SAMOA

DRUGS ACT 1967

Arrangement of Provisions

DRUGS ACT 1967

1967 **No.6**

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

[Assent and commencement date: 24 July 1967]

PART 1
PRELIMINARY

1. Short title – This Act may be cited as the 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 drug and includes any trade circular, label, and advertisement in any trade journal;

"agent" in relation to any drug, includes a person who, not being the owner of the 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 drug;

"analyst" means an analyst appointed under this Act;

"Chief Executive Officer" means the Chief Executive Officer of the Ministry of Health appointed under the Health Ordinance 1959, and includes aperson 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, deodorant, and 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 a 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; and

(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; and

(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; and

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

(e) any anaesthetic; and

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

(g) any cosmetic; and

(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;

"*Gazette*" means the *Samoa Gazette*;

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

"Minister" means the Minister responsible for health;

"Ministry" means the Ministry of Health;

"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 regulations;

"radioactive substance" means a 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, 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 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) [Repealed by the Food Act 2015].

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

(4) When any drug is sold or offered or exposed for sale it is 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 a drug for the purpose of being mixed with any other drug, or with a drug of the same kind, is taken 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 a drug for the purpose of analysis is taken to be a purchase and sale of the 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.

(7) *[Repealed by the Food Act 2015]*.

5. What constitutes "adulteration" – For the purposes of this Act, a drug is taken 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 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 a substance of a commercial value lower than that of the 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 drug as sold are less than those of the 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 be appointed, by the Public Service Commission, such analysts and officers as are required for the purposes of this Act and an officer of the Ministry appointed under the Health Ordinance 1959 is, for the purposes of this Act, taken to be an officer appointed under this subsection.

(2) The Minister may when needed in his or her 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 be remunerated by way of fees or commission only.

(2A) No person appointed under this subsection is by virtue of such appointment an officer of the Public Service, and nothing in the legislation relating to the Public Service applies with respect to an appointment made under this subsection.

(3) Analysts and officers under this Act have the powers and shall perform the duties set out in this Act, and have such other powers and 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 is administered by the Chief Executive Officer and the Ministry under the control of the Minister.

PART 2
SALE OF DRUGS

7A. Sale prohibition Order – **(1)** The Minister may, by Order, prohibit the sale of any product or goods, or class of products or goods for health safety related purposes determined by the Minister.

(2) A person who contravenes this section commits an offence and is liable upon conviction to a fine not exceeding 10 penalty units for every day or part of a day during which the same continues.

(3) Section 93 of the Customs Act 2014 does not apply to this section.

8. Offences in relation to sales – **(1)** Subject to such exceptions as may be prescribed, a person commits an offence who sells any 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 drug so sold.

(2) A person commits an offence who sells a drug:

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

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

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

(3) A person commits an offence who sells a drug in a package which bears or has attached thereto a 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 an ingredient thereof.

(4) *[Repealed by the Food Act 2015]*.

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

(6) *[Repealed by the Food Act 2015]*.

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

(8) Subject to subsection (9), a person who commits an offence is liable:

(a) for the first offence, to a fine not exceeding 1 penalty unit; or

(b) for subsequent offence (whether of the same or a different nature), to a fine not exceeding 4 penalty units.

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

(a) for an individual, to a fine not exceeding 4 penalty units or to imprisonment for a term not exceeding 3 months;

(b) for 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 drug contrary to this Act, or regulations, it is 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 this section, it is a defence in any prosecution for an offence against section 8 if the defendant proves that:

(a) 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) 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) 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) 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 is a defence under this section unless:

(a) it was given or made by or on behalf of a person who is a 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 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 is a defence in a 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 is 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)** A person commits an offence who, being the seller of a drug, or the servant or agent of the seller, publishes or causes to be published an advertisement relating or calculated or likely to cause a person to believe that it relates to the drug, or to any ingredient thereof, which:

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

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

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

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

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

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

(c) delivered to a person or left upon premises in the occupation of a 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 drug in connection with which there is a breach of this Act or of a regulation is sold in an unopened package, a person who appears from any statement or label thereon or attached thereto to be:

(a) the person who has manufactured, imported, or prepared the drug; or

(b) the person who is the owner of the rights of manufacture thereof or has enclosed it in the package; or

(c) the agent of the person in paragraph (a) or (b), –

is, unless he or she proves the contrary, taken to have so manufactured, imported, prepared, or enclosed the drug or, as the case may require, to be such agent as aforesaid, and is liable

in the same manner and to the same extent as if he or she had actually sold the drug.

13. Sales by agent or servant – **(1)** For the purposes of this Act, a person is taken to sell a drug who actually sells the 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 is, without prejudice to any liability under this Act of the agent or servant, liable under this Act in the same manner and to the same extent as if the principal or employer had effected the sale personally.

PART 3
NEW DRUGS

14. New drugs - (1) No person may import or manufacture any new drug unless the new drug is approved under this section.

(2) A person may, in writing, apply to the Chief Executive Officer to approve the new drug setting out the following:

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

(b) if the applicant 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 its wording; 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 is recommended to be administered, applied or otherwise used; and

(h) the purposes for which the drug is 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.

(3) Except with the prior written consent of the Chief Executive Officer, no person may 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 the application was received by the Chief Executive Officer.

(4) The Chief Executive Officer may:

(a) approve the new drug with or without conditions;

(b) decline to approve any new drug if the Chief Executive Officer is satisfied that the drug may have substantially similar pharmacological effect, or is intended or apparently intended to have a substantially similar pharmacological effect, as an illegal drug under the Narcotics Act 1967 or any other Act; or

(c) revoke any approved new drug if the Chief Executive Officer is satisfied that the new drug may have substantially similar pharmacological effect, or is intended or apparently intended to have a substantially similar pharmacological effect, as an illegal drug under the Narcotics Act 1967 or any other Act.

(5) A person commits an offence who:

(a) manufactures or imports a new drug contrary to subsection (1); or

(b) sells, or distributes by way of gift, loan, or sample or in any other manner, or advertises for sale, or advertises the availability of, any drug that is not approved or is revoked under subsection (4),

and is liable on conviction to a fine not exceeding 500 penalty units or to imprisonment for a term not exceeding 5 years.

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 a 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 a 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, give to 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 at least 90 days from the date of the Chief Executive Officer is given the notice as aforesaid.

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

PART 4
SPECIAL PROVISIONS

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 15, require the maker of the

application or the giver of the last-mentioned notice to give further information or particulars about the drug.

(2) A person to whom a notice is given under this section shall comply with it as soon as possible, 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 a drug, or the manufacturer in Samoa of a 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 known to the importer.

(2) Subsection (1) does not apply in a 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 – A person who contravenes or fails to comply with any of the provisions of sections, 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.

PART 5
POWERS AND DUTIES OF OFFICERS

20. Powers of entry, inspection, to mark or seal, and to seize and destroy – **(1)** An officer may:

(a) at all reasonable times enter into and inspect any place where there is any 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 drug of which the sale, preparation, or manufacture is or appears to be contrary to this Act or any regulation; and

(c) seize any 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 drug, wherever found, which is decayed or putrefied; and

(e) inspect any drug, wherever found, which the officer has reasonable grounds 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 drug shall be taken for any offence in section 8 unless sections 24 and 25 have been complied with.

(2) A person claiming anything seized under this section may within 48 hours after the seizure complain thereof to any District Court Judge or Fa'amasino Fesoasoani, and the complaint may be heard and determined before a District Court Judge or Fa'amasino 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 no complaint has been made, or if the seizure is confirmed under subsection (2), the article seized becomes the property of the Government, and is, subject to subsection (4), destroyed or otherwise disposed of so as to prevent the use of it for human consumption.

(4) Nothing in subsection (3) prevents:

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

(b) the release or return by an officer of any drug seized under this section if the officer is satisfied that the drug is fit for sale or if any condition or stipulation 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 a person is in possession of any drug or other substance for the purpose of sale, or for the purpose of manufacturing or preparing a drug for sale, in breach 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 an 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 such 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, are taken to be true and correct copies or extracts unless the contrary is proved.

(3) For the purposes of this subsection, "manufacturer", in relation to a drug, means the person who, as owner, packs the drug for sale or causes it to be so packed.

(3A) For the purpose of enabling the making of regulations, the Chief Executive Officer may, by notice in writing to the manufacturer in Samoa of any compounded drug which is sold under a trade name, or to the importer into Samoa of any such drug, require such manufacturer or importer to state correctly in writing to the Chief Executive Officer the nature of the ingredients of the drug and the proportions in which those ingredients are contained in it.

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

(5) A person commits an offence who refuses or neglects to comply with a requisition made pursuant to this section.

(6) An 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 a person, except for the purpose of carrying into effect the provisions of this Act, commits an offence and is liable to a fine not exceeding 1 penalty unit.

22. Power to require name and address of seller – **(1)** An officer acting in the exercise of any of the officer's other powers under this Act may require a person who is in possession of any 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 drug.

(2) A person commits an offence who refuses or neglects to comply with a requisition made pursuant to this section.

23. Examination of Customs entries – For the purposes of this Act, an officer has the right, subject to the convenience of the Comptroller of Customs or other responsible officer of Customs, to inspect a Customs entry relating to any goods imported or proposed to be imported into Samoa, or to inspect a certificate or invoice relating to those goods, if and so long as any such document is in the possession or control of the Comptroller of Customs or other responsible officer as aforesaid.

PART 6
ANALYSIS OF DRUGS

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

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

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

(4) A person commits an offence who refuses or neglects to comply with a 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, a person who is in possession of any drug which in the opinion of an officer is intended for sale is, until the contrary is proved, taken to be the seller thereof or, as the case may require, the agent or servant of the seller.

25. Taking of samples – **(1)** Where it is intended to submit for analysis any sample procured under section 24, the officer procuring it shall, before or 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 mark and seal or fasten up each part in such manner as its nature will permit, and 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 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 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 drug under the same brand or label may be so 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) *[Repealed by the Food Act 2015]*.

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 a method of analysis for the analysis of a drug is prescribed, an 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 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.

(3A) Except as provided in subsection (3), and in section 33, no person is entitled to obtain a copy of an analyst's certificate or report given in respect of a sample procured and submitted for analysis by an officer pursuant to this Act.

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

27. Duty of officer to procure sample for analysis on request – **(1)** An officer is, on being requested in writing by a person to procure a sample of any 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 drug and submit it for analysis.

(2) Sections 24 and 25, so far as applicable and with the necessary modifications, apply with respect to the procuring and analysis of the sample under subsection (1).

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 is, without proof of the signature of the analyst, 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.

PART 7
MISCELLANEOUS

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

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

32. General penalty for offences – A person who commits an offence for which no penalty is provided elsewhere than in this section is 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 a prosecution under this Act or under any regulations is 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 is compelled to produce any confidential report or document made or received by him or her in his or her official capacity, or to make any statement in relation thereto.

35. Forfeiture of drugs on conviction – **(1)** Where a person is convicted of an offence against this Act or any regulation, the convicting District Court Judge may order that any drug to which the conviction relates, and any similar 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 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 a 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 drug in respect of which the conviction is obtained (including any analysis under section 29) is paid by the defendant.

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

37. Publication of conviction where ordered by District Court Judge – Where a 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)** Despite anything in this Act, the Chief Executive Officer may, for the purpose of protecting the public, publish statements in respect of any 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 drug.

(2)A statement published under this section is 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 is not 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 make regulations as may be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

(2) Without limiting subsection (1), 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 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 a drug or of an ingredient or component part thereof;

(c) prohibiting or restricting the addition of a specified thing, or of more than the specified quantity or proportion thereof, to a drug;

(d) prohibiting any modes of manufacture, preparation, or preservation of a 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 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) & (h) (repealed by the Food Act 2015)

(*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 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, a drug;

(*l*) prescribing the mode of labelling of any drug sold in a package and requiring any matter to be printed, embossed, impressed, branded, stamped or otherwise marked on any 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 on any label for any of the aforesaid purposes;

(n) prescribing in the case of any specified class or classes of 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) (repealed by the Food Act 2015)

(p) requiring that any specified drug, 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) (repealed by the Food Act 2015)

(r) (repealed by the Food Act 2015)

(s) prescribing the method of analysis of a drug;
(t) prescribing fees to be paid in respect of the analysis by an analyst of any 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 drugs generally or to specified drugs only.

41. Savings – **(1)** Despite anything contained in this Act or in any notice thereunder or in any regulations, it is lawful for a 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 drug of which the sale is otherwise lawful, if he or she proves that at the date the drug was part of the existing stock in trade in Samoa of a person carrying on business there, and that since the said date no act has been done whereby the 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 date for importation into Samoa are taken to be part of the purchaser's stock in trade in Samoa at that date.

42. Repeal – **(1)** The Food and Drugs Act 1947 (NZ) and all its amendments are repealed as to Samoa.

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

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

(a) Food and Drug Regulations 1946 (S.R. 1946/136); and
(b) Food and Drug Temporary Regulations 1946 (S.R. 1946/162) (Combined Reprint S.R. 1963/209); and
(c) Food Hygiene Regulations 1952 (S.R. 1952/74); and
(d) Health (Eating house) Regulations 1948 (S.R. 1948/185; Reprint S.R. 1954/208).

REVISION NOTES 2008 – 2019

This is the official version of this Act as at 31 December 2019.

This Act has been revised by the Legislative Drafting Division from 2008 to 2019 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008.*

The following general revisions have been made:

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

(b) Amendments have been made to up-date references to offices, officers and statutes (e.g. "Minister responsible for health").

(c) Insertion of the commencement date

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

- (i) "Every" and "any" changed to "a" or "each" where appropriate
- (ii) Present tense drafting style:
  - "shall be" and "has been" changed to "is/are"
  - "shall be deemed" changed to "is/are taken"
  - "shall have" changed to "has"
  - "it shall be lawful" changed to "may"
  - "it shall be the duty" changed to "shall"
  - "forthwith" removed
  - "hereby" and "from time to time" removed
- (iii) Offence provisions
  - "shall be guilty" changed to "commits"
- (iv) Removal/replacement of obsolete and archaic terms with plain language
  - "notwithstanding" changed to "despite"
  - "pursuant to" or "in accordance with the provisions of" changed to "under"
  - "under the hand of" changed to "signed by"
- (v) Numbers in words changed to figures
- (vi) Dividing the Act into Parts and amending section headings in the body of the text and arrangement of provisions accordingly (including heading of section 25).
- (vii) Adopting the drafting style of putting "and" or "or" at the end of paragraphs where appropriate.
- (viii) Altering the form of subsections by sub-dividing (e.g. section 6(2) and (2A)), section 12, section 26(3) and (3A) and section 27).
- (ix) Deleted-
  - "the provisions of" or "any provision of" in references such as "the provisions of subsection (9)" or "any provision of this Act" respectively.

- "against this section" or "against this Act" in references such as "commits an offence against this section" or "commits an offence against this Act" respectively.

The following amendments were made to this Act since the publication of the *Consolidated and Revised Statutes of Samoa 2007:*

By the *Food and Drugs Amendment Act 2011* commenced on 11 October 2011.

By the *Food and Drugs Amendment Act 2011:*
Section 7A A new section was inserted.

By the *Customs Act 2014:*
amends s7A

By the *Food Act 2015 which commenced on 3 June 2015*:

Whole Act	delete "Food and", "food or", "adulterated food", and "or food" wherever they appear in the whole Act, including references in headings;
Section 2	definitions of "Appliance" and "milk" are repealed; Substituted new definition for "food" (*Note – definition deleted as the term "food" is no longer used in the Act*);
Section 4	subsections (2) and (7) are repealed;
Section 8	subsections (4) and (6) are repealed;
Section 14	substituted new section 14;
Section 19	deleted "14";
Section 25	subsection (6) is repealed;
Section 40	in subsection (2), repeal paragraphs (g), (h), (o), (q), and (r).

Lemalu Hermann P. Retzlaff
Attorney General of Samoa

This Act is administered by
the Ministry of Health.