



SAMOA

FOOD ACT 2015

Arrangement of Provisions

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FOOD ACT 2015

2015

No. 16

AN ACT:

- (a) to regulate dealing with food, food business and inspection and analysis of food; and**
- (b) to provide functions, duties and powers for the purpose of this Act; and**
- (c) to regulate production, manufacture, importation and exportation, sale, donation, processing, cooking, handling, labeling, advertising, promotion of and information on food, including provision of food for community and traditional events and ceremonies; and**
- (d) for related purposes.**

[Assent and commencement date: 3 June 2015]

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

**PART 1
PRELIMINARY**

1. Short title and commencement - (1) This Act may be cited as the Food Act 2015, and commences on the date of assent.

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

“Act” includes Ordinance;

“advertisement” means any form of communication made to a person for the purpose of selling or promoting or appearing to sell or to promote the sale of food or associated thing;

“analysis” means an analysis and examination undertaken under Part 5;

“associated thing”:

(a) means a thing that is used, or represented for use, in or for the production, processing, cooking, handling or sale of food; and

(b) includes —

(i) a thing that is enclosed with, attached to, in contact with, or contained in food; or

(ii) an infant feeding accessory; or

(iii) a place.

“best before date” means the date which signifies the end of the period under any stated storage conditions during which the product will:

(a) remain fully marketable; and

(b) retain a specific quality for which tacit or express claims have been made, even though, beyond that date the food may still be perfectly satisfactory.

“business”, in relation to food, includes any activity aimed at generating revenue in trade, commerce or industry;

“business licence” means a business licence for a food business issued under the Business Licences Act 1998;

“certificate of analysis” means a certificate issued under section 28;

“certificate of health” for a food business, means a certificate of health issued under section 13;

“closing order” means an order issued under section 25(1);

“*Codex Alimentarius* Commission” means the body created in 1963 by the Food and Agriculture Organisation and the World Health Organisation to develop and maintain international food standards, guidelines and related texts, such as codes of practice;

“dealing with food” means any of the following:

(a) producing food;

(b) processing, cooking or handling food;

(c) selling food;

(d) importing or exporting food;

(e) labeling, advertising, promoting or providing information about food;

(f) storing food;

(g) transporting food;

(h) providing food for community or traditional purposes;

(i) donating food;

“Director General” means the Chief Executive Officer of the Ministry appointed pursuant to section 9 of the Ministry of Health Act 2006;

“exempted food” means food exempted by regulations;

“expiry date” means the date which signifies the end of the estimated period under any stated storage conditions, after which the food probably will not be satisfactory or have the quality attributes normally expected by consumers;

“export”:

(a) means to send out of Samoa; and

(b) includes to send to an agent in Samoa for the purpose of being held prior to re-exportation.

“food”:

(a) means any substance, whether processed, semi-processed, raw or cooked, which is intended for human consumption; and

(b) includes any drink, chewing gum or substance used in the manufacture, preparation or treatment of the substance; and

(c) does not include cosmetics, tobacco or a substance used only as medicine.

“food business”:

(a) means a business that deals with food; and

(b) includes a business that —

(i) sells, transports or stores food; or

(ii) sells food on the internet; or

(iii) operates, for reward, places (including mobile premises) or services in connection with or for the purpose of dealings with food; or

(iv) is prescribed by regulations to be a food business for the purposes of this Act; but

(c) does not include a business that is prescribed by regulations not to be a food business for the purposes of this Act.

“food handler” means a person who:

(a) directly handles unpackaged food or any food equipment and utensils, or food contact surfaces; and

(b) is expected to comply with food hygiene requirements under this Act.

“food safety officer” means a person designated as such under section 20;

“hazard” means a biological, chemical, or physical agent that:

- (a) is in the food or has the potential to be in the food, or is a condition of the food, or has the potential to affect the condition of the food; and
 - (b) causes or could cause an adverse or injurious effect on the life or health of a person or on public health;
- “infant feeding accessory” means a thing that is intended for the feeding of infants, such as infant feeding bottles and teats;
- “import” means to bring into Samoa;
- “importer” means a person who imports food or an associated thing, and includes the following:
- (a) the agent or representative in Samoa of a person who is based overseas and who has arranged the importation of food or associated thing;
 - (b) the consignee of the imported food or associated thing;
 - (c) the person who is or becomes the owner of, or entitled to the possession or control of, or beneficially interested in, the imported food or associated thing, on or at any time after its importation and before it has ceased to be subject to the control of Customs;
- “intended use” means the use for the food that is specifically stated, or could reasonably be presumed, to be intended, taking into account the nature, labeling, packaging, or identification of the food;
- “Judge” means a judge of the District Court or Supreme Court;
- “label” means any tag, brand, mark, pictorial or other descriptive matter that is written, printed, stenciled, marked, embossed, impressed on or attached to the food or associated thing;
- “Minister” means the Minister responsible for Health;
- “Ministry” means the Ministry responsible for Health;
- “operator of a food business” means:
- (a) the owner of the business; or
 - (b) the person in possession or control of the business operations;
- “package”:
- (a) includes—
 - (i) anything in or by which food for carriage or for sale may be wholly or partly encased, covered, enclosed, contained or packed; and
 - (ii) if the food is sold or carried or intended for sale or carriage in more than 1 package, the package; but
 - (b) does not include any of the following—
 - (i) bulk cargo containers;
 - (ii) pallet overwraps;

(iii) crates and packaging that do not obscure labels on the food;

(iv) vessel, aircraft or vehicle;

“place” includes any of the following:

(a) any premises;

(b) a building;

(c) a temporary or permanent structure;

(d) a stall;

(e) a conveyance;

(f) a vessel or aircraft;

(g) a vehicle;

(h) a bulk cargo container;

(i) any other area where food is processed, cooked or may be present;

“police officer” means a sworn member of the Samoa Police Service;

“processing and handling”, in relation to food for sale, includes preparing, manufacturing, producing, cooking, packing, repacking, transporting, storing, displaying or serving food;

“safe”:

(a) means a condition in which food, in terms of its intended use, is unlikely to cause or lead to illness or injury to a person or adversely affecting public health; and

(b) includes a process condition by which a hazard is identified, controlled, managed or eliminated;

“sell”:

(a) means to sell for human consumption or use; and

(b) includes the following—

(i) to sell for re-sale for human consumption or use;

(ii) to offer or attempt to sell, or to receive for sale, or to have in possession for sale, or to expose for sale, or to send or deliver for sale, or to cause or permit to be sold, offered, or exposed for sale;

(iii) to barter;

(iv) to supply, together with any accommodation, service, or entertainment, as part of an inclusive fee or charge;

(v) to offer as a prize or reward, whether or not on payment of money, or to give away;

(vi) to export;

(vii) any other method of disposition for valuable consideration.

“suitable” means the condition where the following matters are appropriate to the food in terms of its intended use:

- (a) quality;
- (b) composition or modifications to composition for the purpose of improving health status;
- (c) labeling;
- (d) identification;
- (e) condition of the food.

3. Purposes - The purposes of this Act are:

- (a) to ensure that food is safe and suitable for human consumption; and
- (b) to improve nutrition; and
- (c) to prevent misleading conduct relating to the sale of food; and
- (d) to comply with Samoa’s international obligations.

4. Relationship with other Acts - This Act:

- (a) is in addition to any other Act that regulates food; and
- (b) prevails, if there is any inconsistency between this Act and that other Act.

**PART 2
DEALING WITH FOOD**

5. Safe food - (1) A person who deals with food must take reasonable steps to ensure that the food is safe.

(2) A person who contravenes subsection (1) commits an offence and is liable upon conviction to a fine not exceeding 10,000 penalty units or to imprisonment for a term not exceeding 5 years, or both.

6. Suitable food - (1) A person who deals with any food must take reasonable steps to ensure that the food is suitable.

(2) A person who contravenes subsection (1) commits an offence and is liable upon conviction to a fine not exceeding 10,000 penalty units or to imprisonment for a term not exceeding 5 years, or both.

7. False descriptions of food - (1) A person must not falsely describe food intended for sale.

(2) A person must not sell food that the person ought reasonably to know is falsely described or is likely to cause physical harm to a person who relies on that description.

(3) A person who contravenes subsection (1) commits an offence and is liable upon conviction to a fine not exceeding 8,000 penalty units or to imprisonment for a term not exceeding 3 years, or both.

(4) A person who contravenes subsection (2) commits an offence and is liable upon conviction to a fine not exceeding 5,000 penalty units or to imprisonment for a term not exceeding 2 years, or both.

8. Labelling requirements - (1) A person who undertakes the packaging of any food, other than exempted food, must ensure that the packaged food bears a label that states the following information:

- (a) the name under which the food is to be sold;
- (b) the nature of the food;
- (c) the list of ingredients;
- (d) the net weight, true measure or volume of the food's contents;
- (e) the name, address and any other contact information of the manufacturer or importer;
- (f) any other particulars prescribed by regulations.

(2) Subject to regulations made under this Act, information required under subsection (1) must be provided in the English or Samoan language in a manner that is easily visible and likely to be read and understood by an ordinary person under normal conditions of purchase and use.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable upon conviction to a fine not exceeding 5,000 penalty units or to imprisonment for a term not exceeding 2 years, or both.

9. Expiry and best before dates - (1) A person who sells any food that carries an expiry date or a best before date, or is required by regulations to carry an expiry date or a best before date, must ensure that the food bears the expiry date or best before date in a manner that is easily visible and likely to be read and understood by an ordinary person under customary conditions of purchase and use.

(2) For the purpose of subsection (1), the person must, after the expiry date or best before date of food, ensure that the food is not sold.

(3) A person must not import, export, sell or donate any food which has passed its expiry or best before date.

(4) A person who contravenes subsection (1), (2) or (3) commits an offence and is liable upon conviction to a fine not exceeding 5,000 penalty units or to imprisonment for a term not exceeding 2 years, or both.

10. Food for infants and children - (1) A person who advertises, promotes, labels or sells any food, infant feeding accessory or associated thing, for infants and young children, in contravention of the requirements of this Act, commits an offence and is liable upon conviction to a fine not exceeding 10,000 penalty units or to imprisonment for a term not exceeding 5 years, or both.

- (2) In this Act, the ages for infants and young children are:
- (a) for infants, 12 months or under; and
 - (b) for young children, over 12 months to 3 years.

11. Import and export of food - (1) A person must not import any food unless the food:

- (a) has been produced or manufactured in accordance with prescribed standards; and
- (b) is accompanied by the prescribed documents; and
- (c) has been inspected by the relevant government Ministry or agency at a port of entry.

(2) If any food sought to be imported would, if sold in Samoa, contravene this Act, a food safety officer may authorise its importation for the purpose of re-labeling or re-conditioning as prescribed.

(3) If the re-labeling or re-conditioning under subsection (2) is not carried out within the authorised period, the importer must re-export or destroy the food at his or her own expense.

(4) If an importer fails to re-export or destroy the imported food under subsection (3), the Director General may destroy the imported food.

(5) The exporter is liable to pay the Government for the costs of destruction of imported food by the Director General under subsection (4) and the costs are recoverable as debt owed to the Government.

(6) A person who contravenes subsection (1) or (3) commits an offence and is liable to a fine not exceeding 10,000 penalty units or to imprisonment for a term not exceeding 5 years.

12. Inspection of imported food - (1) A food safety officer may:

- (a) inspect any imported food or associated thing; and
- (b) take samples of the imported food or associated thing for analysis or inspection.

(2) When a sample is taken under subsection (1), the officer:

- (a) must, in the presence of the owner or importer or a person in apparent control of the food, seal and mark the sample in the manner prescribed; and
- (b) must not release the consignment from which the sample was taken except upon production of an analyst's certificate

under section 28 to the effect that the food or associated thing complies with the requirements of this Act.

(3) The costs of an inspection, analysis or storage while analysis is being performed are to be paid by the importer.

PART 3 FOOD BUSINESS

13. Certificate of health - (1) No person may operate a food business unless the business has a current certificate of health issued under this section in the manner prescribed by regulations.

(2) Subject to Business Licences Act 1998, the Director General may:

- (a) issue with or without conditions a certificate of health to a food business that meets the requirements of this Act; or
- (b) refuse to issue a certificate of health if the business does not meet the requirements of this Act; or
- (c) suspend or revoke a certificate of health issued under this Act if the business does not meet the requirements or has breached a provision of this Act.

(3) For the purpose of subsection (2), a food safety officer must:

- (a) inspect a food business to assess whether the business meets the requirements of this Act; and
- (b) make an inspection report to the Director General.

(4) The business licence of a food business is taken to be suspended by operation of this subsection if the food business does not have a current certificate of health.

(5) A person who operates a food business without a certificate of health commits an offence and is liable upon conviction to a fine not exceeding 10,000 penalty units or to imprisonment for a term not exceeding 5 years, or both.

14. Operators of food business - (1) The operator of a food business must carry out the following:

- (a) ensure that the operations of the food business do not contravene a requirement of this Act;
- (b) ensure that any food that the operator imports, exports or deals with complies with all relevant requirements of this Act;
- (c) ensure the unhindered right of food safety officers to carry out their functions, duties and powers under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding 10,000 penalty units or to imprisonment for a term not exceeding 5 years, or both.

15. Operators to ensure that food can be traced - (1) The operator of a food business must establish and implement a system to enable the business to identify a person who supplied or to whom the business supplied, any animal, food or substance intended to be eaten or expected to be incorporated into any other food.

(2) The operator of a food business must, on request by a food safety officer, provide any information collected under the system.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding 10,000 penalty units or to imprisonment for a term not exceeding 5 years, or both.

16. Food handlers - (1) The operator of a food business must ensure that a food handler has food safety training from any of the following:

- (a) the Ministry;
- (b) an approved training organisation.

(2) Subject to any exemption by regulations, the operator of a food business must:

- (a) before a food handler starts employment in the food business, ensure that the food handler has undergone a medical screening test approved by the Director General; and
- (b) ensure that a food handler undertakes an annual medical screening tests;
- (c) send a copy of the medical certificate under paragraph (a) or (b) to the Director General.

(3) The operator of a food business must not employ a person as a food handler if the person has not passed the medical screening test under subsection (2).

(4) An operator who contravenes subsection (2) or (3) commits an offence and is liable on conviction to a fine not exceeding 5,000 penalty units or to imprisonment for a term not exceeding 2 years, or both.

PART 4 ADMINISTRATION

17. Responsibility of the Ministry-(1) The Ministry is responsible for the implementation and enforcement of this Act.

(2) The functions of the Ministry in carrying out its responsibilities under subsection (1) are:

- (a) to monitor food control activities in Samoa at all stages of production, manufacture and distribution; and
- (b) to prepare regulations, orders, standards, codes of practice and notices under this Act; and
- (c) to consult widely with all sectors relating to or affected by food in carrying out its activities under paragraphs (a) and (b); and
- (d) to promote consumer education regarding food safety; and
- (e) to carry out any other matters relating to paragraphs (a) to (d) or conferred on it under this Act or any other Act.

18. Food and Nutrition Policy Committee-(1) The Food and Nutrition Policy Committee is established consisting of the following members to be appointed by the Minister:

- (a) a representative of the Ministry of Health, as Chairperson;
- (b) a representative of the Ministry of Agriculture, Forestry and Fisheries;
- (c) a representative of the Ministry of Natural Resources and Environment;
- (d) a representative of the Ministry responsible for Tourism;
- (e) a representative of the Ministry of Commerce, Industry and Labour;
- (f) a representative of the Ministry of Revenue;
- (g) a representative from the Ministry of Education, Sports and Culture;
- (h) a representative of a body responsible for national food standards;
- (i) a representative of a private-sector body responsible for food consumers.

(2) The Minister may appoint up to 3 additional members to ensure that the Committee reflects the maximum number of expertise.

(3) At a meeting of the Committee:

- (a) the Chairperson or, if the Chairperson is absent, a member (other than additional members) selected by other members (including additional members) present, presides;
- (b) the quorum is at least 50% of all members (excluding additional members).

(4) The Committee:

- (a) must meet at least once every 3 months; and
- (b) may regulate its own procedures, subject to this Act.

(5) The Committee may appoint subcommittees consisting of members or non-members or both, to assist the Committee perform its functions.

(6) A person who has any direct or indirect financial interest in a business dealing with food or food associated product must not be appointed to the Committee or a subcommittee.

19. Functions of the Committee - (1) The function of the Committee is to advise the Director General on any matter dealing with this Act referred to it under a term of reference issued by the Director General.

(2) Other functions of the Committee may be prescribed by regulations.

20. Food safety officers - (1) The Director General may designate a suitably qualified and experienced person to be a food safety officer for the purposes of this Act on terms and conditions set out in the designation by the Director General.

(2) The Director General may suspend or terminate a person's designation as a food safety officer.

21. Power of Director General to issue directions and controls - (1) The Director General may give written directions to a food safety officer about the officer's functions, duties, or powers under this Act.

(2) The Director General may direct the following persons, either individually or as a class, to take any action to meet any requirement of this Act on food and associated things, if the Director General is satisfied that the food or associated thing will not meet the requirements of this Act if the action is not taken:

- (a) the operator of a food business;
- (b) the person in possession or control of, or reasonably appearing to be in possession or control of, any food, an associated thing, or anything that may become food.

(3) The Director General may give the following directions to a person if the Director General reasonably believes that there is an urgent need to do so to protect life and health of persons or protect public health:

- (a) to restrict or stop the movement of food;
- (b) to restrict or stop the production, processing, cooking, handling, or sale of food.

(4) The Director General may impose controls if the Director General reasonably suspects the existence of a hazard or a source of contamination that may affect the food or anything that may become food.

(5) The directions or controls continue in force until the earlier of the following occurs:

- (a) the directions or controls expire;
- (b) the Director General revokes the directions or controls.

(6) The Director General may give the following directions to a person:

- (a) to publish a statement for the purpose of protecting the public;
- (b) to recall food or an associated thing that the Director General reasonably believes is not safe or suitable;
- (c) to recall an associated thing that the Director General reasonably believes has contaminated food or caused food to be no longer safe or suitable;
- (d) to recall an associated thing that the Director General reasonably believes may contaminate food;
- (e) to recall food or an associated thing that the Director General reasonably believes is mislabeled or incorrectly identified;
- (f) to take food or an associated thing recalled under any of paragraphs (b) to (e) to—
 - (i) a place specified in the directions; or
 - (ii) a place agreed to between the Director General and the person to whom the directions are given;
- (g) to dispose of food in a manner approved by the Director General.

(7) If a person to whom a direction is given under subsection (3) or (6) fails or refuses to comply with a direction, the Director General may:

- (a) take any steps necessary to ensure compliance with the direction (including entry by food safety officers to a place under a warrant); and
- (b) recover the costs and expenses reasonably incurred in taking action as a debt due from the person.

(8) A person who contravenes a direction given under subsection (2), (3) or (6) commits an offence and is liable on conviction to a fine not exceeding 10,000 penalty units or to imprisonment for a term not exceeding 5 years, or both.

22. Privileged statements - (1) The Director General may publish a statement for the purpose of protecting life or health of persons or protecting public health or informing the public about the safety or suitability of the following:

- (a) any food;
- (b) an associated thing;

(c) anything contained or implied in any advertisement about food or an associated thing.

(2) A statement made under this section is protected from liability if made in good faith and in the public interest only if it is used properly and in a justifiable manner.

23. Approvals - (1) The Director General may, with or without conditions, approve any process, item, laboratory, person or class of persons required to be approved under this Act, if the Director General is satisfied that the approval is necessary for the effective operation of this Act.

(2) For an approved laboratory, a condition may include reporting requirements relating to certain test results, including specified contaminants in food.

PART 5 FOOD INSPECTION AND ANALYSIS

24. Powers of entry and search - (1) Subject to subsections (3) and (7), a food safety officer may do any of the following for the purposes of this Act:

(a) stop, detain or search a vehicle, vessel or aircraft the officer knows or reasonably suspects—

(i) is being used for the production, processing, cooking, handling, storage, display, sale or distribution of any food or associated thing; and

(ii) has been, is being, or is likely to be used by a person in connection with a contravention of a requirement of this Act;

(b) enter any place, at any time, the officer knows or reasonably suspects is being used for the production, processing, handling, storage, display or sale of any food or associated thing.

(2) In the place entered under subsection (1), the officer may do any of the following:

(a) search for, examine or take samples of any food or associated thing;

(b) open and inspect a room, place, container or package that the officer knows or reasonably suspects contains any food or associated thing;

(c) examine or make copies of a document (electronic or hard copy) that could contain relevant information about any food or associated thing;

- (d) obtain photographic evidence of any food or associated thing or condition;
- (e) question, with respect to matters under this Act, a person the officer finds in the place;
- (f) make an inquiry or examination as the officer believes to be necessary or desirable to assist the discharge or exercise of a function or power under this Act to ascertain whether a contravention of a provision of this Act has been, is being or is likely to be committed.

(3) Subsection (1) does not authorise forcible entry by the officer to any place except under the authority of a warrant obtained under subsection (4).

(4) If a Judge is satisfied, upon the information of a food safety officer, that there is reasonable cause to suspect that a place has been, is being or is likely to be used in connection with a contravention of a provision of this Act, the Judge may issue a warrant authorising the officer with or without a police officer to enter the place specified in the warrant for the purpose of exercising the powers and duties conferred on a food safety officer under this Act.

(5) For the purpose of gaining entry to any place, a food safety officer may require the assistance of another person as the officer considers necessary.

(6) A warrant issued under subsection (4) is, for a period of 1 month from the date of its issue, sufficient authority:

- (a) for the food safety officer and a person assisting the food safety officer, to enter the place specified in the warrant; and
- (b) for the food safety officer to exercise, in the place specified in the warrant, all the powers and duties conferred on a food safety officer by this Act.

(7) Before exercising a power under subsection (1), the food safety officer must produce his or her identification, if requested.

25. Closing orders - (1) The Director General may issue a closing order for a place if:

- (a) the Director General has reasons to believe that the public health is at immediate risk until corrective action identified as necessary in an inspection is taken; or
- (b) the owner or operator of the place fails within a reasonable period to implement a corrective action, identified as necessary by the Director General.

(2) The owner or operator of the place that is subject to a closing order may request the Director General for re-inspection of the place to determine compliance with the requirements of this Act and the re-

inspection must be carried out within 72 hours of receiving the request for re-inspection.

(3) If a place is found, upon re-inspection under subsection (2), to be in compliance with the requirements of this Act, the Director General must immediately lift the closing order.

(4) If the operator of a food business:

(a) fails to stop its operations and close its place within 12 hours of the closing order; or

(b) fails to comply with the requirements of this Act, within 14 days of the closing order; or

(c) is found on more than 2 occasions within 12 months to be subject to a closing order,

the Director General must request the Commissioner of Inland Revenue to cancel the business licence for the food business.

(5) When the request is received under subsection (4), the Commissioner of Inland Revenue must as soon as possible cancel the business licence and inform the Director General.

(6) A food business, the business licence of which is revoked pursuant to subsection (5), must not be issued with a new business licence within 3 months of the revocation of the business licence pursuant to subsection (5).

26. Assistance from the police - (1) The Director General or a food safety officer may ask a police officer, if necessary, for assistance in carrying out the functions, duties, or powers under this Act.

(2) In providing assistance under this section, a police officer has the powers of a food safety officer under this Act.

27. Sampling - If a food safety officer reasonably believes that there may be a contravention of this Act, the food safety officer may demand and obtain, with or without payment, samples of food or an associated thing as required for the purposes of this Act.

28. Appointment of analyst and certificate of analyst - (1) The Minister may appoint a suitably qualified person to be an analyst to analyse and examine any food or associated thing submitted for the purposes of this Act and to prepare a certificate of analysis relating to the results of the analysis and examination.

(2) Subject to subsection (3), the certificate of analysis is *prima facie* evidence of the facts stated in the certificate and is admissible in any court or tribunal.

(3) A court or tribunal may require the analyst to appear in the proceedings for the purpose of examination on the certificate of analysis.

29. Copy of certificate - A food safety officer must provide a copy of the certificate of analysis to the person from whom the sample was obtained.

30. Right to request a second test - A food safety officer must provide an affected person with the opportunity to carry out or request, at the person's expense, a second test to re-confirm the results of an analysis undertaken under this Part.

31. Cost of analysis - A Judge may, in the case of a conviction, award the cost of analysis against the defendant as part of the costs of the prosecution.

32. Seizing food or associated things - (1) A food safety officer may seize any food or associated thing which contravenes this Act.

(2) A food safety officer who seizes any food or associated thing under subsection (1) must include a statement of the seizure in the written inspection report and provide the report to the owner or operator of the place as soon as possible.

(3) If a food safety officer has seized any food, associated thing, record or other property for the purposes of this Act, the officer may:

- (a) retain it for as long as it is necessary for the purpose; and
- (b) for any record, provide a certified copy of the record to the person entitled to it; and
- (c) for any food, associated thing or other property, dispose of it as the Judge directs.

(4) The owner or operator from whom any food, associated thing or property has been seized may apply to a Judge within 2 working days from the date of seizure for an order to revoke the seizure and to release the seized food or associated thing.

(5) An order issued by the Judge under subsection (4) may state that the released food or associated thing is safe.

33. Destruction and disposal of seized food or associated things - (1) A food safety officer must destroy and dispose of any food or associated thing seized under section 32 if:

- (a) the food safety officer has reason to believe that public health is at immediate risk unless the food or associated thing is destroyed and disposed of; or
- (b) the food or associated thing is in contravention of the requirements of this Act and the owner consents in writing to its destruction and disposal; or
- (c) the court has ordered the disposal under section 41.

(2) If any food or associated thing is destroyed and disposed of under subsection (1), the owner is liable for all reasonable costs for the destruction and disposal of food.

(3) In this section, “dispose” includes re-export.

PART 6 OFFENCES

34. Offences involving misleading conduct - (1) A person commits an offence if the person:

(a) provides a document or information to a food safety officer that—

(i) is required to be provided to the officer under this Act; and

(ii) is false or misleading in a material detail; or

(b) alters, conceals, or destroys a document or information; or

(c) adulterates, misrepresents, or tampers with food or an associated thing so that it does not conform with –

(i) its label; or

(ii) its package; or

(d) falsifies, suppresses, or tampers with any food sample or associated thing.

(2) In a prosecution for an offence against this section, it is not necessary to prove that the defendant intended to commit the offence.

(3) A person who is convicted of an offence under subsection (1) is liable on conviction to a fine not exceeding 10,000 penalty units or to imprisonment for a term not exceeding 5 years, or both.

35. Offences involving obstruction of officers - A person who hinders or obstructs a food safety officer from carrying out his or her functions, duties or powers under this Act commits an offence and is liable on conviction to a fine not exceeding 5,000 penalty units or to imprisonment for a term not exceeding 2 years, or both.

36. Offences involving publishing non-complying advertisements - (1) A person commits an offence if the person publishes or arranges an advertisement that:

(a) does not comply with the requirements of this Act; or

(b) is false or misleading in a material detail; or

(c) is prohibited by a requirement of this Act.

(2) A person who is convicted of an offence under subsection (1) is liable on conviction to a fine not exceeding 10,000 penalty units or to imprisonment for a term not exceeding 5 years, or both.

37. Offences involving donation of unsafe food - A person who donates or gives free-of-charge food which is unsafe or unsuitable or which does not comply with the requirements of this Act commits an offence and is liable on conviction to a fine not exceeding 5,000 penalty units or to imprisonment for a term not exceeding 2 years, or both.

38. Offences by body corporate - If a body corporate commits an offence against this Act, a director or any other person concerned in the management of the body corporate also commits the same offence unless the director or other person proves that he or she exercised reasonable diligence to prevent the commission of the offence.

**PART 7
EVIDENTIAL PRESUMPTIONS
AND COURT ORDERS**

40. Order to pay expenses - (1) A court may order a person convicted of an offence against this Act to pay any or all of the expenses incurred in taking, holding, or testing food or an associated thing for the purposes of the prosecution.

(2) The amount ordered under subsection (1) is to be paid together with any fine imposed or to be recoverable as a debt.

41. Order to forfeit and dispose of food or associated thing - (1) Before making an order under this section, the court must give the following an opportunity to be heard:

- (a) a person convicted of an offence against this Act;
- (b) any other person the court considers has an interest in the food or associated thing for which the offence was committed.

(2) The court may order that:

- (a) the following be forfeited to the Government—
 - (i) any food or associated thing for which the offence was committed that is in the person's possession or control;
 - (ii) any food or associated thing for which the offence was committed that was in the person's possession or control before being seized under this Act and is still in the custody of the court or the prosecution; and
- (b) the food or associated thing must be disposed of in the manner approved by the Director General.

(3) The court may order a person to pay all or any of the expenses incurred in disposing of any food or associated thing under subsection (2)(b).

(4) The amount that the court orders to be paid under this section is to be paid together with any fine imposed or to be recoverable as a debt.

(5) The court may order relief from the forfeiture of any food or associated thing, if the court is satisfied that the relief is in the interests of justice.

(6) In this section, “disposed of” includes re-exported.

42. Order to cease use of label, etc - The court may order a person who does the following to cease the use of any advertisement, label, or package of the same kind until the problem that resulted in the conviction has been remedied:

- (a) imports, produces, processes and handles, or sells any food or associated thing;
- (b) is convicted of an offence against this Act in relation to any advertisement, label, or package.

43. Order to restrict or prohibit dealing with food- (1) This section applies when:

- (a) a person—
 - (i) is convicted of an offence against this Act; and
 - (ii) has been convicted of an offence under any other Act in relation to matters covered under this Act; or
- (b) a person is convicted of an offence against this Act and the court considers that the person’s dealings with food should be restricted or prohibited because—
 - (i) the offence for which the person has been convicted is serious; or
 - (ii) the person has breached a previous order under this section.

(2) The court may make:

- (a) a restriction order to specify the ways in which the person is restricted in the person’s dealings with food; or
- (b) a prohibition order to prohibit the person from dealing with food.

(3) A person subject to an order under subsection (2) may apply to the court which may do the following:

- (a) cancel or change the order;
- (b) change a prohibition order to a restriction order;

(c) refuse the application, in which case the court may specify the earliest date upon which the person may re-apply for cancellation of the order.

(4) In making a decision under subsection (3), the court must take into account the following:

- (a) the nature of the offence for which the person was convicted;
- (b) any step taken to remedy the problem that resulted in the order;
- (c) the person's conduct since the order was made;
- (d) the person's character;
- (e) any other circumstances of the case.

(5) If the court changes the order or refuses the application, the person may re-apply for cancellation of the order:

- (a) when the date specified under subsection (3)(c) has expired;
or
- (b) if there has been a material change in the person's circumstances.

PART 8 MISCELLANEOUS

44. Protection from personal liability - (1) This section applies to the following:

- (a) the Minister;
- (b) the Director General;
- (c) the Commissioner of Inland Revenue, in relation to business licences for food businesses;
- (d) a food safety officer;
- (e) any other officer or employee of the Government or any person required to assist in the carrying out of any function, duty or power under this Act.

(2) A person to whom this section applies is not personally liable for carrying or failing to carry out in good faith and without reasonable cause a function, duty, power or requirement under this Act.

45. Delegation - (1) The Director General may delegate all or any of the Director General's functions, duties and powers under this Act to a food safety officer or another officer or employee of the Ministry except the power of delegation under this section.

(2) The delegation does not prevent the Director General from carrying out the functions, duties, and powers delegated under subsection (1).

46. Regulations - (1) Subject to subsection (2), the Head of State, acting on the advice of Cabinet, may make regulations to give effect to or for the purposes of this Act, and in particular to make regulations for the following purposes:

- (a) to specify the criteria that the composition of food, and the sampling and testing of food to determine its composition, must meet to ensure that food is safe and suitable;
- (b) to specify the criteria that the following must meet to ensure that food is safe and suitable—
 - (i) the sampling and testing of food or an associated thing to determine its safety or suitability;
 - (ii) the production, processing, cooking, handling, labeling, importation or sale of food;
 - (iii) the information about or the identification, promotion or advertisement of food;
 - (iv) the substance in or the chemical status or genetic modification of food;
 - (v) the elimination of hazards from food;
 - (vi) any other matter that affects the safety or suitability of food;
- (c) to require an approved item or an approved person or an approved class of persons to be used;
- (d) to set out all or any of the following for imported food—
 - (i) different categories based on criteria, descriptions, food groups, import passages, origins, risks, or types;
 - (ii) different treatment for different categories, including their criteria to be complied with;
 - (iii) how and when the criteria must be met, how the criteria may be met and who is responsible for ensuring that the criteria are met;
 - (iv) other matters related to criteria;
 - (v) sampling and testing requirements that must be complied with;
 - (vi) record-keeping requirements that must be complied with;
- (e) to prescribe procedures, documentation and requirements relating to a certificate of health;
- (f) to set out requirements of the following for a person or a class of persons—
 - (i) the information that the person or class of persons must collect about food or an associated thing;

- (ii) the periods for which the person or class of persons must keep the information;
 - (iii) how, when, and to whom the person or class of persons must report on the information;
 - (g) to set out requirements on the details of and keeping and maintaining of public registers under this Act;
 - (h) to prescribe fines not exceeding 10,000 penalty units for the breach of a regulation;
 - (i) to prescribe standards for the fortification of food including standards which prescribe the following—
 - (i) the composition, production, manufacture, preparation, storage, labeling, promotion or advertisement of food;
 - (ii) the sampling and testing of food to determine its composition or safety;
 - (j) to regulate food business or food premises;
 - (k) to regulate the use of salt, sugars or fats in food.
- (2) Before advising the Head of State to make regulations, the Cabinet must take into account the following:
- (a) the need to protect public health;
 - (b) the desirability of avoiding unnecessary restrictions on trade;
 - (c) the desirability of maintaining consistency between the regulations and any relevant standards, requirements, or recommended practices that apply or are accepted internationally including standards, guidelines and related texts published by the *Codex Alimentarius* Commission;
 - (d) the need to give effect to Samoa's obligations under a relevant international agreement, convention, protocol, or treaty;
 - (e) any other matter that the Cabinet considers relevant.

47. Fees and forms - The Minister may:

- (a) by Notice in the Savali, determine fees, charges, levies, and other cost recovery mechanisms for the purposes of this Act; and
- (b) approve forms for the purpose of this Act.

48. Reference to standard works - (1) A reference in a regulation or notice made under this Act to the current edition of a specified standard work of reference is to be read as a reference to the latest edition of the work available at the time of reading, together with any changes made to it up to that time.

(2) A reference in a document to a specific edition of a specified standard work of reference means the specific edition that is to be used.

(3) A standard work of reference is a work of reference that the Director General considers is accepted internationally or by industry as a standard work of reference to be consulted on its subject matter.

49. Transitional - (1) Within the 12 months after the commencement date of this Act, a person may sell food if:

(a) there is no reason, other than the fact that this Act applies to it, as to why the person must not sell the food; and

(b) the person proves that—

(i) at the commencement of this Act, the food was part of the existing stock-in-trade in Samoa of a person carrying on business in Samoa; or

(ii) the food was purchased before the commencement of this Act for importation into Samoa; and

(c) since the commencement of this Act, no person has done an act that causes the food not to comply with this Act or regulations.

(2) Subsection (1) does not allow a person to sell any food that is unsafe.

(3) The Head of State may, acting on the advice of Cabinet, make regulations, within 2 years from the commencement of this Act, to deal with any transitional or saving matters relating to this Act.

50. Consequential amendments - (1) The Food and Drugs Act 1967 is amended as shown in the following table:

Sections amended	Amendment
Whole Act	delete “Food and”, “food or”, “adulterated food”, and “or food” wherever they appear in the whole Act, including references in headings
2	(a) repeal whole definitions of “Appliance” and “Milk” (b) repeal definition of “Food” and substitute the following definition: ““Food” has the meaning given under the Food Act 2015;”
4	repeal subsections (2) and (7)

8	repeal subsections (4) and (6)
14	<p>Substitute:</p> <p>“14. New drugs-(1) No person may import or manufacture any new drug unless the new drug is approved under this section.</p> <p>(2) A person may, in writing, apply to the Chief Executive Officer to approve the new drug setting out the following:</p> <ul style="list-style-type: none">(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
	<ul style="list-style-type: none">(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

	<p>(j) reports of any tests made to control the strength, quality, purity or safety of the drug; and</p> <p>(k) the intended method of marketing the drug in Samoa; and</p> <p>(l) if the drug is to be manufactured, prepared or packed in Samoa the place where that is intended to be done.</p> <p>(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.</p> <p>(4) The Chief Executive Officer may:</p> <p>(a) approve the new drug with or without conditions;</p>
	<p>(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</p> <p>(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.</p> <p>(5) A person commits an offence who:</p> <p>(a) manufactures or imports a new drug contrary to subsection (1); or</p>

	(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 to a fine not exceeding 500 penalty units or to imprisonment for a term not exceeding five (5) years.”.
19	Delete “14”
25	repeal subsection (6)
40	in subsection (2), repeal paragraphs (g), (h), (o), (q), and (r)

(2) Business Licences Act 1998 - For section 7 of the Business Licences Act 1998, after subsection (3) insert:

“(4) If the application is for an economic activity for food business, the applicant must attach to the application a copy of the certificate of health issued under the Food Act 2015.

(5) It is a condition of a licensed business for economic activity in relation to any food business that the food business should not be opened for trading unless it has a certificate of health issued under the Food Act 2015.”.

(3) Consumer Information Act 1989 - In section 2 of the Consumer Information Act 1989:

- (a) in the definitions of “drug” and “medical device”, for “Food and Drugs Act 1967”, substitute “Drugs Act 1967”; and
- (b) in the definition of “food”, for “Food and Drugs Act 1967” substitute “Food Act 2015”.

(4) Ministry of Health Act 2006 - In Schedule 1 to the Ministry of Health Act 2006:

- (a) for “Food and Drugs Act 1967” substitute “Drugs Act 1967”; and
- (b) insert “Food Act 2015” in its correct alphabetical position.

(5) Narcotics Act 1967 - In sections 7(2)(f) and 10(3C)(a)(iv) of the Narcotics Act 1967, for “Food and Drugs Act 1967” substitute “Drugs Act 1967”.

(6) Poisons Act 1968 - In sections 3 and 33(6) of the Poisons Act 1968, for “Food and Drugs Act 1967” substitute “Drugs Act 1967”.

(7) Any regulations, orders or other items of subsidiary legislation in relation to food made under the Food and Drugs Act 1967 continue as if they were made under this Act until they are revoked or replaced under this Act or other Act.

REVISION NOTES 2015 – 2020/3 March 2021

This is the official version of this Act as at 3 March 2021.

This Act has been revised by the Legislative Drafting Division from 2015 – 2020/3 March 2021 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) insertion of assented and commencement date;
- (b) numbers in words deleted and substituted with figures;
- (c) Arrangement of Provisions revised by shifting '**39. Evidential Presumptions**' under Part 7 to be consistent with the content of the Act.

*This Act is administered by the
Ministry of Health.*