or drug is prescribed, any analyst shall in the certificate of analysis declare that he or she has followed the prescribed method in the analysis.

(3) Where any sample of a food or drug is procured by an officer under this Act and submitted for analysis, the person from whom the sample was procured may, on payment of a fee not exceeding 25 sene obtain a copy of the analyst's certificate or, if there is no such certificate, a copy of the report made by the analyst in respect of the sample. Except

as provided in this subsection, and in section 33, no person shall be entitled to obtain a copy of any analyst’s certificate or report given in respect of any sample procured and submitted for analysis by an officer pursuant to this Act.

(4) Every person commits an offence against this Act who causes or permits any copy of an analyst's certificate or report obtained under subsection (3) to be used in any advertisement.

27. Duty of officer to procure sample for analysis on request - Every officer shall, on being requested in writing by any person to procure a sample of any food or drug and submit it for analysis, and on payment by that person of the prescribed fee together with the cost of the sample, procure a sample of the food or drug and submit it for analysis. The provisions of sections 24 and 25 shall, so far as applicable and with the necessary modifications, apply with respect to the procuring and analysis of the sample.

28. Analyst's certificate to be prima facie evidence - In any proceedings under this Act the production by the prosecutor of a certificate of analysis purporting to be signed by an analyst shall, without proof of the signature of the analyst, be sufficient evidence of the facts stated therein, unless the defendant requires that the analyst be called as a witness, in which case the defendant shall give notice thereof to the prosecutor not less than 3 clear days before the date of the hearing.

29. Order by District Court Judge for further analysis - In any proceedings for an offence under this Act the District Court Judge shall, on the request of either party to the

proceedings, and may if the

Judge thinks fit without such request, order that the part of the sample retained by the officer under section 25 be submitted, for analysis and report, to some other analyst.

MISCELLANEOUS

30. Interference with official marks or seals - Every person commits an offence who without written authority from an officer erases, alters, opens, breaks, or removes any mark, seal, or fastening placed by any officer, pursuant to this Act, on any food or drug, or on any sample of a food or drug, or on any package, place, door, or opening containing or affording access to any food or drug.

31. Obstruction of officers - Every person commits an offence against this Act who in any way resists, obstructs, or deceives any officer in the exercise of any powers conferred on that officer by or pursuant to this Act.

32. General penalty for offences - Every person who commits an offence against this Act or any regulation for which no penalty is provided elsewhere than in this section shall be liable to a fine not exceeding 1 penalty unit and (if the offence is a continuing one) to a further fine not exceeding one-half of one penalty unit for every day or part of a day during which the offence continues.

33. Procedure on prosecutions for offences - There shall be served with the summons in any proceedings for offences against this Act or against any regulation a copy of any

analyst's certificate on which the prosecution is based.

34. Source of information or reports need not be disclosed - No prosecutor or witness in any prosecution under this Act or under any regulations shall be compelled to disclose the fact that he or she received any information, or the nature of such information, or the name of any person who gave such information; and no officer appearing as a prosecutor or witness shall be compelled to produce any confidential reports or documents made or received by him or her in his or her official capacity, or to make any statement in relation thereto.

35. Forfeiture of food or drugs on conviction - (1) Where any person is convicted of an offence against this Act or any regulation, the convicting District Court Judge may order that any food or drug to which the conviction relates, and any similar food or drug found on the defendant's premises or in his or her possession at the time of the commission of the offence, together with all packages or vessels containing the food or drug, shall be forfeited to the Government.

(2) Everything so forfeited to the Government shall be disposed of as the Minister directs.

36. Payment of expenses of analysis on conviction - (1) Where any person is convicted of an offence against this Act or any regulation, the District Court Judge may order that all fees and other expenses incidental to the analysis of any food or drug in respect of which the conviction is obtained (including any analysis under section 29) shall be paid

by the defendant.

(2) All such fees and expenses shall be deemed to be part of the costs attending the conviction, and shall be recoverable accordingly.

37. Publication of conviction where ordered by District Court Judge - Where any person is convicted of an offence against this Act or any regulation, the Chief Executive Officer shall, if the convicting District Court Judge so orders, cause to be published, in such newspaper or newspapers circulating in Samoa as the District Court Judge thinks fit, a notification of the name, occupation, and place or places of business of the defendant, the nature of the offence, and the fine, forfeiture, or other penalty inflicted.

38. Statements by Chief Executive Officer - (1) Notwithstanding anything in this Act, the Chief Executive Officer may from time to time, for the purpose of protecting the public, publish statements in respect of any food or drug, or in respect of any matter contained or implied in advertisements (either generally or in any particular advertisement or any class or classes of advertisements) relating to any food or drug.

(2) Every statement published under this section shall be privileged unless the publication is proved to be made with malice.

39. Protection of persons acting under authority of Act - A person who does any act in pursuance or intended pursuance of any of the provisions of this Act shall not be under

any civil or criminal liability in respect thereof, whether on the ground of want of jurisdiction, or mistake of law or fact, or on any other ground, unless he or she has acted in bad faith or without reasonable care.

40. Regulations - (1) The Head of State, acting on the advice of Cabinet, may from time to time make all such regulations as may in the Head of State's opinion be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

(2) Without limiting the general power hereinbefore conferred, it is hereby declared that regulations may be made under this section for all or any of the following purposes namely:

(a) Enabling licences to be granted by the Chief Executive Officer for the sale of any food or drug containing more than 3 parts of proof spirit percent; prescribing forms and conditions of licences; and providing for or regulating applications for, granting, custody, production, and cancellation or revocation of licences, and the fees payable for licences;

(b) Prescribing standards of strength, weight, quality, purity, quantity, or composition in respect of any food or drug or of any ingredient or component part thereof;

(c) Prohibiting or restricting the addition of any specified thing, or of more than the specified quantity or proportion thereof, to any food or drug;

(d) Prohibiting any modes of manufacture, preparation, or preservation of any food or drug;

(e) Licensing, controlling, or restricting the manufacture, importation, sale, distribution, or use of sera, vaccines, antigens, toxins, antitoxins, and other biological preparations;

(f) Securing the cleanliness and freedom from infection or contamination of any food or drug in the course of its manufacture, preparation storage, packing, carriage, delivery, exposure for sale or sale; and securing the cleanliness of places, receptacles, appliances, and vehicles used in such manufacture, preparation, storage, packing, carriage, delivery, exposure for sale or sale as aforesaid; and requiring the owner or occupier of any such place to cease to use the same for any such purpose;

(g) Prohibiting the use of any room or place for the preparation of any food for sale without the approval in writing of the Chief Executive Officer or an inspector;

(h) Prohibiting, restricting, or regulating the sale or supply for human consumption of unpasteurised milk that is infected or is suspected by the Chief Executive Officer, on reasonable grounds, of being infected;

(i) Providing for the registration of premises used as eating houses, and conditions subject to which registration may be granted or renewed or revoked and reasonable fees to be paid in respect of the grant or renewal of registration, and conditions to be complied with in the absence of such registration;

(j) Prescribing the mode of labelling, branding, printing, or marking of appliances, containers, or devices used or intended for use in or in connection with the preparation or storage of any food or drug;

(k) Prescribing the mode of labelling of packages containing any substance or preparation used or intended for use or held or kept for use in the manufacture or preparation of, or as an ingredient of, any food or drug;

(l) Prescribing the mode of labelling of any food or drug sold in a package and requiring any matter to be printed, embossed, impressed, branded, stamped or otherwise marked on any food or drug (whether sold in a package or otherwise) in such manner as may be prescribed in any regulations;

(m) Prescribing the matter to be contained or not to be contained in any label for any of the aforesaid purposes;

(n) Prescribing in the case of any specified class or classes of food or drugs imported into Samoa that all articles belonging to any such class, or the packages containing such articles, shall be branded, stamped, or marked so as to indicate the fact of their importation and the country of origin;

(o) Requiring with respect to any specified article of food that, when it is sold otherwise than in packages, there shall be conspicuously displayed in the place of sale, so as to be easily read by the purchaser, the same particulars (if any), but subject to such necessary modifications as may be expressed or indicated in any regulation, as are required by any regulation to be contained in the labels when the article is sold in packages;

(p) Requiring that any specified food or drug, or foods or drugs of any specified class or classes, shall be artificially coloured by the addition thereto of such colouring substance or substances as may be prescribed in any regulation, in such proportion or proportions as may be so prescribed;

(q) Prohibiting the sale of specified articles of food otherwise than by weight;

(r) Prohibiting or restricting the sale of any vessel or utensil intended for use in the storage, preparation, or cooking of food and made of any material containing any substance capable of

imparting any poisonous or injurious property to any food that might be stored, prepared, or cooked therein;

(s) Prescribing the method of analysis of any food or drug;

(t) Prescribing fees to be paid in respect of the analysis by an analyst of any food or drug;

(u) Prescribing fines for the breach of any regulation, not exceeding 1 penalty unit in any case and, where the breach is a continuing one, not exceeding one-half of one penalty unit for every day or part of a day during which the breach continues.

(3) Any regulation under this section may be made applicable either to foods or drugs generally or to specified foods or drugs only.

41. Savings of sales of existing stocks - (1) Notwithstanding anything contained in this Act or in any notice thereunder or in any regulations, it shall be lawful for any person, at any time within 12 months after the date of the coming into force of this Act or any such notice or regulations as the case may be, to sell any food or drug of which the sale is otherwise lawful, if he or she proves that at the said date the food or drug was part of the existing stock in trade in Samoa of any person carrying on business there, and that since the said date no act has been done whereby the food or drug fails to conform to this Act or such notice or regulations, as the case may be.

(2) For the purposes of this section any goods purchased before the said date for importation into Samoa shall be deemed to be part of the purchaser's stock in trade in Samoa at the said date.

42. Repeals and revocations - (1) The Food and Drugs Act 1947 (NZ) and all its amendments are hereby repealed as to Samoa.

(2) Section 57 of the Health Ordinance 1959 is hereby repealed.

(3) The following New Zealand Regulations and all their amendments are hereby repealed and revoked as to Samoa:

(a) The Food and Drug Regulations 1946 (S.R. 1946/136)

(b) The Food and Drug Temporary Regulations 1946 (S.R. 1946/162) (Combined Reprint S.R. 1963/209)

(c) The Food Hygiene Regulations 1952 (S.R. 1952/74)

(d) The Health (Eatinghouse) Regulations 1948 (S.R. 1948/185; Reprint S.R. 1954/208).

REVISION NOTES 2008

This law has been generally edited as provided for by section 5 of the *Revision and Publication of Laws Act 2008*. The following general revisions have been made –

(a) References to Western Samoa have been amended to Samoa in accordance with an amendment to the Constitution of Samoa in 1997.

(b) The fines have been amended and are stated as penalty units as provided for by the *Fines (Review and Amendment) Act 1998*.

(c) All references to the male gender have been made gender neutral.

(d) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.

(e) Amendments have been made to up-date references to offices, officers and statutes.

(f) Other minor editing has been done in accordance with the lawful powers of the Attorney General.

There were no amendments made to this law since the publication of the *Western Samoa Statutes Reprint 1978-1996.*

Revised and consolidated by Graham Bruce Powell

Under the supervision of Teleiai Lalotoa Sinaalamaimaleula Mulitalo (Parliamentary Counsel)

REVISION NOTES 2008 No. 2

This law has been generally edited as provided for by section 5 of the *Revision and Publication of Laws Act 2008*. The following general revisions have been made –

(a) the commencement date (which is the assent date under the *Acts Interpretation Act 1974*) is inserted after the assent date;

(b) other minor editing has been done in accordance with the lawful powers of the Attorney General.

No amendment has been made to this law since the publication of the *Consolidated and Revised Statutes of Samoa 2007*.

Revised and consolidated under the supervision of Teleiai Lalotoa Sinaalamaimaleula Mulitalo (Parliamentary Counsel)

The Food and Drugs Act 1967

is administered in the Ministry of Health.