

ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER S5

SALE OF FOOD AND DRUGS ACT

Showing the Law as at 15 December 2010

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition consolidates Act 7/2010, in force 1 November 2010

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SALE OF FOOD AND DRUGS ACT

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SALE OF FOOD AND DRUGS ACT

Interpretation

1. In this Act—

"drug" includes medicine for internal or external use;

"Environmental Health Officer" means a person appointed as such under the Public Health Act;

"food" includes every article used for food or drink by man other than drugs or water.

DESCRIPTION OF OFFENCES

Prohibition on mixing injurious ingredients and selling them

2. (1) No person shall mix, colour, stain or powder or order or permit any other person to mix, colour, stain or powder any article of food with any ingredient or material so as to render the article injurious to health with intent that the same may be sold in that state, and no person shall sell any such article so mixed, coloured, stained or powdered.

(2) A person referred to in subsection (1) is liable on summary conviction—

(a) for a first offence, to a fine of $9,600; and

(b) for a second or subsequent offence, to a fine of $9,600 or to imprisonment for a term of 6 months.

Prohibition on mixing drugs with injurious ingredients and selling them

3. (1) No person shall, except for the purpose of compounding as hereinafter described, mix, colour, stain or powder or order or permit any other person to mix, colour, stain or powder any drug with any ingredient or material so as to affect injuriously the quality or potency of such drug with intent that the same may be sold in that state and no person shall sell any such drug so mixed, coloured, stained or powdered.

(2) A person referred to in subsection (1) is liable on summary conviction—

(a) for a first offence, to a fine of $9,600; and

(b) for a second or subsequent offence, to a fine of $9,600 or to imprisonment for a term of 6 months.

Exemption in cases of proof of absence of knowledge

4. No person is liable to be convicted under section 2 or 3 in respect of the sale of any article of food or of any drug if he shows to the satisfaction of the Magistrate that he did not know of the article of food or drug sold by him being so mixed, coloured, stained or powdered as in either of these sections mentioned and that he could not with reasonable vigilance have obtained that knowledge.

Prohibition of sale of articles of food and of drugs not of the proper nature, etc.

5. A person who sells to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance and quality of the article demanded by such purchaser is liable on summary conviction to a fine of $3,840, but an offence shall not be deemed to be committed under this section in the following cases, that is to say—

(a) where any matter or ingredient not injurious to health has been added to the food or drug because the same is required for the production or preparation thereof as an article of commerce in a state fit for carriage or consumption and not fraudulently to increase the bulk, weight or measure of the food or drug or conceal the inferior quality thereof;

(b) where the food or drug is a proprietary medicine or is the subject of a patent in force and is supplied in the state required by the specification of the patent;

(c) where the food or drug is compounded as mentioned in this Act;

(d) where the food or drug is unavoidably mixed with some extraneous matter in the process of collection or preparation.

Reduction allowed for under proof brandy, whisky or rum or for gin

6. In determining whether an offence has been committed under section 5 by selling to the prejudice of the purchaser spirits not adulterated otherwise than by the admixture of water, it shall be a good defence to prove that such admixture has not reduced the spirit more than 25 degrees under proof for brandy, whisky, or rum or 35 degrees under proof for gin.

Sale of compounded articles of food and compounded drugs

7. A person who sells any compounded articles of food or compounded drug which is not composed of ingredients in accordance with the demand of the purchaser is liable on summary conviction to a fine of $3,840.

Protection from offences by giving of label

8. No person is guilty of any such offence as aforesaid in respect of the sale of an article of food or a drug mixed with any matter or ingredient not injurious to health and not intended fraudulently to increase its bulk, weight or measure or conceal its inferior quality if at the time of delivering such article or drug he shall supply to the person receiving the same a notice by a label distinctly and legibly written or printed on or with the article or drug to the effect that the same is mixed.

Prohibition on abstracting any part of an article of food before sale and selling without notice

9. A person who, with the intent that the same may be sold in its altered state without notice, abstracts from an article of food any part of it so as to affect injuriously its quality, substance or nature and a person who sells any article so altered without making disclosure of the alteration is guilty of an offence and is liable on summary conviction to a fine of $3,840.

APPOINTMENT AND DUTIES OF ANALYSTS

Appointment of analysts

10. The Governor may appoint one or more persons possessing competent knowledge, skill and experience as analysts of all articles of food and drugs sold within Anguilla, and shall pay to such analysts such remuneration as shall be mutually agreed upon out of sums to be voted by the Legislature for that purpose. It shall be lawful to appoint any person or persons not resident in Anguilla to be such analyst as aforesaid, and to assign to any person appointed as analyst any district in Anguilla as the district in which his duty as analyst is to be performed.

Power to purchaser of an article of food to have it analysed

11. Any purchaser of an article of food or of a drug in Anguilla, if there is an analyst appointed under this Act, shall be entitled on payment to such analyst of a sum not exceeding $2.40 or, if there is no analyst appointed, to any analyst whom the Governor may appoint of such sum as may be agreed upon between such person and the analyst, to have such article analysed by such analyst and to receive from him a certificate of the results of his analysis.

Officer named to obtain a sample of food or drug to submit to analyst

12. (1) Any medical officer, environmental health officer, or inspector of weights and measures, or any inspector of a market, or any police officer under the direction of the Commissioner of Police may procure any sample of food or drugs, and if he suspects it to have been sold to him contrary to any provision of this Act, shall submit it to be analysed to an analyst appointed under this Act.

(2) The analyst shall, upon receiving payment as is provided in section 11, with all convenient speed analyse the sample and give a certificate to the officer in which he shall specify the results of his analysis.

(3) The expenses attending any purchase or analysis under this section shall be paid out of the Consolidated Fund.

(Act 7/2010, s. 26, as am. in L.R. 15/12/2010)

Officer, inspector, etc. may obtain sample of milk to submit to analyst

13. Any medical officer, environmental health officer, or inspector of weights and measures, or any inspector of a market, or any police officer under the direction of the Commissioner of Police may procure at the place of delivery any sample of any milk in course of delivery to the purchaser or consignee in pursuance of any contract for the sale to any purchaser or consignee of such milk and such officer, inspector or police officer, if he suspects the milk to have been sold contrary to any of the provisions of this Act, shall submit it to be analysed and it shall be analysed and proceedings shall be taken and fines on conviction shall be enforced in like manner in all respects as if such officer, inspector or police officer had purchased the milk from the seller or consignor under section 12.

Fine on refusal to give milk for analysis

14. The seller or consignor or any person or persons entrusted by him for the time being with the charge of such milk, if he shall refuse to allow such officer, inspector or police officer to take the quantity which such officer, inspector or police officer shall require for the purpose of analysis, is liable on summary conviction to a fine of $1,920.

In sale of adulterated articles no defence to allege purchase for analysis

15. In any prosecution under the provisions of this Act for selling to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance and quality of the article demanded by such purchaser, it shall be no defence to any such prosecution to allege that the purchaser having bought only for analysis was not prejudiced by such sale. Neither shall it be a good defence to prove that the article of food or drug in question though defective in nature or in substance or in quality was not defective in all 3 respects.

Provision for dealing with the sample when purchased

16. The person purchasing any article with the intention of submitting it to any analyst shall, after the purchase shall have been completed, forthwith notify to the seller or his agent selling the article his intention to have the article analysed by the analyst and shall offer to divide the article into 3 parts to be then and there separated and each part to be marked and sealed or fastened up in such manner as its nature will permit and shall, if required to do so, proceed accordingly and shall deliver one of the parts to the seller or his agent. He shall afterwards retain one of the parts for future comparison and submit the third part, if he deems it right to have the article analysed, to the analyst.

Provision when sample is not divided

17. If the seller or his agent does not accept the offer of the purchaser to divide the article purchased in his presence, the analyst receiving the article for analysis shall divide the same into 2 parts and shall seal or fasten up one of those parts and shall cause it to be delivered either upon receipt of the sample or when he supplies his certificate to the purchaser who shall retain it for production in case proceedings shall afterwards be taken in the matter.

Provision for sending article to analyst through post office

18. If the analyst does not reside within 2 miles of the residence of the person requiring the article to be analysed, such article may be forwarded to the analyst through the post office as a registered letter, subject to any regulations the Governor in Council may make in reference to the carrying and delivery of such article, and the charge for the postage of such article shall be deemed one of the charges of this Act or of the prosecution, as the case may be.

Person refusing to sell article to officer liable to fine

19. If any such officer, inspector or police officer as above described shall apply to purchase any article of food or any drug exposed to sale or on sale by retail on any premises or in any shop or store or in any street or open place of public resort and shall tender the price for the quantity he shall require for the purpose of analysis, not being more than shall be reasonably requisite, and the person exposing it for sale shall refuse to sell it to such officer, inspector or police officer, such person is liable on summary conviction to a fine of $1,920.

Form of certificate

20. The certificate of the analyst shall be in the form set forth in the Schedule or to the like effect.

Quarterly report of the analyst

21. Every analyst appointed under this Act shall report quarterly to the Governor the number of articles analysed by him under this Act during the foregoing quarter and shall specify the result of each analysis and the sum paid to him in respect thereof, and such report shall be presented at the next meeting of the House of Assembly.

PROCEEDINGS AGAINST OFFENDERS

Proceedings against offenders

22. (1) When the analyst having analysed any article shall have given his certificate of the result from which it may appear that an offence against some one of the provisions of this Act has been committed, the person causing the analysis to be made may take proceedings for the recovery in a summary manner of the fine herein imposed for such offence, before the Magistrate.

(2) Every fine imposed by this Act shall be recovered in manner provided by the Magistrate's Code of Procedure Act.

Certificate of analyst *prima facie* evidence; evidence of analyst and defendant

23. At the hearing of the information in such proceeding, the production of the certificate of the analyst shall be sufficient evidence of the facts therein stated, unless the defendant shall require that the analyst shall be called as a witness, and the parts of the articles retained by the person who purchased the article shall be produced, and the defendant may, if he thinks fit, tender himself and his wife to be examined on his behalf, and he or she shall, if he so desires, be examined accordingly.

Power for Magistrate to have articles of food and drugs analysed

24. The Magistrate before whom any complaint may be made or the Court before whom any appeal may be heard under this Act may, upon the request of either party, in his or its discretion, cause any article of food or drug to be sent to an analyst other than the analyst by whom the analysis has been made and residing either in or out of Anguilla who shall thereupon make an analysis and give a certificate to the Magistrate of the result of his analysis; and the expense of such analysis shall be paid by the complainant or the defendant as the Magistrate may by order direct.

Defendant to prove exception

25. In any prosecution under this Act where the fact of an article having been sold in a mixed state has been proved, if the defendant shall desire to rely upon any exception or provision contained in this Act, it shall be incumbent upon him to prove that exception.

Discharge of defendant if he proves article bought in the same state, etc.

26. If the defendant in any prosecution under this Act proves to the satisfaction of the Magistrate or Court that he had purchased the article in question as the same in nature, substance and quality as that demanded of him by the prosecutor, and with a written warranty to that effect, that he had reason to believe at the time when he sold it that the article was otherwise, and that he sold it in the same state as when he purchased it, he shall be discharged from the prosecution but is liable to pay the costs incurred by the prosecutor unless he shall have given due notice to him that he will rely on the above defence.

Application of fines

27. Every fine imposed and recovered under this Act shall be paid in the case of a prosecution by any medical officer, environmental health officer, inspector of weights and measures, inspector of markets or police officer under the direction of the Commissioner of Police to such officer, inspector or police officer and shall be by him paid into the Consolidated Fund.

(Act 7/2010, s. 26)

Punishment for forging certificate or warranty

28. (1) Any person who shall forge or shall utter, knowing it to be forged, for the purposes of this Act any certificate or any writing purporting to contain a warranty is guilty of an offence and is punishable on summary conviction by imprisonment for a term of 2 years.

(2) Every person who shall wilfully apply to an article of food or a drug in any proceedings under this Act a certificate or warranty given in relation to any other article or drug is guilty of an offence under this Act and is liable on summary conviction to a fine of $3,840.

(3) Every person who shall give a false warranty in writing to any purchaser in respect of an article of food or a drug sold by him as principal or agent is guilty of an offence under this Act and is liable on summary conviction to a fine of $3,840.

(4) Every person who shall wilfully give a label with any article sold by him which shall falsely describe the article sold is guilty of an offence under this Act and is liable on summary conviction to a fine of $3,840.

Proceedings on contracts

29. Nothing in this Act contained shall take away any other remedy against any offender under this Act or in any way interfere with contracts and bargains between individuals and the rights and remedies belonging thereto, but, in any action brought by any person for a breach of contract on the sale of any article of food or of any drug, such person may recover alone or in addition to any other damages recoverable by him the amount of any fine which he has paid under this Act together with the costs paid by him upon conviction and those incurred by him in and about his defence thereto if he proves that the article or drug the subject of such conviction was sold to him as and for an article or drug of the same nature, substance and quality as that which was demanded of him and that he purchased it not knowing it to be otherwise and afterwards sold it in the same state in which he purchased it, the defendant in such action being nevertheless at liberty to prove that the conviction was wrongful or that the amount of costs awarded or claimed was unreasonable.

Expenses

30. The expenses of executing this Act shall be defrayed out of money appropriated for the purpose and the Governor is authorised from time to time to draw upon the Accountant General for such expenses.

(Act 7/2010, s. 26)

Governor may delegate his powers

31. It shall be lawful for the Governor to delegate any of the powers given to him by this Act to any person or persons as he shall think fit.

Powers to fix standards of purity

32. The Governor in Council may make orders fixing the standard of purity for any articles of food or of any drug, and after due publication as regulations in the *Gazette* of such order or orders respectively the same shall be deemed to be part of this Act.

Fine for sale not complying with standard of purity

33. No person shall sell to the prejudice of any purchaser any article of food or drug which does not comply with the standard of purity fixed therefor under such order or orders as aforesaid and any person infringing any such order is liable to the fine provided in section 2(2).

Citation

34. This Act may be cited as the Sale of Food and Drugs Act, Revised Statutes of Anguilla, Chapter S5.

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SCHEDULE

(Section 20)

CERTIFICATE OF ANALYST

To ……

I, the undersigned public analyst for the …….. , do hereby certify that I have received on the …….. day of …….., 20…… from ……..... a sample of …… for analysis (which when weighed ……..) and have analysed the same and declare the result of my analysis to be as follows—

I am of opinion that the same is a sample of genuine ……...……..

or

I am of opinion that the said sample contained the parts as under or the percentages of foreign ingredients as under—

OBSERVATIONS

As witness my hand this ……. day of……..

A.B. …… at …… .

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