

CHAPTER 136

SALE OF FOOD LAW

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CHAPTER 136

SALE OF FOOD LAW

A Law to make Provision for the Sale of Food and Drink in a pure state.

Short title.

1. This Law may be cited as the Sale of Food Law.

Interpretation.

2. In this Law:
"analyst" includes an analyst appointed by the Commissioner under section 7 and any analyst in the service of the Government;
"food" includes any article used for food or drink by man other than drugs and water and aerated mineral waters.

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

3. No person shall sell, to the prejudice of the purchaser, any article of food which is not of the nature, substance and quality of the article demanded by such purchaser.

Penalty: a fine of five thousand naira:

Provided that an offence shall not be deemed to be committed under this section in the following cases:

- (a) where any matter or ingredient not injurious to health has been added to the article of food 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 conceal the inferior quality thereof;
- (b) where the article of food 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 is unavoidably mixed with some extraneous matter in the process of collection or preparation.

Prohibition of the sale of compounded articles of food.

4. No person shall sell any compound article of food which is not composed of ingredients in accordance with the demand of the purchaser.

Penalty: a fine of five thousand naira

5. No person shall be guilty of an offence under section 3 or 4 in respect of the sale of an article of food 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 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, to the effect that the same is mixed. Protection from offences by giving of label.

6. No person shall, with the intent that the same may be sold in its altered state without notice, abstract from an article of food any part of it so as to affect injuriously its quality, substance or nature, and no person shall sell any article so altered without making disclosure of the alterations. Prohibition of the abstraction of any part of an article of food before sale without notice.

Penalty: a fine of five thousand naira.

7. The Commissioner may appoint analysts of all articles of food. Appointment of analysts.

8. Any vendor or purchaser of an article of food in any place where there is any analyst appointed under this Law may on payment of a sum of five hundred naira, have such article analysed by such analyst, and may receive from him a certificate of the result of his analysis. Purchaser may have food analysed.

9. Any customs or medical officer or sanitary inspector or any police officer of or above the rank of inspector or any police officer or other person acting on the instruction of a police officer of or above the rank of inspector may procure any sample of any article of food, and if he suspect the same to have been sold to him contrary to any provision of this Law, shall submit the same to be analysed by an analyst, and such analyst shall, with all convenient speed, analyse the same and give a certificate to such officer, wherein he shall specify the result of the analysis. Officers named may procure sample of food to be analysed.

10. (1) The person purchasing any article of food with the intention of submitting the same to analysis shall, after the purchase shall have been completed, forthwith notify to the seller or his agent selling the article his intention to have the same analysed by an analyst, and shall offer to divide Provision for dealing with the sample when purchased.

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 agent.

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

Provision when the sample is not divided.

11. 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 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 supplies his certificate, to the purchaser, who shall retain the same for production in case proceedings shall afterwards be taken in the matter.

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

12. (1) If any of the officers or persons mentioned in section 9 shall apply to purchase any article of food exposed for sale or on sale on any premises or in any shop or store, and shall tender the price for the quantity which he 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 or person as aforesaid, such person refusing shall be liable to a fine of two thousand five hundred naira.
- (2) All intoxicating liquor in or on any premises licensed for the sale of intoxicating liquor shall be deemed to be exposed for sale unless and until the contrary is proved.
- (3) Any person licensed to sell intoxicating liquor by wholesale may sell to any of the persons mentioned in section 9 the quantity of liquor required by him for analysis though such quantity be less than two gallons.

Form of the certificate.

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

Proceedings against offenders.

14. When the analyst having analysed any article of food shall have given his certificate of the result, from which it may appear that an

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offence against some of
committed the person
proceedings against the
the place where the
purchaser.
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offence against some one of the provisions of this Law has been committed, the person causing the analysis to be made may take proceedings against the offender before a Court having jurisdiction in the place where the article sold was actually delivered to the purchaser.

15. At the hearing in such proceedings, 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 article retained by the person who purchased the article shall be produced. Analyst's certificate to be prima facie evidence.
16. In any prosecution under this Law, where the fact of an article of food 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 law, it shall be incumbent upon him to prove the facts required to bring the sale within such exception or provision. Defendant in any prosecution to prove facts of exception.
17. If the defendant in any prosecution under this Law prove to the satisfaction of the court that he had purchased within Nigeria 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 no 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 shall be 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. Defendant to be discharged if he proves that he bought the article in same state as sold and with a written warranty.
18. Any person who:
- (a) wilfully applies to an article of food, in any proceedings under this Law, a certificate of warranty given in of warranty relation to any other article; Mis- application of warranty.
 - (b) gives a false warranty in writing to any purchaser in respect of an article of food sold by him as principal or agent; or False warranty.
 - (c) wilfully gives a label with any article sold by him which falsely describes the article sold; False label.
shall be liable to a fine of five thousand naira.
19. Nothing in this Law contained shall take away any other remedy against any offender under this Law or in any way interfere with contracts and bargains between affected individuals, and the rights and remedies belonging thereto: Proceedings and contracts not to be affected.

Secondary Legislation

Provided that in any action brought by any person for a breach of contract on the sale of any article of food such person may recover alone or in addition to any other damages recoverable by him the amount of any penalty in which he may have been convicted under this Law, together with the costs paid by him upon such conviction, and those incurred by him in and about his defence thereto, if he prove that the article the subject of such conviction was sold to him as and for an article 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.

Certificate of analyst to be evidence in proceedings for offences under section 243 of the Criminal Code. (Cap. 30).

20. In any proceedings for an offence under section 243 of the Criminal Code a certificate in the form in the Schedule to the like effect given by the analyst who has analysed the article of food in relation to which such proceedings are taken may be produced and shall be sufficient evidence of the facts therein stated, unless the defendant shall require that the analyst be called as a witness, provided that the procedure prescribed in section 10 or 11, as the case may require, has been followed and the parts of the article retained by the person who has caused the article to be analysed are produced before the court.

Sections 13 and 20.

SCHEDULE
THE SALE OF FOOD LAW
(Ebonyi State of Nigeria)
Form of Certificate

To
I, the undersigned, public analyst for the..... do hereby certify that I received on the.....day of, 20....., from, a sample of, for analysis (which then 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 percentage of foreign ingredients as follows:-*(here state observations)*.

As witness my hand this.....day of....., 20.....

(Signed)

SUBSIDIARY LEGISLATION
(No subsidiary legislation)