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Act 281

FOOD ACT 1983

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FOOD ACT 1983

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LAWS OF MALAYSIA

Act 281

FOOD ACT 1983

An Act to protect the public against health hazards and fraud in the preparation, sale and use of food, and for matters incidental thereto or connected therewith.

[1 October 1985, P.U. (B) 446/1985]

BE IT ENACTED by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

PART I

PRELIMINARY

Short title, application and commencement

1. (1) This Act may be cited as the Food Act 1983 and shall apply throughout Malaysia.

(2) This Act shall come into force on such date as the Minister may by notification in the *Gazette* appoint and the Minister may appoint different dates for the coming into force of this Act for different States in Malaysia or for different provisions of this Act.

Interpretation

2. In this Act, unless the context otherwise requires—

“advertisement” includes any representation by any means whatsoever for the purposes of promoting directly or indirectly the sale or other disposal of any food;

“analyst” means any analyst appointed under section 3;

“animal” includes any quadruped or bird either domesticated or otherwise, fish, reptile or insect, whole or part of which are used for human consumption;

“appliance” includes the whole or any part of any utensil, machinery, instrument, apparatus, or article used for or in connection with the preparation, preservation, packaging, storage, conveyance, distribution or sale of food;

“approved laboratory” means any laboratory approved by the Minister under section 3A;

“authorized officer” means any medical officer of health or any health inspector of the Ministry of Health or of any local authority, or any suitably qualified person, appointed by the Minister to be an authorized officer under section 3;

“Director” means the Deputy Director General of Health(Public Health) of the Ministry of Health;

“Director General” means the Director General of Health of the Ministry of Health;

“entertainment” includes any social or other form of gathering, amusement, festival, exhibition, performance, game, competition, sport or trial of skill;

“food” includes every article manufactured, sold or represented for use as food or drink for human consumption or which enters into or is used in the composition, preparation, preservation, of any food or drink and includes confectionery, chewing substances and any ingredient of such food, drink, confectionery or chewing substances;

“food premises” means premises used for or in connection with the preparation, preservation, packaging, storage, conveyance, distribution or sale of any food, or the relabelling, reprocessing or reconditioning of any food;

“import” means to bring or cause to be brought into Malaysia by land, water or air for the purpose of sale from any place outside Malaysia but does not include the bringing into Malaysia of any food which it is proved is intended to be taken out of Malaysia on the same vehicle, vessel, or aircraft on which such food was brought into Malaysia without any transshipment or landing;

“importer” includes any person who, whether as owner, consignor, consignee, agent or broker, is in possession of, or is otherwise entitled to the custody or control, of the imported food;

“International Health Regulations” means the International Health Regulations as adopted by the World Health Assembly in 1969 and as amended from time to time;

“label” includes any tag, brand, mark, pictorial or other descriptive matter, written, printed, stencilled, marked, painted, embossed or impressed on, or attached to or included in, belonging to, or accompanying any food;

“medical examination” includes physical, microbiological, chemical, serological and radiological examination, and such examination may include the taking of specimen of any body fluid, tissue or waste product for examination or analysis;

“package” includes anything in which or any means by which food is wholly or partly cased, covered, enclosed, contained, placed or otherwise packed in any way whatsoever and includes any basket, pail, tray or receptacle of any kind whether opened or closed;

“premises” includes—

- (a) any building or tent or any other structure, permanent or otherwise together with the land on which the building, tent or other structure is situated and any adjoining land used in connection therewith and any vehicle, conveyance, vessel or aircraft; and
- (b) for the purposes of section 4 any street, open space or place of public resort or bicycle or any vehicle used for or in connection with the preparation, preservation, packaging, storage, conveyance, distribution or sale of any food;

“preparation” includes manufacture, packaging, processing and any form of treatment;

“seal” includes the detention in bulk of any food, a sample of which has been taken for analysis, pending the result of the analysis;

“sell or sale ” refers only to sale for human consumption or use and includes barter and exchange, offering or attempting to sell, causing or allowing to be sold, exposing for sale, receiving, sending, conveying or delivering for sale or exchange or in pursuance of such sale or exchange, supplying any food where consideration is to be received by the supplier for such supply either specifically or as part of a service contracted for sale, or having in possession any food for sale or exchange, or having in possession any food or appliance knowing that the food or appliance is likely to be sold or offered or displayed or exposed for sale or disposed of for any consideration, and includes electronic sale;

“tobacco” means any product obtained from the leaf of the *Nicotiana Tobacum* plant or other related plants and includes any tobacco product;

“tobacco product” means tobacco, cigarette or cigar or any other form of tobacco including any mixture containing tobacco which is designed for human consumption but excludes any medicinal product controlled under the Poisons Act 1952 [*Act 366*] or the Control of Drugs and Cosmetics Regulations 1984 [*P.U. (A) 223/1984*];

“vegetable substance” means any plant or part of a plant, and includes the stem, root, bark, tuber, rhizome, leaf, stalk, inflorescence, bud, shoot, flowers, fruit and seed, or an extract thereof.

PART II

ADMINISTRATION AND ENFORCEMENT

Appointment of analysts and authorized officers

3. (1) The Minister may appoint such number of analysts as he may consider necessary for the purposes of this Act and may make regulations concerning their qualifications, conduct and duties, and shall prepare or cause to be prepared a list of appointed analysts and revise it as the circumstances may require.

(2) The Minister may appoint such number of authorized officers as he may consider necessary for the purposes of this Act and every authorized officer shall be issued with a Certificate of

Authorization which certificate shall in any legal proceedings under this Act be admissible in evidence and shall be *prima facie* evidence of the facts so certified.

(3) The Minister may, in relation to any matter which appears to him to affect the general interests of the consumer, authorize any public officer to procure for analysis samples of any food, and thereupon that officer shall have all the powers of an authorized officer under this Act, and this Act shall apply as if the officer was an authorized officer.

(4) The analysts and authorized officers appointed under this section shall be deemed to be public servants within the meaning of the Penal Code [*Act 574*].

Approved laboratories

3A. (1) The Minister may, by order, approve such number of laboratories as he may consider necessary for the purposes of this Act.

(2) A laboratory approved under subsection (1) shall be issued with a Certificate of Approval which certificate shall, in any legal proceedings under this Act, be admissible in evidence and shall be *prima facie* evidence of the facts so certified.

(3) The Minister shall prepare or cause to be prepared a list of approved laboratories and revise it as the circumstances may require.

Powers of authorized officer

4. (1) An authorized officer may at any time for the proper and better performance of his duty—

- (a) enter any premises which he believes to be food premises and examine any food found therein and take samples of such food, and examine anything that he believes is used or capable of being used for the preparation, preservation, packaging, storage, conveyance, distribution or sale of the food;
- (b) stop, search or detain any aircraft, ship or vehicle in which he believes on reasonable grounds that any food to which this Act applies is being conveyed and examine

any such food and take samples thereof for the purposes of this Act, except an aircraft, ship or vehicle making an international voyage in respect of which the International Health Regulations apply;

- (c) open and examine any package which he believes contains any food to which this Act applies;
- (d) examine any books, documents or other records found in any food premises that he believes contain any information relevant to the enforcement of this Act with respect to any food to which this Act applies and make copies thereof or take extracts there from;
- (e) demand the production of the National Registration Identity Card, the Business Registration Certificate or any other relevant document which the authorized officer may require;
- (f) seize and detain for such time as may be necessary any food or appliance by means of or in relation to which he believes any provision of this Act has been contravened; or
- (g) mark, seal or otherwise secure, weigh, count or measure any food or appliance, the preparation, preservation, packaging, storage, conveyance, distribution or sale of which is or appears to be contrary to this Act.

(1A) In the course of the exercise of his powers under subsection (1) an authorized officer may examine orally the owner, occupier or person in charge of the food premises, or any person found in the food premises, whom he believes to be acquainted with the facts and circumstances of any matter under this Act.

(1B) A person examined under subsection (1A) shall be legally bound to answer truthfully all questions put to him:

Provided that a person examined under this subsection may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture.

(1C) An authorized officer examining a person under subsection (1A) shall first inform that person of the provisions of subsection (1B).

(1D) A statement made by a person under subsections (1A) and (1B) shall, whenever possible, be reduced into writing and signed by the person making it or affixed with his thumb print, as the case may be, after it has been read to him in the language in which he made it and after he has been given an opportunity to make any correction he may wish.

(1E) Any statement made and recorded under this section shall be admissible as evidence in any proceedings in Court.

(2) An authorized officer acting under this section shall, if so required, produce his Certificate of Authorization.

(3) Any owner, occupier or person in charge of any food premises entered by any authorized officer pursuant to paragraph (1)(a), or any person found therein, who does not give to the authorized officer all reasonable assistance in his power or furnish him with all the information as he may reasonably require, commits an offence and is liable on conviction to imprisonment for a term not exceeding one year or to fine or to both.

(4) Any person who obstructs or impedes any authorized officer in the course of his duty or prevents or attempts to prevent the execution by the authorized officer of his duty commits an offence and is liable on conviction to imprisonment for a term not exceeding one year or to fine or to both.

(5) An authorized officer may arrest without warrant any person whom he has reason to believe to have committed an offence under this Act or any regulation made thereunder if the person fails to furnish his name and address or there are reasonable grounds for believing that he has furnished a false name or address or that he is likely to abscond:

Provided that when any person has been arrested as aforesaid he shall thereafter be dealt with as provided by the Criminal Procedure Code [Act 593].

(6) Any person who knowingly makes any false or misleading statement either verbally or in writing to any authorized officer engaged in carrying out his duty commits an offence and is liable on conviction to imprisonment for a term not exceeding one year or to fine or to both.

(7) An authorized officer shall release any food seized by him when he is satisfied that all the provisions of the Act with respect to it have been complied.

(8) Where an authorized officer has seized any food and the owner or the person in whose possession the food was at the time of seizure consents in writing to its destruction, the food may be destroyed or otherwise disposed of as the authorized officer may direct and if the owner or the person does not consent to the destruction of the food, the authorized officer may apply to a court for the destruction or disposal of the food or any appliance and the court may make an order as it may deem fit, notwithstanding that the owner or the person has not been convicted of any offence in connection with the food.

(9) Where an authorized officer has seized any food which is perishable in nature and the owner or the person in whose possession the food was at the time of seizure does not consent in writing to its destruction, the responsibility for proper storage of such food so as to prevent it from deterioration, spoilage, damage or theft, pending judgment by the court, lies with the owner or such person.

(10) Where any food or appliance has been seized and detained under paragraph (1)(f) and the owner thereof has been convicted of an offence the food or appliance may be destroyed or otherwise disposed of as the court may direct.

(11) Notwithstanding any other provisions of this section an authorized officer may destroy any food wherever found which is decayed, putrefied or injurious to health or food the importation of which is prohibited or food which is surrendered by the owner for destruction on payment by him of reasonable charges.

(12) Any person who removes, alters or interferes in any way with any food seized or sealed under this Act without the authority of an authorized officer commits an offence and is liable on conviction to imprisonment for a term not exceeding one year or to fine or to both.

(13) Any food seized may at the option of an authorized officer be kept or stored in the premises where it was seized or may at the direction of an authorized officer be removed to any other proper place.

(14) An authorized officer may submit any food seized by him or any sample from it or any other sample taken by him to any approved laboratory for analysis or examination.

(15) *(Deleted by Act A1117).*

Power to take sample

5. (1) On payment or tender to any person selling food or to his agent or servant, of the current market value of the food, any authorized officer may at any place demand and select and take or obtain samples of the food for the purpose of analysis.

(2) An authorized officer may at any place demand and select and take or obtain samples for the purpose of analysis without payment from any manufacturer making food for sale or from any importer of any food or from his agent or servant.

(3) Any such authorized officer may require the person or his agent or servant to show and permit the inspection of the package in which such food is at the time kept and to take therefrom the samples demanded.

(4) Where any food is kept for retail sale in an unopened package, no person shall be required by any authorized officer to sell less than the whole of the contents of such package.

(5) Any person who refuses or neglects to comply with any demand or requisition made by an authorized officer in pursuance of this section commits an offence and is liable on conviction to imprisonment for a term not exceeding one year or to fine or to both.

Procedure for taking sample

6. (1) Where it is intended to submit any sample of any food for analysis the authorized officer purchasing or otherwise procuring the sample shall inform the seller or his agent or servant selling the food that he intends to have the sample analysed by an analyst.

(2) The procedure for taking and dealing with the samples shall be as prescribed by regulations.

Certificate of analyst

7. (1) The certificate of the analyst shall be in the form as prescribed by regulations.

(2) Where any method of analysis has been prescribed by regulations for the analysis of any food, the analyst shall follow, and in his certificate of analysis declare that he has followed, the prescribed method.

(3) A copy of the result of any analysis of any food procured by an authorized officer may be obtained from the analyst by the person from whom the food so analysed was purchased or obtained on payment of such fee as may be prescribed.

(4) No copy of the result of any analysis made under this Act or any reproduction thereof shall be displayed or used as an advertisement and if any person so displays or uses such copy or reproduction he commits an offence and is liable on conviction to imprisonment for a term not exceeding one year or to fine or to both.

Power to call for information

8. (1) If any authorized officer is of the opinion that there is reasonable ground for suspecting that any person is in possession of any food or other substance or any appliance for the purpose of or in connection with the preparation, preservation, packaging, storage, conveyance, distribution or sale of food in breach of any of the provisions of this Act or any regulations made thereunder he may require such person to produce for his inspection any books, documents or other records or any other information relating to the importation, preparation, reception, possession, purchase, sale or delivery of such food or other substance or any appliance.

(2) Any authorized officer mentioned in subsection (1) may make or cause to be made copies of or extracts from any such books, documents or records, or any other information and such copies or extracts certified as such by such authorized officer shall, unless the contrary is proved, be deemed to be true and correct copies or extracts.

(3) Any person who refuses or neglects to comply with any requisition made in pursuance of this section commits an offence and is liable on conviction to imprisonment for a term not exceeding one year or to fine or to both.

(4) Any authorized officer who—

- (a) does not maintain the secrecy of all matters which come to his knowledge in the performance of his official duties under this section; or
- (b) communicates any such matter to any person except for the purpose of carrying into effect the provisions of this Act,

commits an offence and is liable on conviction to imprisonment for a term not exceeding three years or to fine or to both.

Power of the Director General to obtain particulars of certain food ingredients

9. (1) The Director General may after obtaining an approval in writing from the Minister direct any person who at the date of the direction or at any subsequent time carries on a business which includes the production, importation or use of any substance to which this Act applies to furnish to him, within such time as may be specified in such direction, such particulars as may be specified, of the composition and use of any such substance sold or for sale in the course of that business or used in the preparation of food.

(2) Without prejudice to the generality of subsection (1), a direction made thereunder may require the following particulars to be furnished in respect of any substance, that is to say—

- (a) particulars of the composition and chemical formula of the substance;
- (b) particulars of the manner in which the substance is used or proposed to be used in the preparation of food;
- (c) particulars of any investigation carried out by or to the knowledge of the person carrying on the business in question, for the purpose of determining whether and to what extent the substance, or any product formed when the substance is used as aforesaid, is injurious to, or in any other way affects, health;

- (d) particulars of any investigation or enquiries carried out by or to the knowledge of the person carrying on the business in question, for the purposes of determining the cumulative effect on the health of a person consuming the substance in ordinary quantities.

(3) No particulars furnished in accordance with a direction under this section and no information relating to any individual business obtained by means of such particulars shall, without the previous consent in writing of the person carrying on the business in question, be disclosed except in due discharge of his duties under this Act, and any person who discloses any such particulars of information in contravention of this subsection commits an offence and is liable on conviction to imprisonment for a term not exceeding five years or to fine or to both.

Director may order food premises or appliances to be put into hygienic and sanitary condition

10. (1) Where the Director or an officer authorized by him in this particular respect is satisfied, by his own inspection or the report of an authorized officer, that any food premises, or any appliances used for or in connection with the preparation, preservation, packaging, storage, conveyance, distribution or sale of food, is in a condition that fails to comply with any hygiene and sanitary requirements specified in regulations made under this Act, he may, by instrument in writing served on the proprietor, owner or occupier of such premises, or the proprietor or owner of such appliance, order that the premises or appliance be put into a hygienic and sanitary condition to the satisfaction of an authorized officer within a period specified in the instrument.

(2) If after the expiration of that period, the Director or an officer authorized by him in this particular respect is not satisfied that the food premises or appliance to which the order relates has been put into a condition that complies with the hygienic and sanitary requirements the Director or the officer may, by instrument in writing, served on the proprietor, owner or occupier of the food premises or the proprietor or owner of the appliance, as the case may be, order that—

- (a) the food premises shall not be kept for the preparation, preservation, packaging, storage or sale or, in the case of a vehicle, for the conveyance, distribution or sale of any food; and

- (b) the appliance shall not be used in or for the preparation, preservation, packaging, handling, supplying, or serving of any food,

until an authorized officer has given or otherwise deemed to have given to the proprietor, owner or occupier of the food premises or the proprietor or owner of the appliance, as the case may be, a certificate in writing that the food premises or appliance has been put into a condition which complies with the hygienic and sanitary requirements.

(3) The proprietor, owner or occupier of any food premises or the proprietor or owner of any appliance on whom an order under subsection (2) is served may at any time after the order has been served request, in writing, the Director or an officer authorized by him in this particular respect to cause the food premises or appliance to be inspected by an authorized officer at a places specified in the request.

(4) Where a request is so made, an authorized officer shall inspect the food premises or appliance to which the request relates within a period of seven days after the receipt of the request by the Director or the officer authorized by him in this particular respect, and the authorized officer making the inspection shall if he is satisfied that the food premises or appliance has been put in a condition that complies with the hygienic and sanitary requirements, give to the proprietor, owner or occupier of the food premises or the proprietor or owner of the appliance, a certificate to that effect.

(5) Where a request is so made and the food premises or appliance is not inspected by an authorized officer within a period of seven days after that receipt of the request by the Director or the officer authorized by him in this particular respect, a certificate in respect of the food premises or appliance shall be deemed to have been given to the proprietor, owner or occupier of the food premises or the proprietor or owner of the appliance.

(6) Where an order under subsection (2) has been served on the proprietor, owner or occupier of any food premises, or the proprietor or owner of any appliance and a certificate in respect thereof has not subsequently been given or has not otherwise been deemed to have been given any person who—

- (a) keeps or uses the food premises or any part of the food premises for the preparation, preservation, packaging,

storage or sale or in the case of a vehicle, for the conveyance, distribution or sale of any food; or

- (b) uses the appliance in or for the preparation, preservation, packaging, handling, supplying or serving of any food,

commits an offence and is liable on conviction to imprisonment for a term not exceeding five years or to fine or to both.

Closure of insanitary premises

11. The Director or an officer authorized by him in this particular respect may in writing order the closure forthwith not exceeding fourteen days of any premises preparing or selling food where the Director or the officer authorized by him in this particular respect is of the opinion that such premises is in a condition that fails to comply with the sanitary and hygienic requirements and such that it is likely to be hazardous to health, and the proprietor, owner or occupier of the premises who fails to comply with the order commits an offence and is liable on conviction to imprisonment for a term not exceeding five years or to fine or to both.

Conviction published in newspapers

12. A notification of the name and occupation of any person who has been convicted of any offence against this Act or any regulation made thereunder together with his place or places of business, the nature of the offence and the fine, forfeiture, or other penalty inflicted shall, if the court so orders, be published in any newspaper circulating in Malaysia or in any part thereof, and the court shall further order the person convicted to pay the cost of such publication and such cost shall be treated as if it was a fine imposed by such court.

PART III

OFFENCES AND EVIDENCE

Meaning of “owner of the rights of the manufacturer or packer”

12A. (1) For the purposes of this Part, the term “owner of the rights of the manufacturer or packer” means—

- (a) in the case of foreign manufactured or packed food, any person who owns the exclusive rights to distribute or sell

the food in Malaysia by way of licence, agreement or franchise from the foreign manufacturer; or

- (b) in the case of locally manufactured or packed food, any person who, not being the manufacturer or packer, has proprietary rights over the distribution and sale of the food, or who, being the manufacturer or packer, distributes or sells the food through and in the name of a marketing agent.

(2) The term “owner of the rights of the manufacturer or packer” in subsection (1) extends also to any person who, in relation to food, claims or holds himself out as one, whether the food is imported or locally manufactured or packed.

Food containing substances injurious to health

13. (1) Any person who prepares or sells any food that has in or upon it any substance which is poisonous, harmful or otherwise injurious to health commits an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding ten years or to both.

(2) In determining whether any food is injurious to health for the purpose of subsection (1), regard shall be had not only to the probable effect of that food on the health of a person consuming it but also to the probable cumulative effect of the food of substantially the same composition on the health of a person consuming the food in ordinary quantities.

Food unfit for human consumption

13A. (1) Any person who prepares or sells any food that consists wholly or in part of—

- (a) any diseased, filthy, decomposed or putrid animal or vegetable substance;
- (b) any portion of an animal unfit for food; or
- (c) the product of an animal which has died otherwise than by slaughter or as game,

whether manufactured or not, commits an offence and shall be liable, on conviction, to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding eight years or to both.

(2) Any person who prepares or sells any food that contains or upon which there is any matter foreign to the nature of such food, or is otherwise unfit for human consumption, whether manufactured or not, commits an offence and shall be liable, on conviction, to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding five years or to both.

(3) Any person who prepares or sells any food whether manufactured or not that is enclosed in a sealed package and the package is damaged and can no longer ensure protection to its contents from contamination or deterioration, commits an offence and shall be liable, on conviction, to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding five years or to both.

Adulterated food

13B. (1) No person shall prepare or sell any adulterated food.

(2) For the purposes of and without prejudice to the generality of subsection (1), any food shall be deemed to be adulterated if—

- (a) it contains or is mixed or diluted with any substance which diminishes in any manner its nutritive or other beneficial properties as compared with such food in a pure, normal or specified state and in an undeteriorated and sound condition, or which in any other manner operates or may operate to the prejudice or disadvantage of the purchaser or consumer;
- (b) any substance or ingredient has been extracted, wholly or in part, or omitted, from the food and by reason of such extraction or omission, the nutritive or other beneficial properties of the food are less than those of the food in its specified state, or the food operates or may operate to the prejudice or disadvantage of the purchaser or consumer;
- (c) it contains or is mixed or diluted with any substance of lower commercial value than such food in a pure, normal or specified state and in an undeteriorated and sound condition;
- (d) it contains any substance the addition of which is not permitted by this Act or any regulations made under this Act;

- (e) it does not comply with the standard or specification prescribed by any regulations made under this Act;
- (f) it contains a greater proportion of any substance than is permitted by this Act or any regulations made under this Act;
- (g) it is mixed, coloured, powdered, coated, stained, prepared or otherwise treated in a manner whereby damage or inferiority may be concealed; or
- (h) it is in a package, and the contents of the package as originally packed have been removed in whole or in part and other contents have been placed in the package.

(3) For the purposes of and without prejudice to the generality of paragraph (2)(d), the addition of any substance to the food shall be deemed to be not permitted or shall be deemed to be prohibited by or under this Act if the standards or specifications prescribed for the food by regulations made under this Act do not expressly provide for the addition of such substance.

(4) A person who contravenes any of the provisions of this section commits an offence and shall be liable, on conviction, to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding five years or to both.

Removal of food from food premises

13c. (1) Where any food is found to have contravened or reasonably suspected to have contravened any provision of this Act or any regulations made under this Act, the Director or any authorized officer authorized by the Director may, by notice in writing, order any of the persons in section 24 to recall, remove, or withdraw from sale such food from any food premises within such time as may be specified in the notice.

(2) Notwithstanding subsection (1), it shall be the duty of any of the persons in section 24, if he knows or has reason to believe or it has come to his knowledge that any food imported, manufactured, packed, farmed, prepared or sold by him has contravened section 13, 13A or 13B, to recall, remove or withdraw from sale such food from any food premises with immediate effect.

(3) A person who contravenes subsection (1) or (2) commits an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding ten years or to both.

Prohibition against sale of food not of the nature, substance or quality demanded

14. (1) Any person who sells any food which is not of the nature, or is not of the substance, or is not of the quality (as specified under this Act and any regulation made thereunder) of the food demanded by the purchaser, commits an offence and is liable on conviction to imprisonment for a term not exceeding five years or to fine or to both.

(2) Where regulations made under this Act contain provisions prescribing the standard of any food or the composition of, or prohibiting or restricting the addition of, any substance to any food, a purchaser of the food shall, unless the contrary be proved, be deemed for the purpose of this section to have demanded food complying with the provisions of such regulations.

Labelling, etc., not complying with standard of food

15. Where a standard has been prescribed for any food, any person who prepares, packages, labels or advertises any food which does not comply with that standard, in such a manner that it is likely to be mistaken for food of the prescribed standard, commits an offence and is liable on conviction to imprisonment for a term not exceeding three years or to fine or to both.

False labelling, etc.

16. Any person who prepares, packages, labels or sells any food in a manner that is false, misleading or deceptive as regards its character, nature, value, substance, quality, composition, merit or safety, strength, purity, weight, origin, age or proportion or in contravention of any regulation made under this Act commits an offence and is liable on conviction to imprisonment for a term not exceeding three years or to fine or to both.

Advertisement

17. (1) Any person who for the purpose of affecting or promoting the sale of any food, publishes or causes to be published, either on his own account or as the agent or servant of the person seeking to effect or promote the sale, any advertisement relating or likely to cause any person to believe that it relates to such food, or to any ingredient or constituent thereof, which—

- (a) directly or indirectly qualifies or is inconsistent with or contrary to any particulars required by regulations made under this Act to be marked on or attached to such food or marked on or attached to any package containing such food;
- (b) is prohibited by any such regulations from being marked on or attached to such food or marked on or attached to any package containing such food;
- (c) omits from the name or description of any food any word or words required by regulations made under this Act to be included in the name or description marked on or attached to such food or marked on or attached to any package containing such food; or
- (d) is likely to deceive a purchaser with regard to the character, nature, value, substance, quality, strength, purity, composition, merit or safety, weight, proportion, origin, age or effects of any food or of any ingredient or constituent thereof,

commits an offence and is liable on conviction to imprisonment for a term not exceeding three years or to fine or to both.

(2) Any person who publishes or causes to be published any advertisement which does not contain a statement setting forth the true name of the person by whom or on whose behalf the advertisement is published and the address of his place of business or residence, commits an offence and is liable on conviction to imprisonment for a term not exceeding three years or to fine or to both:

Provided that where such person is a company it shall be sufficient if instead of the address of the place of business of such company the statement sets forth the name of the place where the company has its registered office.

(3) Nothing in subsection (2)—

- (a) shall apply in respect of any advertisement that is published orally or by any means of producing or transmitting light or sound; or
- (b) shall affect the operation of any other provision of this Act or any regulation made thereunder which relates to the labelling of food.

(4) Any statement which is contained in an advertisement for any food and which purports to set forth the name of the person by whom or on whose behalf such advertisement is published, shall, until the contrary is proved, be sufficient evidence of the name of such person.

(5) Nothing in this section shall apply to any advertisement which complies with any regulation made under this Act relating to the disclosure or otherwise of the name and address of the place of business or residence of the manufacturer or seller of the food advertised or the agent of such manufacturer or seller.

Power of court to order licence to be cancelled and food to be disposed of

18. (1) On the conviction of any person of any offence under this Act the court may, in addition to any other penalty which it may lawfully impose, cancel any licence issued to such person under this Act or any regulation made thereunder.

(2) Where a person has been convicted of an offence under this Act, the court may order any food of a similar nature belonging to or in the possession of the convicted person or anything found with such food be forfeited, and upon such order being made such food or things may be disposed of as the court directs.

Prosecutions

19. (1) Where any analyst having analysed or examined any food to which this Act applies, has given a certificate and from that certificate it appears that an offence under this Act has been committed, an authorized officer may, subject to section 377 of

the Criminal Procedure Code and section 32A, take proceedings under this Act before any court having jurisdiction in the place where the food sold was actually delivered to the purchaser or the sample thereof taken.

(1A) The certificate of the analyst referred to in subsection (1) shall be issued to the Director or any authorized officer within ninety days from the date the food was sent for analysis.

(2) Where any food has been purchased or procured from any person for analysis or examination, no proceedings in respect of the sale thereof or of any offence against this Act shall be instituted after the expiration of one hundred and fifty days from the time of purchasing or procuring that food.

(3) In any proceedings under this Act, the contents of any package appearing to be intact and in the original state of packing by the manufacturer thereof shall be deemed, unless the contrary is proved, to be food of the description specified on the label.

Certificate of analyst to be *prima facie* evidence

20. In any proceedings under this Act a certificate of analysis purporting to be signed by the analyst shall be accepted as *prima facie* evidence of the facts stated therein provided that—

- (i) the party against whom it is produced may require the attendance of the analyst for the purpose of cross-examination if a notice requiring the attendance of the analyst has been given to the prosecution three clear days before the trial; and
- (ii) no such certificate of the analyst shall be received in evidence unless the party intending to produce it has before the trial given notice to the party against whom it is intended to be produced ten clear days of such intention together with a copy of the certificate.

Court may order independent analysis

21. (1) Where a sample has been taken or procured in accordance with section 5 or dealt with under regulations made under that section, the court before which any proceedings for an offence against this Act are heard may where it is reasonably and technically

practicable so to do and on the request of either party to such proceedings order that the part of the sample retained by the authorized officer be submitted to another analyst for analysis:

Provided that the authorized officer is required to retain part of the sample for such purpose.

(2) The court may order the party making the request to pay the costs of the analysis.

Presumption of sale, etc.

22. In any proceedings under this Act—

- (a) evidence that the package containing any food to which this Act applies bore the name, address or registered mark of an importer, manufacturer or packer, or of the owner of the rights of the manufacturer or packer, or of an agent of any of them, shall be *prima facie* evidence that the food was imported, manufactured or packed, as the case may be, by each of the persons whose name, address or registered mark is borne on the package;
- (b) any substance commonly used for human consumption, which is sold or offered, exposed or kept for sale, shall be presumed, until the contrary is proved, to have been sold or, as the case may be, to be intended for sale for human consumption;
- (c) any substance commonly used for human consumption which is found on premises used for the preparation, storage or sale of that substance and any substance commonly used in the manufacture of products for human consumption which is found on premises used for the preparation, storage or sale of those products, shall be presumed, until the contrary is proved, to be intended for sale, or for manufacturing products for sale, for human consumption; and
- (d) any substance capable of being used in the composition or preparation of any substance commonly used for human consumption which is found on premises on which that substance is prepared shall, until the contrary is proved, be presumed to be intended for such use.

No defence that offence not wilfully committed

23. In a prosecution for selling any food contrary to the provisions of this Act or of any regulation made thereunder it shall be no defence that the defendant did not act wilfully unless he also proves that he took all reasonable steps to ascertain that the sale of the food would not constitute an offence against this Act or against any regulation made thereunder.

Advance notice of expert evidence in court

23A. In any proceedings for an offence under this Act, no expert evidence shall be received in evidence unless, within a period ending ten clear days before the trial, the person charged with the offence has served on the prosecution notice in writing that he intends to adduce expert evidence, and shall disclose in the notice the name of the expert and the nature of the expert evidence; and shall also furnish a copy of any document that the expert proposes to adduce at the hearing.

Sales, etc., by agent or servant

24. (1) For the purposes of this Act every person who prepares, packages, labels, advertises or sells any food shall be deemed to do so either on his own account or as the agent or servant of any other person.

(2) In the case of any preparation, packaging, labelling, advertisement or sale by an agent or servant, his principal or employer shall be under the same liability as if he had effected the preparation, packaging, labelling, advertisement or sale personally.

(3) In the case of a sale of any food in contravention of this Act or any regulations made under this Act by a retailer or seller, or his servant or agent, the retailer, seller, servant or agent effecting the sale shall, for the purpose of this Act, be deemed to be the agent of the importer, manufacturer, packer, farmer, person who prepares the food or the owner of the rights of the manufacturer or packer, or the agent to the agent of any of them, and each of those persons shall be under the same liability as that of the retailer or seller or the servant or agent as if he had himself effected the sale unless such person proves that he could not have been responsible for such contravention.

Presumption for human consumption

25. (1) When any food is sold or exposed or offered for sale it shall, unless the contrary is proved, be deemed to be sold or exposed or offered for sale for human consumption.

(2) The purchase and sale of a sample of food under the provisions of this Act for the purpose of analysis shall be deemed to be a purchase and sale of such food for human consumption unless the seller proves that the bulk from which such sample was taken was not offered, exposed, or intended for sale for human consumption.

(3) For the purpose of this Act every person shall be deemed to sell or to intend to sell any food if he sells or intends to sell for human consumption any food of which such food is a constituent.

Non-disclosure of information

26. (1) No prosecutor or witness in any prosecution under this Act shall be compelled to disclose the fact that he received any information or the nature of such information or the name of any person who gives such information.

(2) No officer appearing as a prosecutor or witness shall be compelled to produce any confidential report or document made or received by him in his official capacity or to make any statement in relation thereto.

Manufacturing process and trade secret

27. Any person who discloses any information obtained by him in connection with the administration or execution of this Act or any regulation made thereunder in relation to any manufacturing process or trade secret used in carrying on any particular trade, industry or process, shall unless the disclosure was made for the purposes of this Act or of any criminal proceedings under this Act or with the consent of the person carrying on that trade, industry or process, commits an offence and is liable on conviction to imprisonment for a term not exceeding five years or to fine or to both.

Liability of importer, manufacturer, packer, etc.

28. Where food in connection with which there is a contravention of any provision of this Act or any regulations made under this Act is sold in an unopened package, any person who appears from any statement appearing on the package or attached to the package to have imported or manufactured or prepared the food or to have enclosed it in such package, or to be the owner of the rights of the manufacturer or packer, or to be the agent of any of them, shall, unless the contrary is proved, be deemed to have so imported, manufactured, prepared, or enclosed the food in the unopened package and shall be liable to the same penalty as if he had actually sold the food in such package.

PART IV

IMPORTATION, WARRANTY AND DEFENCES

Importation

29. (1) Subject to subsections (2) and (3), the importation of any food which does not comply with the provisions of this Act or any regulation made thereunder is prohibited.

(2) Where food which is sought to be imported into Malaysia is processed food in a finished form and if sold in Malaysia constitutes an offence relating to labelling, the food may be imported into Malaysia for the purpose of relabelling it so that it complies with the provisions of this Act relating to labelling.

(3) Where food which is sought to be imported into Malaysia is raw or semi-processed food and if sold in Malaysia constitutes an offence, the food may be imported into Malaysia for the purpose of reprocessing or reconditioning it so that it complies with the provisions of this Act.

(4) Where such food is imported into Malaysia for the purposes of relabelling, reprocessing or reconditioning it and the food is not relabelled, reprocessed or reconditioned within three months of the importation, the food shall be exported by the importer within a period of two months or such other period as the Minister may determine and, where it is not so exported, it shall be forfeited and disposed of as the Minister may direct.

(5) The Director may require the importer to relabel, reprocess or recondition the food in a designated area under the supervision of an authorized officer to ensure that the relabelling, reprocessing or reconditioning of the food comply with the provisions of this Act.

(6) The Minister may exempt any food or class of food from the provisions of this section.

Warranty

30. (1) No manufacturer or distributor of, or dealer in, any food specified by the Minister shall sell such food to any vendor unless a written warranty or other written statement is given that the food complies with the provisions of this Act or any regulation made thereunder.

(2) Any person who contravenes the provisions of subsection (1) commits an offence and is liable on conviction to imprisonment for a term not exceeding three years or to fine or to both.

Reliance on written warranty a good defence

31. (1) Subject to the provisions of this section it shall be a good defence in any prosecution for an offence under this Act or any regulation made thereunder if the defendant proves that—

- (a) he purchased the food sold by him in reliance on a written warranty or other written statement as to the nature of the food purchased signed by or on behalf of the person from whom the defendant purchased the same;
- (b) he had no reason to believe that the food sold did not conform to such written warranty or statement; and
- (c) if the food had truly conformed to such written warranty or statement, the sale of the food by the defendant would not have constituted the offence charged against him.

(2) No written warranty or other written statement given or made by a person resident outside Malaysia shall be any defence under this section unless the defendant proves that he had taken reasonable steps to ascertain and did in fact believe in the truth of the matters set forth in such written warranty or statement.

(3) No written warranty or other written statement shall be any defence in any prosecution unless the defendant—

- (a) has within fourteen days after the receipt of such warranty or statement furnished a copy thereof to the Director or any officer authorized by him in this particular respect; and
- (b) has within seven days after service of the summons delivered to the prosecutor a copy of such warranty or statement with a written notice stating that he intends to rely thereon and specifying the name and address of the person from whom he received it and also within the same time sent by registered post a like notice of his intention to such person.

(4) When the defendant is an agent or servant of a person who purchased the food under such a warranty or statement he shall be entitled to the benefit of this section in the same manner and to the same extent as his employer or principal would have been, if he had been the defendant:

Provided that the agent or servant further proves that he had no reason to believe that the food did not conform to such warranty or statement.

Penalty for false warranty

32. (1) Any person who in respect of any food sold by him as principal or agent gives to the purchaser a false warranty in writing commits an offence and is liable on conviction to imprisonment for a term not exceeding two years or to fine or to both:

Provided that it shall be a defence if he proves to the satisfaction of the court that when he gave the warranty he had reason to believe that the statements or descriptions contained therein were true.

(2) The provisions of subsection 19(2) to the effect that no proceedings shall be instituted after the expiration of one hundred and fifty days from the time of purchasing or procuring any food shall not apply in relation to a false warranty.

PART V

MISCELLANEOUS PROVISIONS

Prosecution

32A. No prosecution shall be instituted for an offence under this Act or any regulation made under this Act without the consent in writing of the Public Prosecutor.

Power to compound

33. (1) The Director or any authorized officer authorized by the Director may, with the consent in writing of the Public Prosecutor, compound any compoundable offence committed by any person by making a written offer to the person suspected of having committed the offence to compound the offence upon payment to the Director or the authorized officer of an amount of money not exceeding fifty per centum of the amount of maximum fine for that offence within the time specified in the offer.

(2) An offer under subsection (1) may be made at any time after the offence has been committed, but before any prosecution for it has been instituted, and if the amount specified in the offer is not paid within the time specified in the offer or within such extended period as the Director or the authorized officer may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

(3) If an offence has been compounded under subsection (1)—

- (a) no prosecution shall be instituted after that in respect of the offence against the person to whom the offer to compound was made; and
- (b) any food or appliance seized shall be forfeited, destroyed or returned to that person, as the Director or the authorized officer deems fit after taking into consideration the nature of the offence and the condition of the food or appliance, and no further proceedings shall be taken in respect of the food.

(4) All sums of money received by the Director or the authorized officer under this section shall be paid into and form part of the Federal Consolidated Fund.

(5) In this section, “compoundable offence” means an offence under this Act or any regulation made under this Act and prescribed to be a compoundable offence by regulations made under this Act.

Offence by body corporate

33A. Where a body corporate commits an offence under this Act or any regulations made under this Act, any person who, at the time of the commission of the offence, was a director, manager, secretary or other similar officer of the body corporate or was purporting to act in any such capacity, or was in any manner or to any extent responsible for the management of any of the affairs of the body corporate, or was assisting in such management—

- (a) may be charged severally or jointly in the same proceedings with the body corporate; and
- (b) where the body corporate is found guilty of the offence, shall be deemed to be guilty of that offence unless, having regard to the nature of his functions in that capacity and to all circumstances, he proves—
 - (i) that the offence was committed without his knowledge, consent or connivance; and
 - (ii) that he took all reasonable precautions and had exercised due diligence to prevent the commission of the offence.

Protection against legal proceedings

33B. No action, suit, prosecution or other proceedings shall be brought, instituted or maintained in any court against any authorized officer on account of or in respect of any act done or omitted to be done for the purpose of carrying into effect this Act unless it can be proven that the act was done or omitted to be done in bad faith and not in a reasonable belief that it was necessary for the purpose intended to be served thereby.

Indemnity

33c. (1) The Government shall not be liable to make good any damage which an owner or occupier or person in charge of any food premises may sustain as a result of an entry, search or seizure

under this Act, unless the damage was caused by the wilful neglect or default of a public officer.

(2) In the event of any dispute as to the amount of compensation in respect of any damage so caused, the amount shall be summarily ascertained and determined by a Magistrate's court.

Power to make regulations

34. The Minister may make regulations for the better carrying into effect the purposes and provisions of this Act, and in particular and without prejudice to the generality of the foregoing, for all or any of the following matters:

- (a) to prescribe the standard, composition, strength, potency, purity, quality, weight, quantity, shelflife or other property of any food or any ingredient or component thereof;
- (b) to prohibit the addition of any specified substance;
- (c) to prohibit the addition of more than the specified quantity of a permissible substance;
- (d) to declare that any food or class of food is adulterated due to the presence therein or addition thereto or extraction or omission therefrom of any prescribed substance or class of substance;
- (e) to prohibit any mode of preparation or preservation of any food;
- (f) in respect of the use of any substance as an ingredient of any food so as to prevent the consumer or purchaser from being deceived or misled as to its quality, quantity, character, value, composition, effect, merit or safety or to prevent injury to the health of the consumer or purchaser;
- (g) to secure the cleanliness and freedom from contamination or adulteration of any food in the course of its preparation, preservation, packaging, storage, conveyance, distribution or sale and the cleanliness of places, receptacles, appliances, and vehicles used in such preparation, preservation, packaging, storage, conveyance, distribution or sale and to secure the proper conduct of place in which the preparation or sale of food is carried out and for these purposes to require any person to submit to a medical examination by a person authorized in this respect;

- (h) to regulate food premises and persons engaged in or occupied with any of the activities in relation to food premises or employed in such premises;
- (i) *(Deleted by Act A1117)*;
- (j) in respect of the carriage of food subject to the provisions of this Act including the licensing of vehicles used for the carriage of food;
- (k) to prescribe the mode of labelling of food sold in packages or otherwise the matter to be contained or not to be contained in such labels;
- (l) to prescribe the size, dimensions and other specifications of packages of food;
- (m) to prescribe the method of analysis of any food and the form of certificate of analysis;
- (n) to prescribe standards and conditions to be observed by laboratories approved in respect of the analysis of food for the purposes of this Act;
- (o) to provide for the registration and licencing of laboratories and analysts and to prescribe the fees thereof;
- (p) to prescribe the fees to be paid in respect of analysis of any food by an analyst and for any copy of the result of any analysis and for any licence issued or registration effected under this Act or under any regulation made thereunder, including any licence or registration relating to the importation and exportation of food;
- (q) to prescribe the fees to be paid in respect of any licence or certificate issued or registration effected under this Act or any regulation made thereunder relating in any way to the importation, exportation, preparation, preservation, packaging, storage, conveyance, distribution or sale of any food;
- (r) to prohibit or regulate the sale, advertisement or importation or exportation of any food;
- (ra) to provide for any matter relating to the recalling, removal or withdrawal from sale of food from food premises;
- (s) to prescribe food which requires warranty to be given and the form of such warranty;

- (t) to prohibit the sale of specified food otherwise than by weight;
- (u) to require persons who sell food to maintain such books and records necessary for the proper enforcement and administration of this Act;
- (v) to prescribe requirements respecting the packaging of any food and to prohibit the placing in food for sale or in packages of such food any toy, coin or other article;
- (w) to prescribe penalties of a fine not exceeding *ten thousand ringgit or imprisonment for a term not exceeding two years for a contravention of any regulations made under this Act;
- (x) to prescribe anything which is to be or may be prescribed by regulations.

Repeal and savings

35. (1) The following Ordinances are repealed to the extent that they relate to food:

- (a) Sale of Food and Drugs Ordinance 1952 [*No. 28 of 1952*];
- (b) Public Health Ordinance of Sabah [*Sabah No. 7 of 1960*];
and
- (c) Public Health Ordinance of Sarawak [*Sarawak No. 24 of 1962*].

(2) Nothing in this Act shall affect the past operation of or anything done under the provisions of any law relating to food passed before the commencement of this Act provided that any right, liberty, privilege, obligation or liability existing at the commencement of this Act by virtue of any such law shall except as hereinafter provided, be subject to the provisions of this Act.

Application to tobacco, etc.

36. (1) The provisions of this Act so far as they are applicable shall apply, with such modifications as may be provided in regulations made under this Act, to tobacco, cigars, cigarettes, snuff, and other like substance in the same manner as the provisions apply to food.

*NOTE—Previously “five”—see Food (Amendment) Act 2001 [*Act A1117*].

(2) Without prejudice to the powers of the Minister to make regulations under this Act, the Minister may make regulations providing for all or any of the following:

- (a) the regulation of or prohibition against the advertising or sponsorship of tobacco products;
 - (b) the mode of labelling of cigarette containers and the matters to be contained or not to be contained in such labels;
 - (c) the procedure for the taking of samples of tobacco products for analysis;
 - (d) the prohibition against smoking of tobacco products in specified buildings and the declaration of any place as a no smoking place and for notices to be placed at such place;
 - (e) the prohibition against the sale to, or having in possession, buying, smoking or chewing by, persons below the age of eighteen years of tobacco products; and
 - (e) any other matter which the Minister deems expedient or necessary for giving full effect to the control and regulation of the preparation, sale, purchase, use or consumption of tobacco products.
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LAWS OF MALAYSIA**Act 281****FOOD ACT 1983**

LIST OF AMENDMENTS

Amending law	Short title	In force from
Act A1117	Food (Amendment) Act 2001	28-09-2001

LAWS OF MALAYSIA

Act 281

FOOD ACT 1983

LIST OF SECTIONS AMENDED

Section	Amending authority	In force from
2	Act A1117	28-09-2001
3A	Act A1117	28-09-2001
4	Act A1117	28-09-2001
8	Act A1117	28-09-2001
10	Act A1117	28-09-2001
12A	Act A1117	28-09-2001
13	Act A1117	28-09-2001
13A	Act A1117	28-09-2001
13B	Act A1117	28-09-2001
13C	Act A1117	28-09-2001
19	Act A1117	28-09-2001
20	Act A1117	28-09-2001
22	Act A1117	28-09-2001
23A	Act A1117	28-09-2001
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32A	Act A1117	28-09-2001
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33A	Act A1117	28-09-2001
33B	Act A1117	28-09-2001
33C	Act A1117	28-09-2001
34	Act A1117	28-09-2001
36	Act A1117	28-09-2001



