

RSNL1990 CHAPTER F-21

FOOD AND DRUG ACT

Amended:

1997 c39; 2004 c36 s15

CHAPTER F-21

AN ACT RESPECTING FOOD AND DRUGS

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Short title

1. This Act may be cited as the Food and Drug Act.

RSN1970 c139 s1

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Definitions

2. In this Act

(a) "analyst" means the government analyst or an analyst designated by the minister for the purpose of this Act; and this word and the word "analysis" or its grammatical forms connote physical or bacteriological or other similar examinations as well as chemical analysis;

(b) "chief health inspector" means the official in charge of the inspection division of the department;

(c) "cold storage" means the storage of articles of food at or below a temperature of 4 degrees Celsius, those temperatures being artificially reproduced;

(d) "cold store" means an establishment employing refrigerating machinery or ice or other artificial cooling method for the storage of foods at or below a temperature of 4 degrees Celsius;

(e) "department" means the department presided over by the minister;

(f) "drug" includes all medicines for internal or external use for human beings or animals;

(g) "food" includes every article used for food or drink by human beings, other than drugs, and an article which ordinarily enters into or is used in the composition or preparation of food for human beings, and also includes flavouring matters and condiments, and ice sold for domestic purposes;

(g.1) "food premises" means a place where food is prepared, manufactured, handled, cut, processed, packaged, displayed, stored, offered for sale, sold or served and includes hotels, restaurants, catering vehicles, mobile preparation premises, temporary facilities, retail food stores, tents, booths, ships, cold stores, bakeries, breweries, bottling establishments, drinking establishments, dairies, creameries, pasteurizing plants, meat packing premises, locker plants and premises;

(h) "inspector" means a person authorized or instructed by the minister to inspect food, drugs and places where food is prepared or sold or where drugs are prepared, offered for sale or sold;

(i) "locker plant" means food premises in which individual lockers are rented or offered for rent to the public for the storage of frozen foods and also includes cold storage;

(i.1) "minister" means the minister appointed under the Executive Council Act to administer this Act;

(j) "package" includes a box, bottle, basket, tin, barrel, case, receptacle, sack, bag, wrapper or other thing in which food or a drug are placed or packed;

(k) [repealed by 1997 c39 s1]

(l) "premises" includes a vehicle or other ambulatory establishment; and

(m) "vehicle" means a vehicle in which food is prepared or transported.

RSN1970 c139 s2; 1978 c55 Sch; 1997 c39 s1

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Regulations

3. The minister may make regulations

(a) prescribing the manner in which food intended for human consumption shall be prepared, packaged, stored, transported, sold, advertised or exposed for sale, and delivered;

(b) prescribing the manner in which packages shall be marked in order to disclose the nature or method of preparation of their contents;

(c) prescribing standards applicable to different trades or classes of food premises;

(d) prohibiting the sale or holding for sale within the province of food or a drug unless that food or drug attains a standard of composition laid down in the regulations;

(e) respecting the licensing of food premises;

(e.1) respecting inspectors, the powers of inspectors and orders or directions which may be made by inspectors;

(f) dispensing, in the case of highly perishable goods, of the tripartite division of samples mentioned in section 13; and

(g) designating as analysts for the purpose of this Act persons suitably qualified in the opinion of the minister and prescribing the fees to be paid for analyses made for the purpose of this Act.

RSN1970 c139 s3; 1997 c39 s2&7

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Sale of unfit food

4. (1) A person who

(a) sells, or offers, or exposes for sale, or possesses for the purpose of sale or of preparation for sale;

(b) deposits with or consigns to a person for the purpose of sale or of preparation for sale,

food intended for but unfit for human consumption is guilty of an offence.

(2) Where food, in respect of which an offence under paragraph (1)(a) has been committed, was sold to the offender by some other person that person is also guilty of an offence.

(3) Where a person is charged with an offence under paragraph (1)(b) or under subsection (2) it is a defence for that person to prove either that he or she gave notice to the person with whom he or she deposited or to whom he or she consigned or sold the food in question that it was not intended for human consumption or that at the time when it was delivered or dispatched to that person either it was fit for human consumption or that person did not know and could not with reasonable diligence have ascertained that it was unfit for human consumption.

(4) [Rep. by 1997 c39 s3]

(5) Where a person is charged with an offence under this section in relation to a food and the food has been brought before a Provincial Court judge under section 5, 6, 7 or 8, the person may be tried by that Provincial Court judge or by another Provincial Court judge.

RSN1970 c139 s4; 1979 c38 s1; 1997 c39 s3

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Inspection

5. Where it is reasonably necessary for the purpose of ensuring that food or drugs are prepared, offered for sale or sold in accordance with this Act, an inspector may, at all reasonable times

(a) enter and inspect food premises, a store or other place or premises and may inspect all things in food premises, a store or other place or premises; and

(b) inspect and examine food or drugs exposed for sale or deposited in a place for the purpose of sale or in preparation for sale and which is intended or might be used for human consumption,

and the person in charge of the food premises, store or other place shall answer questions asked by the inspector and shall provide information and documents that the inspector may request.

1997 c39 s4

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Search and seizure

6. (1) Where an inspector believes on reasonable grounds that a person has contravened this Act or the regulations, the inspector may, with a warrant issued under subsection (2) enter a commercial, public or private premises in the province and

(a) search for food or drugs that appear to be unwholesome, unsound, diseased, injurious to health or otherwise unfit for consumption by human beings;

(b) examine those premises and make those inquiries that the inspector considers are necessary;

(c) tag and detain food or drugs for not more than 14 days pending a further investigation by the inspector at those premises with the instructions as to its care and storage that the inspector considers necessary and after 14 days the food or drugs shall be returned to its owner or seized under this section; and

(d) seize, take away, hold and store food or drugs and containers in which they are found where that food or drug appears to the inspector to be unwholesome, unsound, diseased, injurious to health or otherwise unfit for consumption by human beings.

(2) A Provincial Court judge who is satisfied by an information upon oath or affirmation that there are reasonable grounds for believing that there is in a commercial, public or private premises anything which will provide evidence with respect to a contravention of this Act may issue a warrant authorizing the inspector named in the warrant to enter the commercial, public or private premises, search for and seize anything that will provide evidence with respect to a contravention of this Act, subject to the conditions that may be specified in the warrant.

(3) The owner or person in charge of the premises referred to subsections (1) and (2) and a person found there shall give an inspector reasonable help to enable the inspector to carry out

his or her duties and functions under this section and shall provide the information and documents that the inspector may reasonably require.

(4) Notwithstanding subsection (1), an inspector may exercise the powers of search and seizure under that subsection without a warrant issued under subsection (2) where the conditions for obtaining the warrant exist but by reason of exigent circumstances, it would not be practical to obtain a warrant.

(5) For the purpose of subsection (4), exigent circumstances include circumstances in which the delay necessary to obtain the warrant would result in danger to human life or safety or to the loss or destruction of evidence.

(6) For the purpose of section 5 and this section, premises, in addition to its definition under section 2 includes a trailer, receptacle or container.

1997 c39 s4; 2004 c36 s15

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Return or destruction of food

7. (1) Food, drugs and their containers seized under section 6 may be detained for a period of 2 months following the day of seizure, unless during that period proceedings under this Act in respect of those food or drugs are undertaken, in which case the food, drugs and containers may be further retained until the proceedings are finally concluded.

(2) Where, following a seizure under section 6, proceedings are not taken, charges are withdrawn or proceeding are taken and the person charged is acquitted of the charge that has been made, the inspector or other person having custody of the food or drugs seized under section 6 shall return them to the person from whom they were seized.

(3) Notwithstanding subsection (2), where food or drugs have been seized under section 6 and an examination by or tests ordered conducted by the inspector discloses that the food or drugs are unfit for human consumption, that food or those drugs shall be disposed of or destroyed as ordered by the inspector.

1997 c39 s4

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Food offered as prizes

8. (1) Sections 4 to 7 apply in relation to food that is intended for human consumption and is

(a) offered as a prize or reward in connection with an entertainment to which the public are admitted whether on payment of money or not;

(b) offered as a prize or reward or given away for the purpose of advertisement or to further a trade or business; or

(c) exposed or deposited in a premises for the purpose of being so offered or given away

as if the food was or had been exposed for sale

(d) in a case falling within paragraph (a), by each person concerned in the organization of the entertainment,

(e) in a case falling within paragraph (b), by the person offering or giving away the food, or

(f) in a case falling within paragraph(c), by the occupier of the premises.

(2) In this section, the expression "entertainment" includes a social gathering, amusement, exhibition, performance, game, sport or trial of skill.

1997 c39 s4

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Handling and storage of food

9. (1) In a food premises it shall be handled, prepared, packed, repacked, or stored in a manner that

(a) protects the food from coming into contact with harmful contaminants; and

(b) protects the food from contamination or adulteration that could be hazardous to human health.

(2) Food shall be transported in a manner that protects it from

(a) coming into contact with harmful contaminants; and

(b) contamination or adulteration that could be hazardous to human health.

(3) Where the owner of a room who did not let it for the purpose of being used for the preparation, sale or storage of food executes a work necessary to make the room comply with subsection (1) that owner may recover the expenses incurred by him or her in so doing from the occupier of the room summarily as a civil debt.

(4) In this section, the expression "room" includes a shop or cellar or other part of a building, and a shed, store or outbuilding or a part of one, and the provisions of this section, where applicable, apply in relation to a yard, forecourt, or area as they apply in relation to a room.

(5) Except as may be expressly provided by the regulations, this section does not apply in relation to premises that are used for the preparation, sale or storage of articles prepared from or consisting of materials other than those of animal or vegetable origin, where the premises are not otherwise used for a purpose in connection with the preparation, storage or sale of food.

1997 c39 s4

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Slaughter of animals

10. (1) An animal, within a licensing area, shall not be slaughtered for food except in an approved building but this subsection does not apply to the killing of game animals.

(2) Meat from outside the province shall not be sold within the province unless it shows evidence of inspection at its point of origin or processing.

1997 c39 s4

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Sampling of food

11. (1) An inspector may purchase for analysis a sample of food or a drug.

(2) An inspector may, without going through the form of purchase, take for analysis a sample of food or a drug in the course of manufacture, preparation, sale or delivery to a purchaser or consignee.

(3) An inspector may, without going through the form of purchase, take for analysis a sample of food in bulk or milk, meat, fowl or fish sold or exposed for sale or intended for sale or being on the premises of a dealer in those commodities or in a vehicle.

(4) Where an inspector applies to purchase an article of food or a drug exposed for sale or on sale by retail on a premises, including a street or open space of public resort, and tenders the price for the quantity which he or she requires for the purpose of analysis, not being more than is reasonably requisite, and the person exposing the article or drug for sale, or having it for sale on the premises, refuses to sell to the inspector the quantity required, or where the person having charge of an article of food or drug of which an inspector is empowered to take a sample under subsection (2) or (3) refuses to allow the inspector to take the quantity which he or she requires for the purpose of analysis, the person who makes that refusal is guilty of an offence.

(5) Where an article of food is exposed for sale in an unopened tin or package properly labelled, a person shall not be required to sell it except in the unopened tin or package in which it is contained.

1997 c39 s4

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Division of samples

12. The inspector purchasing or taking a sample of an article of food or a drug with the intention of submitting it to analysis shall, after the purchase has been completed, or at the time of taking the sample, immediately notify the seller or his or her agent who sold the sample or the person in charge of the goods from which the sample was taken of the inspector's intention to have it analyzed by an analyst and shall at that time divide the sample into 3 parts, each part to be marked and sealed or fastened in the manner that its nature will permit, and shall

(a) where required deliver one part to the seller or the agent of the seller or the person in charge of the goods from which the sample was taken;

(b) retain one part for future comparison; and

(c) where the inspector thinks fit to have an analysis made, submit one part to the analyst.

1997 c39 s4

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Offence re: inspection

13. Where, after being requested to do so by an inspector, a person who has possession of or control of for sale or in course of its manufacture or its preparation for sale, food or a drug, refuses or omits

(a) to show the inspector the place in which the food or drug is stored;

(b) to admit the inspector into that place;

(c) to show the inspector all food or a drug in his or her possession;

(d) to permit the inspector to inspect food or a drug in his or her possession;

(e) to furnish the inspector with the reasonable assistance he or she requires for the purpose of this section; and

(f) to answer truthfully questions put to that person by the inspector regarding the food or drug, or the place where it is prepared or stored,

that person is guilty of an offence.

1997 c39 s4

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Rep. by 1997 c39 s4

14. [Rep. by 1997 c39 s4]

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16. [Rep. by 1997 c39 s4]

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Complaint of inspector

17. (1) Where food is sold on premises and the premises are insanitary or there exists on or in connection with those premises a condition which would constitute a danger to the health of a person purchasing food on or from those premises, an inspector or other person designated for the purpose by the minister may lay a complaint before a Provincial Court judge stating the condition existing on or in connection with the premises.

(2) Every Provincial Court judge before whom a complaint is laid under subsection (1) shall proceed promptly to hear the matter of the complaint, first giving the owner and the occupier of the premises reasonable notice of the hearing.

(3) Where, in the opinion of the Provincial Court judge before whom a complaint was laid under subsection (1), it is desirable to do so, the judge may make an order that no food shall be sold on or from the premises in respect of which the complaint was laid, pending the hearing and determination of the complaint.

(4) Upon hearing a complaint laid under subsection (1), a Provincial Court judge may

(a) where satisfied that the sale of food on or from the premises in respect of which the complaint was laid constitutes a danger to the health of a person purchasing it, issue an order prohibiting the sale of food on or from those premises, either absolutely, or, except upon compliance with those terms and conditions that the judge may prescribe in the order; or

(b) where not satisfied that the sale of food on or from the premises in respect of which the complaint was laid constitutes a danger to the health of a person purchasing it, dismiss the complaint and revoke an interim order made by that or another Provincial Court judge under subsection (3) relating to the premises.

(5) Every person who contravenes or fails to comply with an order of a Provincial Court judge issued under subsection (3) or (4) is guilty of an offence under this Act.

(6) This section applies to and in respect of every premises and the owner or occupier of them, whether or not the premises are licensed under this Act or the regulations, or the licensing provisions of this Act or the regulations apply to the premises.

RSN1970 c139 s17; 1979 c38 s1

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Food considered for sale

18. (1) Food or a drug found upon a premises ordinarily used for the sale or storage of the food or drug, or similar food or drug, shall be considered to be held for sale.

(2) The supplying of food whether in the forms of meals or otherwise by an employer to an employee constitutes a sale and food kept by an employer in a place commonly used for storage of food for employees shall be considered to be kept for sale.

RSN1970 c139 s18

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Examination of food handlers

19. (1) The minister, a medical health officer or an inspector may require a person working or about to work in a food premises to submit to medical examination for the purpose of ascertaining whether that person is afflicted with a contagious or infectious disease or physical ailment that may contaminate the food or affect other persons through the medium of the food.

(2) An examination required under subsection (1) shall be made without charge to the person examined and shall be made by a registered medical practitioner designated by the minister.

(3) A person examined under subsection (1) may have his or her own physician present at the examination.

(4) A person who upon the examination is certified by the examining medical practitioner to be unfit to work in a food premises by reason of a contagious or infectious disease or physical ailment shall not work in a food premises until that person has received from the minister a permit to do so and where he or she does so without a permit he or she is guilty of an offence.

(5) A person who refuses to submit to medical examination when required under subsection (1) is guilty of an offence.

(6) A person who knowingly employs, in a food premises, a person who has refused to submit to medical examination under subsection (1) or a person who has been certified as unfit to be so employed and has not subsequently received a permit from the minister under subsection (4) is guilty of an offence.

RSN1970 c139 s19; 1997 c39 s7

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Rep. by 1997 c39 s5

20. [Rep. by 1997 c39 s5]

1997 c39 s5

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Where food sold

21. No person shall keep, sell or offer for sale food outside of a store, shop or building or in the open doorways or in the open or closed display windows of a store, shop or building, or in a street or public place, unless the food is kept properly covered so that it is protected from dust, dirt and the contact of flies.

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22. [Rep. by 1997 c39 s5]

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23. [Rep. by 1997 c39 s5]

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Rep. by 1997 c39 s5

24. [Rep. by 1997 c39 s5]

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Tuberculin testing

25. (1) No producer or vendor of milk shall represent to his or her customers or to the public that his or her cows have undergone tuberculin test or that they have reacted favourably to the test unless the producer of the milk has possession of a certificate to that effect issued by the proper officer of the Department of Health within 1 year previous to the representation and relating to each animal in the herd.

(2) No unpasteurized milk shall be placed in a container marked so as to suggest that the contents have been pasteurized.

(3) An adulteration of milk shall be considered to be injurious to health.

RSN1970 c139 s25

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Rep. by 1997 c39 s5

26. [Rep. by 1997 c39 s5]

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27. [Rep. by 1997 c39 s5]

1997 c39 s5

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Limitation of storage

28. No person shall sell or deliver out of a cold store an article of food that has been in cold storage in this country and elsewhere for more than 12 calendar months unless the article has been inspected and a written permit to sell or deliver the article has been issued by the chief health inspector.

RSN1970 c139 s28

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Misrepresentation of goods

29. No person shall represent or advertise as fresh goods articles of food that have been held in cold storage.

RSN1970 c139 s29

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Notice of cold storage

30. No person shall sell, offer or expose for sale fish which has been held in cold storage without express notice to the purchaser by the display of a sign that the fish has been held in cold storage.

RSN1970 c139 s30

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Return to cold storage

31. No article of food which has been taken out of cold store shall be returned into a cold store except with the express permission of an inspector.

RSN1970 c139 s31

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Employee's offence also employer's

32. An offence against this Act or the regulations by an officer, employee or agent acting for or employed by a person or corporation and being within the scope of his or her employment or office shall be considered to be the offence of both that person and of the employing person or corporation.

RSN1970 c139 s32

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Certificate of analyst

33. Upon the hearing of a charge under this Act or the regulations the production of the certificate of an analyst is, in the absence of evidence to the contrary, evidence of the facts stated in the certificate unless the defendant requests that the analyst be called as a witness and the parts of the samples retained by the person who purchased the article or took the sample shall be produced.

RSN1970 c139 s33

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Action against inspector

34. Where an action or proceeding is taken against the chief health inspector, an inspector, officer or other person for anything done by him or her under this Act or the regulations and the court before which the action or proceeding is taken is satisfied that there was probably cause for the action of the chief health inspector, inspector, officer or other person and that it was not malicious, a verdict or judgment shall not be given against the chief health inspector, inspector, officer or other person for more than \$0.05 damages or for costs of suit.

RSN1970 c139 s34

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Offence

35. A person who contravenes this Act or the regulations or fails to comply with the conditions of a licence or permit issued under this Act or the regulations is guilty of an offence.

RSN1970 c139 s35

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Penalty

36. (1) A person who violates a provision of this Act or the regulations is guilty of an offence.

(2) A person found guilty of an offence under this Act or the regulations is liable on summary conviction

(a) for a first offence, to a fine of not less than \$500 and not more than \$5,000 or to imprisonment for a term of not less than one month nor more than 6 months, or to both a fine and imprisonment; and

(b) for a second and subsequent offence to a fine of not less than \$5,000 and not more than \$20,000 or to imprisonment for a term of not less than 2 months or more than 6 months, or to both a fine and imprisonment.

(3) Where a person has been convicted under subsection (2) the court shall, in addition to a penalty imposed under that subsection, order that the person pay to the minister the cost incurred by the department to sample and analyze a food or drug associated with the matter for which the person was convicted.

1997 c39 s6

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