



ST. CHRISTOPHER AND NEVIS

CHAPTER 9.26

SALE OF FOOD AND DRUGS ACT and Subsidiary Legislation

Revised Edition

showing the law as at 31 December 2002

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This edition contains a consolidation of the following laws—

SALE OF FOOD AND DRUGS ACT

Act 18 of 1887 ... in force 31st October 1987

Amended by: Act 6 of 1976

Act 7 of 1976

FOOD AND DRUGS ORDER – Section 30

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SALE OF FOOD AND DRUGS ACT

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FIRST SCHEDULE

SECOND SCHEDULE: Food and Drugs Order

CHAPTER 9.26
SALE OF FOOD AND DRUGS ACT

AN ACT TO MAKE PROVISION FOR THE SALE OF ARTICLES OF FOOD AND DRUGS IN THEIR PROPER NATURE, SUBSTANCE AND QUALITY; AND TO MAKE PROVISION FOR RELATED OR INCIDENTAL MATTERS.

Short title.

1. This Act may be cited as the Sale of Food and Drugs Act.

Interpretation.

2. In this Act—

“food” includes every article used for food or drink by man, other than drugs or water;

“drug” includes medicine for internal or external use;

“Minister” means the Minister responsible for Health;
(Inserted by Act 7 of 1976)

“sanitary officer” means any duly appointed officer of a Board of Health in the State or a sanitary officer of some town, village, or place in the State.

Description of Offences

Prohibition of the mixing of injurious ingredients and of selling same.

3. (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 who contravenes the provisions of subsection (1) commits an offence and is liable to pay a fine not exceeding three thousand dollars or to imprisonment for six months.

(Amended by Acts 7 of 1976 and 9 of 1986)

Prohibition of mixing drugs with injurious ingredients and of selling same.

4. (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 who contravenes the provisions of subsection (1) commits an offence and is liable for a first and subsequent offence to the same penalty in each case as provided in section 3.

Exemption in cases if proof of absence of knowledge.

5. No person shall be liable to be convicted under either of the two last foregoing sections in respect of the sale of any article of food or of any drug if he or she shows, to the satisfaction of the Magistrate or Court before whom he or she is charged, that he or she did not know of the article of food or drug sold by him or her being so mixed, coloured, stained or powdered as in either of these sections mentioned and that he or she could not with reasonable vigilance have obtained that knowledge.

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

6. Any 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 the purchaser commits an offence and is liable to pay a fine not exceeding one thousand dollars:

Provided that 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 drug or food 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 in this Act mentioned;
- (d) where the food or drugs is unavoidably mixed with some extraneous matter in the process of collection or preparation.

(Amended by Acts 7 of 1976 and 9 of 1986)

Reduction allowed to the extent of 25 degrees under proof for brandy, whisky or rum and 35 degrees for gin.

7. In determining whether an offence has been committed under the preceding section 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 twenty-five degrees under proof for brandy, whisky, or rum or thirty-five degrees under proof for gin.

Provision for the sale of compounded articles of food and compounded drugs.

8. Any person who sells any compound article of food or compounded drug which is not composed of ingredients in accordance with the demand of the purchaser commits an offence and is liable to pay a fine not exceeding one thousand dollars.

(Amended by Acts 7 of 1976 and 9 of 1986)

Protection from offences by giving of label.

9. No person shall be 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 or she

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 of the abstraction of any part of an article of food before sale and selling without notice.

10. Any 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 any person who sells any article so altered without making disclosure of the alteration commits an offence and is liable, in each case, to pay a fine not exceeding one thousand dollars.

(Amended by Acts 7 of 1976 and 9 of 1986)

Appointment and duties of analysts

Appointment of analysts.

11. The Minister may appoint one or more persons possessing competent knowledge, skill and experience as analysts of all articles of food and drugs sold within the State.

(Amended by Acts 6 of 1976 and 7 of 1976)

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

12. Any purchaser of an article of food or of a drug in the State after there is an analyst appointed under this Act shall be entitled on payment to such analyst of a sum to be prescribed by the Minister or if there be no analyst then appointed to any analyst whom the Minister 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 or her a certificate of the results of his or her analysis.

(Amended by Acts 6 of 1976 and 7 of 1976)

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

13. Any medical officer, inspector of nuisances, or inspector of weights and measures, or any inspector of a market, or any police constable, under the direction of the Chief of Police may procure any sample of food or drugs, and if he or she suspect the same to have been sold to him or her contrary to any provision of this Act, shall submit the same to be analysed to an analyst appointed under this Act and such analyst shall upon receiving payment as is provided in the last section with all convenient speed analyse the same and give a certificate to such officer wherein he or she shall specify the results of his or her analysis, and the expenses attending any purchase or analysis under this section shall be paid out of the Public Treasury.

Officer, Inspector or constable may obtain a sample of milk to submit to analyst at place of delivery.

14. Any medical officer, inspector of nuisances, or inspector of weights and measures, or any inspector of a market, or any police constable, under the direction of the Chief 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 constable if he or she suspect the same to have been sold contrary to any of the provisions of this Act shall submit the same to be analysed and the same shall be

analysed and proceedings shall be taken and penalties on conviction be enforced in like manner in all respects as if such officer, inspector or constable had purchased the same from the seller or consignor under the preceding section.

Penalty on refusal to give milk for analysis.

15. The seller or consignor or any person or persons entrusted by him or her for the time being with the charge of such milk if he or she shall refuse to allow such officer, inspector or constable to take the quantity which such officer, inspector or constable shall require for the purpose of analysis commits an offence and shall be liable to a fine not exceeding seven-hundred and fifty dollars.

(Amended by Acts 7 of 1976 and 9 of 1986)

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

16. (1) 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.

(2) 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 three respects.

Provision for dealing with the sample when purchased.

17. (1) The person purchasing any article with the intention of submitting the same to any analyst shall, after the purchase shall have been completed, forthwith notify to the seller or his or her agent selling the article his or her intention to have the same analysed by the Public Analyst and shall offer to divide the article into three 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 or her agent.

(2) He shall afterwards retain one of the said parts for future comparison and submit the third part, if he or she deems it right to have the article analysed, to the analyst.

Provision when sample is not divided.

18. If the seller or his or her agent do not accept the offer of the purchaser to divide the article purchased in his or her presence the analyst receiving the article for analysis shall divide the same into two 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 or she supplies his or her certificate to the purchaser who shall retain the same for production in case proceedings shall afterwards be taken in the matter.

Provision for sending article to the analyst through the post office.

19. If the analyst does not reside within two 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 Minister 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.

(Amended by Act 6 of 1976)

Person refusing to sell any article to any officer liable to penalty.

20. If any such officer, inspector or constable 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 stores or in any street or open place of public resort and shall tender the price for the quantity he or she shall require for the purpose of analysis, not being more than shall be reasonably requisite, and the person exposing the same for sale shall refuse to sell the same to such officer, inspector or constable, such person commits an offence and shall be liable to pay a fine not exceeding seven hundred and fifty dollars.

(Amended by Acts 7 of 1976 and 9 of 1986)

Form of certificate.

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

Quarterly report of the analyst.

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

(Amended by Act 6 of 1976)

*Proceedings against Offenders***Proceedings against offenders.**

23. (1) When the analyst having analysed any article shall have given his or her 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 of the penalty herein imposed for such offence, before any Magistrate having jurisdiction in the place where the article or drug sold was actually delivered to the purchaser in a summary manner.

(2) Every penalty imposed by this Act shall be recovered in the manner provided by the Magistrates' Code of Procedure Act, Cap. 3:17.

Certificate of analyst *prima facie* evidence. Analyst to be called if required. Defendant and his wife may be examined.

24. 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 or she think fit, tender himself or herself and his wife or her husband to be examined on his or her behalf, and he or she shall, if he or she so desire, be examined accordingly.

Power for Magistrate to have articles of food and drugs analysed.

25. 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 her 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 the State who shall thereupon make an analysis and give a certificate to such Magistrate of the result of his or her 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.

26. 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 or her to prove the same.

***Defendant to be discharged if he prove that he bought the article in the same state as it was sold and with a warranty.**

27. If the defendant in any prosecution under this Act prove to the satisfaction of the Magistrate or Court that he or she had purchased the article in question as the same in nature, substance and quality as that demanded of him or her by the prosecutor, and with a written warranty to that effect, that he or she had no reason to believe at the time when he or she sold it that the article was otherwise, and that he or she sold it in the same state as when he or she purchased it, he or she shall be discharged from the prosecution but shall be liable to pay the costs incurred by the prosecutor unless he or she shall have given due notice to him or her that he or she will rely on the above defence.

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 commits a misdemeanour and shall be punishable on conviction by imprisonment for a term not exceeding two years with hard labour.

(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 commits an offence under this Act and shall be liable to a penalty not exceeding one thousand dollars.

(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 or her as principal or agent commits an offence under this Act and be liable to a fine not exceeding one thousand dollars.

(4) Every person who shall wilfully give a label with any article sold by him or her which shall falsely describe the article sold commits an offence under this Act and shall be liable to a fine not exceeding one thousand dollars.

(Amended by Acts 7 of 1976 and 9 of 1986)

†Proceedings by indictment and on contracts.

29. Nothing in this Act contained shall affect the power of proceeding by indictment or 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:

* Note: section 28 was deleted by Act 7 of 1976.

† Note: sections 31 to 32 were deleted by Act 7 of 1976.

Provided that 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 or her the amount of any penalty in which he or she may have been convicted under this Act together with the costs paid by him or her upon such conviction and those incurred by him or her in and about his or her defence thereto if he or she proves that the article or drug the subject of such conviction was sold to him or her as and for an article or drug of the same nature, substance and quality as that which was demanded of him or her and that he or she purchased it not knowing it to be otherwise and afterwards sold it in the same state in which he or she 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.

Powers to fix standards of purity.

30. The Minister may make Orders fixing the standard of purity for any articles of food or of any drug, and after due publication in the *Gazette* of such Orders or Orders respectively the same shall be deemed to be part of this Act.

Penalty.

31. 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 shall be liable to the penalty provided in sections 3 and 4.

Powers of Sanitary Officers.

32. Every sanitary officer as defined by this Act is hereby empowered to do and perform all or any of the duties imposed by sections 13 and 14 on any medical officer, inspector of nuisances, inspector of weights and measures, inspector of a market or any police constable under the direction of the Chief of Police in the same manner and with the same obligations, rights and privileges as are mentioned in the said Act concerning the said officers respectively.

FIRST SCHEDULE

(Section 21)

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

SECOND SCHEDULE

(Section 30)

FOOD AND DRUGS ORDER

Short title.

- 1. This Order may be cited as the Food and Drugs Order.

Purity of Aerated Waters.

- 2. Aerated waters shall not contain more than one twentieth of a grain per gallon of metallic impurities estimated as lead and shall not contain any saccharine.
