

CHAPTER 19**FOOD SAFETY**

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An Act to provide for the health, safety and welfare of the people by prohibiting the importation, production, processing, handling, distribution, and domestic trade of unsafe, unwholesome and poor quality food.

Commencement: March 24, 2010  
Source: P.L. 2010 - 37

**PART 1 – PRELIMINARY****1901. Short Title.**

This Chapter may be cited as the Food Safety Act, 2010.

**1902. Interpretation.**

In this Chapter, unless the context otherwise requires -

- (a) “adulterated”, in relation to a food, means:
- (i) it contains, or is mixed with, any substance which reduces its properties as compared with such food in a normal or non-deteriorated state;
  - (ii) a substance has been removed from it so that its properties are reduced as compared with such food in a normal or non-deteriorated state;
  - (iii) it contains a substance which is not permitted for use in food;

- (iv) it contains more of a substance than is permitted;
- (v) it is prepared so that the damage, deterioration, or inferiority is or may be concealed;
- (vi) it is the product of an animal that died naturally of disease; or in the case of a warm-blooded animal, in any way other than by legal slaughter;
- (vii) it consists wholly or in part of any diseased or putrid or rotten animal or vegetable substance whether manufactured or not;
- (viii) it contains a hazard or any physical, chemical or biological agent that is or is likely to be injurious to the health of the person consuming the food, whether added with intent or otherwise;
- (ix) the food comes into contact with a material that contains a substance which may render the food unfit for human consumption;
- (x) it contains a foreign substance;
- (xi) it is in a sealed package which is damaged and can no longer protect the contents from contamination or deterioration; or
- (xii) it is in a package and any contents of the package are different from what the label states the package contains.

(b) “advertise” means use of words, whether written or spoken, symbolic or pictorial representation or design, or any other representation that has the effect of promoting a product for sale;

(c) “article” means

- (i) any food; or
- (ii) anything used to label or advertise food; or
- (iii) anything or machine used for the preparation, preservation, packing, storing or displaying of any food.

(d) “charity and community food business operations” refers to charitable, community based or other socially beneficial organisations that sell food to raise funds for charitable or community purposes and not for personal financial gain, and shall include, but not necessarily be limited to community markets, bazaars, raffles, school fundraising activities, church fundraising activities and district stalls;

(e) “date of minimum durability” (“best before”) means the date which signifies the end of the period under any stated storage conditions during which the product will remain fully marketable and will retain any specific qualities for which tacit or express claims have been made. However, beyond the date the food may still be perfectly satisfactory;

(f) “food” means any substance, whether processed, semi-processed or raw, which is intended for human consumption, and includes drinks, packaged water, chewing gum and any substance which has been used in the manufacture, preparation or treatment of “food” but does not include cosmetics or tobacco or substances used only as drugs;

(g) “food business” means any undertaking, whether for profit or not, and whether public or private, carrying out any of the activities related to any stage of production, processing and distribution of food for sale. While not limited to the following, food businesses include restaurants, bakeries, caterers, food wholesalers and retailers, fish vendors, food sellers, meat butcheries, food processors, food importers and food exporters;

(h) “food handler” means any person who directly handles packaged or unpackaged food, food equipment and utensils, or food contact surfaces and is therefore expected to comply with food hygiene requirements;

(i) “food inspector” means a person appointed under Section 10 of this Chapter ;

(j) “label” means any tag, brand, mark, pictorial or other descriptive matter, written, printed, stencilled, marked, embossed or impressed on, or attached to, a container of food;

- (k) “Minister” means the Minister for Health;
- (l) “Premises” means:
- (i) any building or tent or other structure, permanent or temporary, the land on which it is situated, and any adjoining land used in connection with it;
  - (ii) any vehicle or vessel; and
  - (iii) any place, including a street, open space, or place of public resort, used in the preparation, preservation, packaging or storage of any article.
- (m) “operator” means any person who is in charge of, responsible for the operations of, directs or controls the production, processing, handling or sale of food for a food business premises.
- (n) “registered with the Ministry of Health”, in relation to food business premises, means that all food businesses other than those exempted under Part 3 of the Chapter, shall be required to inform the Ministry of Health, in writing using a form available from the Ministry of Health, of their intention to operate and shall identify the address (es) and telephone contact number of the premises to be used in handling, storage and sale of food. This registration will facilitate the inspection of the premise prior to initiating operations;
- (o) “reasonable evidence that public health is at immediate risk” means that the food inspector has reasonable evidence that if the business is not closed, consumers may have their health put at risk by unsafe food. While not being limited to the following conditions, this may include where the food business operations cannot effectively separate raw food and cooked food or where the food business operations cannot effectively control its cooking operations or its cold storage operations. It shall not be taken to mean that the premises have flaws in the floors, walls or ceilings; nor that the premises are not well cleaned; nor that food handlers do not have a health certificate; nor any other condition unless that flaw; lack of a certificate; or other condition, is likely to place the public health at immediate risk;
- (p) “Secretary” means the Secretary of Health, Ministry of Health;
- (q) “sell” means to offer, advertise, keep, deliver, or prepare for sale or exchange, to dispose of for consideration, or to deliver in pursuance of a sale or exchange;
- (r) “suitably qualified person”, in relation to certified food inspectors, means for a transitional period up until 2015, those persons identified as suitably qualified by the Secretary and may include persons with no formal qualifications in an area of relevance to inspection but who have satisfactorily completed a short-course training, approved by the secretary, in the area of food safety and food inspection, After the transitional period, the term shall mean a person with formal qualifications at diploma or degree level from an accredited college or University in an area of study approved by the Secretary as being an area of relevance to food safety. The Secretary may still require the person to have also satisfactorily completed short-course training, approved by the Secretary, in an area of food safety and food inspection;
- (s) “unsanitary conditions” means such conditions as could cause contamination of a food with dirt or filth, or could render the food injurious or dangerous to health, whether such contamination or injury or danger actually occurs or not;
- (t) “use-by date” (Recommended Last Consumption Date, Expiration Date) means the date which signifies the end of the estimated period under any stated storage conditions, after which the product probably will not have the quality attributes normally expected by the consumers. After this date, the food shall not be regarded as marketable.

## PART 2 –GENERAL PROVISIONS

### 1903. Registration and licensing of food businesses.

(1) All food businesses' premises, other than those food businesses engaged in primary production only, shall be registered with the Ministry of Health before initiating operations.

(2) No fee shall be applicable to this registration process unless otherwise determined as may be necessary from time to time.

(3) The Ministry of Health shall maintain a register of all food business' premises, registered in accordance with Subsection (1).

(4) When obtaining a license from the relevant local authority, a food business' premises shall be inspected by a food inspector prior to the license being provided and the business initiating operations.

(5) Notwithstanding a business being in possession of a license provided by the relevant licensing authority, no food business shall initiate operations until it meets the requirements of this Chapter and its regulations and standards.

(6) A license, or a true copy of it, relevant for the particular food business and current for the period of operation, shall be displayed in all premises covered under this Chapter .

(7) Notwithstanding Subsections (1) to (5) of this Section, charity and community food business operations shall be deemed to have met the requirements of this section by informing the food inspector of their intention to operate before starting operations and shall received a written permission from the food inspector to operate for a defined period.

#### **1904. Food safety obligations.**

(1) Operators of food businesses have an obligation to put in place procedures as prescribed in the regulations, and any additional precautions necessary, to ensure the safety of food imported, exported, processed, handled, stored, displayed or sold by the business.

(2) Food that carries a use-by date or a minimum durability date, or is required by regulations under this Chapter to carry such a date, shall bear the date in a manner that is easily visible and likely to be read and understood by an ordinary consumer under customary conditions of purchase and use.

#### **1905. Training of food handlers.**

(1) All food handlers shall, prior to starting work in a food business, be required to undergo training by the health authorities or by a organization accredited by the health authorities for such training.

(2) Charity and community food business operations shall be provided a food handler information sheet by the Ministry of Health when the business informs the Ministry of Health of their intention to operate food business subject to Section 3(6) of this Chapter .

(3) For the purposes of Subsection (1), food handlers involved in charity and community food business operations shall read and follow the training guidance provided under Subsection (2).

#### **1906. Health of food handlers.**

(1) All food handlers shall, prior to starting work in a food business, be required to undergo medical screening tests prescribed by the Secretary and shall be required to undertake such examinations on a six monthly basis while continuing employment as a food handler.

(2) No person shall be employed as a food handler, or handle food, if that person has not been cleared by the medical examinations under Subsection (1) and hold a health certificate.

(3) A food handler employee in all premises covered under this Chapter , shall displayed on a food business' premises in a manner that is easily visible to a food inspector during an inspection a health certificate, or a true copy of it.

(4) Notwithstanding Subsection (3), where the business is a charity or community business, and the premises may be mobile or non-fixed, all food handlers in the business shall, while handling, transporting and selling food, carry with them their health certificate and make it available for inspection at the request of food inspector.

(5) Health certificate shall include a recent passport style photograph of the food handler to assist in confirmation that the health certificate belongs to a given individual.

**1907. Obtaining food from closed areas.**

(1) If the Secretary is of the opinion that any food handler of any specified class of food if cultivated, taken, harvested or obtained in or from a specific area may be dangerous or injurious to persons consuming the food or the public, the Secretary may by order prohibit the person from cultivating, taking, harvesting or obtaining of the food in or from that area.

(2) The Secretary shall, unless the urgency of the matter otherwise requires, give five days' notice in writing of the reasons of the intended prohibition order under Subsection (1).

(3) If a prohibition order made under Subsection (1) is within the jurisdiction of any other department, the Secretary must consult the department before making an order under Subsection (1).

(4) The Minister, if it is necessary in the public interest, may exercise the power conferred on the Secretary by Subsection (1).

**1908. Prohibited product.**

(1) If in the opinion of the Secretary there is a public health concern, the Secretary may, by order, declare any food a prohibited product.

(2) A food declared as a prohibited product under Subsection (1) shall be prohibited from being imported, produced, prepared, stored, displayed or sold.

(3) The Minister, if it is necessary in the public interest, may exercise the power conferred on the Secretary by Subsection (1).

**1909. Food safety from farm-to-table.**

(1) Safety of food for human consumption depends on good hygienic practices in:

- (a) the primary production, slaughter, and butchering of animals;
- (b) the harvesting and handling of fish and fisheries products; and
- (c) on good hygienic practices in the production of plants for food.

(2) Secretary may, after consultation with the appropriate Ministry or Authority with responsibility for these areas of primary production:

- (a) establish regulations and standards to better protect human health; or
- (b) request the relevant Ministry or Authority to establish such regulations and standards for food safety from farm-to-table.

**PART 3 – INSPECTION AND ANALYSIS**

**1910. Appointment of Food Inspectors.**

(1) The Secretary may appoint suitably qualified persons to be certified food inspectors to administer and enforce the provisions of this Chapter, its regulations and standards.

(2) The Secretary may, consult with other appropriate Ministries, national authority or local government, to appoint personnel from another Ministry, national authority or local government to a task force for food inspection purposes. For the period of time in which the task force is conducting an inspection under this Chapter, its regulations and standards, the members of the task force will have the powers, functions and responsibilities of a food inspector.

(3) With respect to food being imported into the Republic of the Marshall Islands, the Secretary of Health may request the support of suitably qualified persons in the Ministry of Resources and Development to support the work of food inspectors in protecting human health through inspection of the safety of the imported food at the point of entry of the food into the country.

**1911. Certification of food inspectors.**

- (1) For an individual to be certified food inspector:
- (a) the Secretary shall have determined that the person is worthy of public trust and confidence
  - (b) be a suitably qualified person; and
  - (c) the Secretary shall have appointed the person as a certified food inspector.
- (2) While on duty, a food inspector shall wear a badge or alternative form of identification to confirm that they are a certified food inspector under this Chapter .

**1912. Powers of entry and search.**

- (1) For the purposes of this Chapter , a Food Inspector may at all reasonable times:
- (a) stop and detain any vehicle or vessel the inspector knows or reasonably suspects is being used for the production, processing, handling, storage, display or sale of any food or article under this Chapter ; and
  - (b) enter any premises the inspector knows or reasonably suspects are being used for the production, processing, handling, storage, display or sale of any food or article under this Chapter .
- (2) Before exercising powers of entry and search under this section, the Secretary of Health shall with the assistance of the Attorney General's Office or the Police Commissioner, obtain a search warrant in accordance under Article II, Section 3 of the Constitution.
- (3) Subject to Subsections (1) and (3), a Food Inspector, accompanied by a Police Officer and other members of taskforce from other government agent, may:
- (a) search for, examine and take samples of any article subject to this Chapter ;
  - (b) open and inspect any room, place, container or package that the food inspector knows or reasonably suspects contains any article subject to this Chapter ;
  - (c) examine any documents (electronic or hardcopy) that could contain any relevant information about articles subject to this Chapter and make copies of them;
  - (d) obtain photographic evidence of any article or condition subject to this Chapter ;
  - (e) question with respect to matters under this Chapter any person the food inspector finds thereon; and
  - (f) make such inquiry and examination as the food inspector believes to be necessary or desirable to assist the discharge or exercise of any function or power under this Chapter to ascertain whether any contravention of any provision of this Chapter has been, is being or is likely to be committed.
- (4) Upon completion of an inspection, a food inspector shall prepare a written inspection report for the information of the food business owner and for health authorities.
- (5) The Secretary may publish the findings of inspections in a public manner so as to inform consumers to what extent food businesses comply with good hygienic practice, the Act, its regulations and standards.

**1913. Powers of temporary closure.**

(1) The Secretary may order the temporary closure, for a minimum period of three days, of any premises where either:

(a) a food inspector has reasonable evidence that public health is at immediate risk until corrective action identified as necessary in an inspection is taken; or

(b) any premises fails, after 3 re-inspections undertaken within a reasonable period, to implement a corrective action identified as necessary by a food inspector.

(2) After three days temporary closure, an owner or operator of food premises may request a food inspector to re-inspect the premises to determine the compliance of the premises with this Chapter, its regulations and standards and the food inspector shall carry out that re-inspection within 72 hours of receiving the request for re-inspection.

(3) Where premises are found, upon re-inspection under Subsection (2) to be in compliance with this Chapter, its regulations and standards, the Secretary shall immediately lift the order for temporary closure of the premises.

(4) Where a food business:

(a) fails to stop its operations and close its premises within 1 day of the Secretary ordering the temporary closure of its premises; or

(b) is found on more than three occasions in a twelve month period to be subject to a temporary closure order,

the Secretary shall request the authority responsible for issuing business' license to immediately revoke the license of the business regardless of the number of premises and activities covered by the license.

(5) Before revoking the licence, the Secretary shall give 10 days to the owner of the business to show cause, the failure of which, the authority issuing trading licenses shall be required to take action as requested by the Secretary under Subsection (4) as soon as it is practically possible to do so.

(6) Where a food business has had its license revoked under Subsection (5), the owner or operator shall not be permitted to apply for a new food business license within 3 months of having the license revoked.

#### **1914. Sampling.**

(1) Where a food inspector reasonably believes there may be a contravention of this Chapter, its regulations and standards, the food inspector may demand and obtain samples of any food as required for the purposes of this Chapter.

(2) Samples taken under this Chapter may be forwarded under seal in any convenient way to an analyst.

(3) Where an analyst certifies that the seal of any sample was unbroken, the certification shall be sufficient evidence of identity of the sample.

#### **1915. Analysis.**

(1) The Secretary may accredit suitably qualified persons or laboratories, located either within or outside the Republic of the Marshall Islands, to be analysts for performing laboratory and field tests for the purposes of this Chapter.

(2) Any accredited analyst analysing any food submitted for the purposes of this Chapter may give a certificate of the result of the analysis.

(3) In any legal proceeding under this Chapter, the production of a certificate purporting to be signed by an analyst shall be prima facie evidence of the identity of the food analysed and of the result of the analysis.

(4) A copy of the result of any analysis shall, on demand, be supplied to the person from whom the sample was procured.

(5) The court may, in case of a conviction, award the cost of analysis against the defendant as part of the costs of the prosecution.

#### **PART 4 – SEIZURE, DESTRUCTION AND FORFEITURE**

##### **1916. Seizure of articles.**

(1) A food inspector accompanied by a police officer and other members of the task force may seize any article which contravenes this Chapter or its regulations or standards.

(2) In exercising powers of seizing articles under this section, the Secretary of Health shall with the assistance of the Attorney General's Office or the Police Commissioner, obtain a search warrant in accordance under Article II, Section 3 of the Constitution.

(3) Any food inspector seizing an article under Subsection (1) shall include a statement of such seizure in a written inspection report and make such written notice available to the owner or operator of the premises in as short a time as practically possible.

(4) If a food inspector has seized articles for the purposes of this Chapter he or she may—

(a) retain them for as long as necessary for those purposes, unless otherwise directed by the court; or

(b) dispose of any articles as the court directs.

(5) The owner of the articles seized under subsection (1) of this section may, within one month from the date of seizure, make a claim in court for recovery of the same. If after trial the court finds that the article was used in the commission of an offence, the court shall forfeit the same.

(6) If no claim is presented within the time prescribed under Subsection (4), articles seized, shall forfeit to the Republic.

(7) If a food inspector has seized records for the purposes of this Chapter and if the person otherwise entitled to possession of the records requests their return, the entitled person shall be provided the original records as soon as the inspector has obtained and certified a copy to be a true copy of the records. Such a certified copy shall be received in all courts and elsewhere as evidence of the matters contained in it as if it were the original.

##### **1917. Destruction and disposal of seized food.**

(1) Any food seized by an authorized food inspector under Section 10 of this Chapter, shall be destroyed and disposed by the food inspector where:

(a) a court has so ordered;

(b) a food inspector has reasonable evidence that public health is at immediate risk if the food were not destroyed and disposed of;

(c) a food inspector has reasonable evidence that the retention of the seized food would enable the food to become a public nuisance due to its possible deterioration; or

(d) the owner agrees in writing to its destruction and disposal.

(2) Where a food is destroyed and disposed of by the food inspector under subsection (1) all reasonable costs for destruction and disposal shall be borne by the owner of the article or, where a person is convicted, the person so convicted.

##### **1918. Liability.**

No food inspector, task force member or analyst shall be liable for any actions taken while executing his or her duties under this Chapter, unless he or she has acted in bad faith or without reasonable care.

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**PART 5 – OFFENCES AND PENALTIES****1919. Food safety offences.**

(1) It shall be an offence for a person to:

(a) imports, exports, produces, processes, handles, stores, displays or sells food that is unfit for human consumption, adulterated, damaged, deteriorated, or perished;

(b) imports, exports, produces, processes, handles, stores, displays, sells or advertises food that does not comply with any regulations promulgated under this Chapter or a prescribed standard for that food;

(c) produces, processes, handles, stores, displays or sells food under unsanitary conditions;

(d) conducts a food business contrary to Sections 3 of this Chapter ;

(e) imports, exports, stores, displays, sells or advertises any food contrary to Section 4 of this Chapter or after its use-by-date or minimum durability date;

(f) marks any article or takes any other action so as to make an use-by-date or a "best before" date not easily visible;

(g) refuses or fails to give to a food inspector all reasonable assistance or any information which such person may reasonably be expected to possess;

(h) knowingly makes a false or misleading statement, either verbally or in writing, to any food inspector in the performance of his or her functions under this Chapter , its regulations or standards;

(I) shall give, pay, or offer, directly or indirectly, to any food inspector or any other officer or employee of the Republic authorized to perform any of the duties prescribed by this Chapter or its regulations and standards, any money or other thing of value, with intent to influence said food inspector or other officer or employee of the Republic in the discharge of any duty specified in this Chapter ;

(j) cultivates, takes, harvests or otherwise obtains food from an area declared closed for such Action under Section 7 of this Chapter ;

(k) imports, produces, prepares, stores, displays or sells a food prohibited under Section 8 of this Chapter ;

(2) Any food inspector, task force member or analyst authorized to perform any of the duties prescribed by this Chapter who shall accept any money, gift, or other thing of value from any person or business, or officers, agents, or employees thereof, given with intent to influence his official action, or who shall receive or accept from any person or business engaged in export commerce any gift, money or other thing of value given with any purpose or intent whatsoever, is guilty of an offence and is liable to a penalty.

**1920. Penalties.**

(1) A person who violates this Chapter shall, upon conviction, be punished as follows:

(a) in the case of an individual, \$1,000 for a first offence, and \$2,000 or 3 years imprisonment for a second or subsequent offence; and

(b) in the case of a body corporate, \$5,000 for a first offence, and \$10,000 for a second or subsequent offence.

**PART 6 – MISCELLANEOUS****1921. Regulations.**

(1) The Minister may make any regulations for carrying out or giving effect to this Chapter in accordance with the Administrative Procedures Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations:

- (a) on labelling and advertising;
- (b) on the importation and exportation of food;
- (c) on primary production, processing, preparation, packaging, storage, transportation, display and selling practices for all food;
- (d) prescribing standards;
- (e) regulating fortification of any food;
- (f) on the inspection, sampling and analysis of food and providing for fees for inspection, analysis and destruction and disposal;
- (g) providing for the tracing and recall of food where necessary;
- (h) regulating breast milk substitutes; and
- (l) on any other matter necessary or convenient for carrying out or giving effect to this Chapter .

**1922. Effect on other Acts.**

(1) This Chapter prevails over Title 7, Chapter 1, Subsections 103, 111, 112 and 114 of the Public Health, Safety and Welfare Act, in those aspects related to food, food premises sanitation, food safety and penalties for improper practices related to food.

(2) Where the requirements of this Chapter conflict with the Public Water Supply Regulations 1994 and public health may be affected adversely by such a conflict, the requirements under this Chapter shall prevail.

**1923. Administration of the Chapter.**

The Administration and regulations promulgated under this Chapter shall be administered by the Ministry of Health.