



SAMOA

POISONS ACT 1968

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POISONS ACT 1968

1968

No. 5

AN ACT to regulate the importation, carriage, custody and sale of poisons.

[Assent date: 29 July 1968]

[Commencement date: 1 January 1969]

**PART 1
PRELIMINARY AND ADMINISTRATION**

1. Short title –This Act may be cited as the Poisons Act 1968.

2. Commencement –Except as otherwise provided herein, this Act comes into force on 1 January 1969.

3. Interpretation – In this Act, unless the context otherwise requires:

- “aircraft” means any machine that can derive support in the atmosphere from the reactions of the air;
- “advertisement” means any words whether written, printed, or spoken, and any pictorial representation or design or device, used to explain the use or notify the availability or promote the sale of any substance or preparation; and includes a trade circular, a label, and an advertisement in any trade journal;
- “carrier” includes a person engaged in carrying goods for hire or reward by any means, and whether by land, water or air;
- “Chief Executive Officer” means the Chief Executive Officer for the Ministry of Health;
- “chemist” means a person for the time being registered as a pharmaceutical chemist under the Pharmacy Act 2007;
- “container” includes anything in or by which poisons or poisonous substances or toxic substances, may be cased, covered, enclosed, contained, or packed; and, in the case of goods sold or carried or intended for sale or carriage in more than one container, includes every such container;
- “dentist” means a person who is for the time being qualified as a dental practitioner under the Dental Practitioners Act 2007;
- “drug” has the same meaning as in section 2 of the Drugs Act 1967;
- “Government” means the Government of Samoa;
- “label” means any written, pictorial, or other descriptive matter appearing on or attached to any container containing a poison or poisonous substance or toxic substance;
- “medical practitioner” means a person for the time being qualified as a medical practitioner under the Medical Practitioners Act 2007 or under any enactment repealed by it;
- “Minister” means the Minister of Health;
- “Ministry” means the Ministry of Health;
- “officer” means an officer of the Ministry or any person appointed as an officer for the purposes of this Act;

- “pack” means to enclose in a container for the purpose of storage, distribution, or sale;
- “poison” means any substance declared to be a poison by any regulations, and includes a restricted poison;
- “poisonous substance” means any substance declared by regulations to be a poisonous substance;
- “prescription poison” means any substance declared by regulations to be a prescription poison which may be sold by retail only pursuant to a prescription of a medical practitioner, dentist, or veterinary surgeon;
- “prohibited substance” means a substance declared by any regulations to be a prohibited substance;
- “radioactive substance” has the same meaning as in section 2 of the Drugs Act 1967;
- “regulations” means regulations made under this Act;
- “restricted poison” means any substance declared by regulations to be a restricted poison;
- “sale” includes barter, and also includes offering or attempting to sell or having in possession for sale, or exposing for sale, or sending or delivering for sale, or causing or allowing to be sold, offered or exposed for sale; and “to sell” has a corresponding meaning;
- “sale by wholesale”, in relation to the sale of any poison or any poisonous substance, means sale for the purposes of resale, whether in an unaltered state or otherwise, but does not include sale for extended purposes;
- “sale for extended purposes”, in relation to the sale of any poison or any poisonous substance:
- (a) means sale for use in any scientific, educational, or commercial laboratory, or for use in any process of manufacture or trade not involving the resale of any poison or poisonous substance; but
 - (b) does not include sale for use in agriculture or horticulture or for destruction of animal or insect pests;
- “ship” means any vessel used in navigation and not propelled by oars;
- “State” means the Independent State of Samoa;
- “toxic substance”:
- (a) means any substance, including any drug, which when swallowed, inhaled, injected into, or

- otherwise absorbed by the human body is likely to destroy life or is likely to be injurious to health; and
- (b) includes any acaricide, insecticide, fungicide, larvicide, nemetacide, pesticide, and herbicide; but
 - (c) does not include any substance which is a narcotic within the meaning of the Narcotics Act 1967 or any radioactive substance.

4. Application of Act to disposal of poisons by gift, etc. -

(1) For the purposes of this section, “gift” includes the giving or distribution of any poison or poisonous substance, in the course of business, without charge or as a sample.

(2) The provisions of this Act relating to the sale of any poison or poisonous substance apply, unless the context otherwise requires, to the disposal of any poison or poisonous substance by way of gift, loan, or otherwise.

5. Power to declare substances to be poisons, etc. – (1)

For the purposes to this Act, the Head of State, acting on the advice of Cabinet, may by regulation, declare any substance:

- (a) to be a poison, or a restricted poison or a prescription poison, or any 2 or more of those things; or
- (b) to be a poisonous substance; or
- (c) to be a prohibited substance.

(2) Any regulations under this section may relate to any substance specified by its name or trade name, or to any class of substances identified by a description of that class, and any such substance for class may be identified in the regulations by reference to its registration under any enactment, or to its pharmacological action, or to its use or the purpose for which it is used or intended to be used.

(3) Any regulations under this section may specify the circumstances in which any substance is or is not to be a poison, or a restricted poison, or a prescription poison, or any 2 or more of those things, or a poisonous substance, or a prohibited substance.

6. Advisory and technical committees – (1)

The Minister may appoint such advisory or technical committees as the Minister thinks fit to advise him or her for any of the purposes of this Act, and may determine the functions of such committee.

(2) A member of a committee holds office at the pleasure of the Minister.

(3) Subject to this Act and of any regulations, every such committee may regulate its own procedure.

(4) There may be paid out of money appropriated by Parliament for the purpose to each member or each such committee who is not a full-time salaried employee of the Government:

- (a) any travelling expenses reasonably incurred by him or her in respect of the performance of these duties as a member of the committee; and
- (b) such sum as Cabinet approves (with power to give retrospective operation thereto) by way of fees or allowances in respect of each day or part of a day which such member spends upon the business of the committee.

7. Officers – (1) An officer of the Ministry shall be an officer for the purposes of this Act.

(2) The Minister, with the concurrence of the controlling authority of any other full-time permanent employees of the Government, may from time to time appoint that employee to be an officer for the purposes of this Act.

PART 2 IMPORTATION, SALE AND CUSTODY OF POISONS

8. Importation, sale and packing of poisons and poisonous substances – (1) No person shall import or sell a poison unless the person:

- (a) is the holder of a licence for the time being in force under this Act authorising him or her to import or sell the poison, as the case may be; or
- (b) is authorised by or under this Act to import or sell the poison.

(2) No person shall pack or label a poison or poisonous substance for the purposes of sale unless the person:

- (a) is the holder of a licence for the time being in force under this Act authorising him or her to pack or label that poison or poisonous substance; or

(b) is authorised by or under this Act to pack or label that poison or poisonous substance.

(3) No licence or other authority is necessary for the import or sale of any poisonous substance, or for the import, sale, packing or labelling of any toxic substance which is not a poison within the meaning of this Act, but the poisonous substance shall be subject to this Act.

(4) No person shall sell any poison or poisonous substance by means of any automatic vending machine.

9. Licence or authority to import poisons – Except as otherwise provided in any regulations, no person shall import any poison unless the person is:

- (a) a chemist, or the agent or servant of a chemist; or
- (b) a medical practitioner; or
- (c) a dentist; or
- (d) a veterinary surgeon; or
- (e) an employee of the Government, and the import is made in the course of his or her employment; or
- (f) the holder of an importer's poison licence for the time being in force under this Act, or the agent or servant of the holder of the licence.

10. Licence or authority to sell poison by wholesale or for extended purposes – (1) Except as otherwise provided in regulations, no person shall sell any poison by wholesale or for extended purposes unless the person is:

- (a) the holder of a wholesaler's poison licence or a packer's poison licence for the time being in force under this Act, or is the agent or servant of the holder or such a licence; or
- (b) an employee of the Government, and the sale is made in the course of his or her employment.

(2) No person being the holder of wholesaler's poison licence or a packer's poison licence, or being the agent or servant of the holder of any such licence, shall:

- (a) sell any poison except pursuant to the terms of that licence;
- (b) sell any poison except at the premises specified in that licence, unless it is otherwise provided in that licence;

- (c) sell any poison except to a person who is licensed or otherwise lawfully entitled to sell that poison, or who is a person to whom that poison may be sold for extended purposes.

11. Licence or authority to sell poison by retail – (1)

Except as otherwise provided in any regulations, no person shall sell any poison by retail unless the person is:

- (a) a chemist, or the agent or servant of a chemist; or
 - (b) a medical practitioner; or
 - (c) a dentist; or
 - (d) a veterinary surgeon; or
 - (e) an employee of the Government, and the sale is made in the course of his or her employment; or
 - (f) the holder of a retailer's poison licence for the time being in force under this Act, or the agent or servant of the holder of such a licence.
- (2) No chemist shall sell any poison by retail except:
- (a) in his or her place of business as registered under the Pharmacy Act 2007; or
 - (b) for a chemist employed as a pharmacist in a hospital under the control of the Ministry, in the course of his or her employment as a pharmacist.

(3) No medical practitioner or dentist shall sell any poison except in the practice of his or her profession and for the treatment of a patient under his or her care.

(4) No veterinary surgeon shall sell any poison except in the practice of his or her profession and for the treatment of an animal under his or her care.

(5) No person being the holder of a retailer's poison licence shall:

- (a) sell any poison except pursuant to the terms of that licence; or
- (b) sell any poison except at the premises specified in that licence, unless it is otherwise provided in that licence.

(6) No agent or servant entitled to sell poison under this section shall sell any poison unless that poison:

- (a) is one that his or her principal or employer is lawfully entitled to sell; and

- (b) is one that the agent or servant is authorised to sell by any regulations; and
- (c) is sold by him or her under the direct personal supervision of his or her principal or employer.

12. Licence or authority to pack poisons or poisonous substances – (1) Except as otherwise provided in regulations, no person shall pack or label any poison or poisonous substance for the purposes of sale unless he or she is, or is working under the direct personal supervision of:

- (a) a chemist; or
- (b) a medical practitioner; or
- (c) a dentist; or
- (d) a veterinary surgeon; or
- (e) an employee of the Government, acting in the course of his or her employment; or
- (f) the holder of a packer's poisons licence for the time being in force under this Act.

(2) No person being the holder of a packer's poison licence shall pack or label, or cause or permit to be packed or labelled, any poison or poisonous substance for the purposes of sale unless:

- (a) the poison or poisonous substance is one that is named or described in that licence; and
- (b) the packing or labelling is done in the premises, or the part of the premises, specified in that licence.

(3) No person shall pack any poison or poisonous substance, or prepare it for use, in any room, or on any table or bench, that is used for the purpose of packing, preparing, or consuming any food or drink.

13. Applications for licences – (1) An application for an importer's poison licence, a wholesaler's poison licence, a retailer's poison licence, or a packer's poison licence shall be made in the prescribed form to the Chief Executive Officer and shall contain the prescribed particulars and information, and shall be accompanied by the prescribed fee.

(2) No application for any such licence shall be made by a person who is under the age of 21 years.

(3) An application for a licence for the period ending 31 December 1969 may be made and dealt with in accordance with

this Act at any time after 31 October 1968, but no licence issued as a result of an application so made shall take effect, or be expressed to take effect, before the commencement of this Act.

14. Grant of licences – (1) On receiving an application for a licence under this Act, the Chief Executive Officer with the prior written authority of the Minister shall issue a licence to the applicant if the Chief Executive Officer is satisfied in respect of all the following matters:

- (a) that the requirements of section 13 have been complied with;
- (b) that the applicant is a fit and proper person to hold the licence applied for;
- (c) that the applicant is not subject to any disqualification under section 19;
- (d) that the applicant has a sufficient knowledge of his or her obligations under this Act;
- (e) that the premises and equipment which the applicant proposes to use are suitable and adequate for the storage, packing, and handling of the poisons or poisonous substances in which it is proposed to deal.

(2) A licence shall be in the prescribed form and shall be subject to such conditions, if any, as may be imposed pursuant to any regulations.

15. Effect of licences – (1) An importer's poison licence shall authorise the licensee to import in accordance with the terms of the licence, but not otherwise, and either in person or by his or her agent or servant, any poison specified in the licence or poisons of any class so specified.

(2) A wholesaler's poison licence shall authorise the licensee to sell by wholesale or for extended purposes in accordance with the terms of the licence, but not otherwise, and either in person or by his or her agent or servant, any poison specified in the licence or poisons of any class so specified.

(3) A retailer's poison licence shall authorise the licensee to sell by retail in accordance with the terms of the licence, but not otherwise, and either in person or by his or her agent or servant, any poison specified in the licence or poisons of any class so specified.

(4) A packer's poison licence shall authorise the licensee to pack and label, and to sell by wholesale, in accordance with the terms of the licence and at the premises specified in the licence or at any part of any premises so specified, and either in person or by his or her agent or servant working under his or her direct personal supervision, any poison or poisonous substance specified in the licence, or poisons or poisonous substances of any class so specified.

16. Duration of licences – A licence under this Act shall, unless sooner terminated under this Act, continue in force until the close of 31 December next following the date on which it was issued, and shall then expire:

PROVIDED THAT:

- (a) a licence issued at any time during the months of November and December in any year shall continue in force until the close of 31 December in the next ensuing year;
- (b) where at any time during the months of November and December in any year any licensee applies for a fresh licence for a further period of 12 months from the expiry of his or her existing licence and the application is not disposed of before the existing licence is due to expire, the existing licence shall continue in force until the application is disposed of.

17. Display of licences – A licensee shall cause his or her current licence to be permanently exhibited in some conspicuous place where it can be readily seen by all persons having access to the premises to which the licence relates.

18. Registers – (1) The Chief Executive Officer shall keep at his or her office a register of the licences issued by him or her under this Act, and such other registers and records as may be prescribed.

(2) The contents of any such register may be evidenced in any proceedings by a certificate under the hand of the Chief Executive Officer. The certificate is sufficient evidence, until the contrary is proved, of the matters stated therein.

(3) A certificate under the hand of the Chief Executive Officer that on a date specified in the certificate the name of any person did not appear in any register as licensee or as the holder of any permit or authority granted under any regulations or that on the specified date any other particulars stated in the certificate did not appear in any register, is sufficient evidence, until the contrary is proved, of the facts stated in the certificate.

(4) A person may have access to any register of licences for the purposes of inspection during the ordinary working hours of the office of the Ministry.

19. Suspension or cancellation of licence, etc. – (1) If a person holding any licence, permit, or authority granted under this Act or under any regulations is convicted of any offence against this Act or against any regulations, the convicting Court:

- (a) may, if it thinks fit, order that the licence, permit, or authority be suspended for such time as the Court orders, or that it be cancelled, and may also, if it thinks fit, declare that person to be disqualified to hold any such licence, permit, or authority for such time as the Court orders; and
- (b) shall cause particulars of the conviction, and of any order made under this subsection, to be endorsed on the licence, permit, or document of authority, and shall cause a copy of those particulars to be sent to the Chief Executive Officer, who shall thereupon note the same on the appropriate register.

(2) A licence or other document required by the Court for endorsement under this section shall be produced, in such manner and within such time as the Court directs, by the person by whom it is held.

(3) A person commits an offence against this Act who, without reasonable cause, fails to produce any licence or other document required as aforesaid.

20. Containers – (1) Subject to any regulations, no person shall, in the course of any business, pack, store, sell or cause to be transported any poison or poisonous substance unless it is in a container that:

- (a) is impervious to the poison or poisonous substance;
and
- (b) is so constructed that it can be readily and effectively resealed after any portion of the contents has been used; and
- (c) is of the prescribed character or type; and
- (d) is labelled in the prescribed manner.

(2) Despite anything in subsection (1)(b), where the container bears a label with directions to the effect that the whole of the contents must be used immediately on opening, and the quantity and nature of the contents are such that it is unlikely that less than the whole of the contents will be used on any one occasion, the container needs to be of a type that can be readily and effectively resealed.

21. Records of sales – (1) Subject to any regulations, a person who sells any poison shall keep, in some place of security at his or her place of business, such records as may be prescribed; and shall retain every such record for a period of not less than 3 years from the date of the making thereof, or, in the case of a book containing more than one such record, from the date of the last entry in that book.

(2) A person who sells any poison shall at all times:

- (a) permit any officer, or any member of the Police Service, to inspect and make copies of any such record; and
- (b) on demand, afford to any officer or to any member of the Police Service all further information in his or her possession with respect to any dealings by him or her relating to poisons or poisonous substances.

(3) A person commits an offence who obstructs or hinders any such inspection as aforesaid.

DIVISION 1 – Possession of Poisons and Poisonous Substances

22. Custody of poisons and poisonous substances – (1) A person commits an offence who has any poison or poisonous substance in his or her charge or possession (whether for the purposes of sale or otherwise howsoever) otherwise than in a

container conforming to the requirements of section 20 and of any regulations.

(2) It is a defence to a charge of an offence against this section if the person charged proves that at the time of the alleged offence the poison or poisonous substance was in the container in which he or she acquired it, and that the container bore the label borne on it when it was acquired, or that at the time of the alleged offence the poison or poisonous substance had been necessarily removed from its container for the effective and lawful use of that poison or poisonous substance.

23. Storage of poisons and poisonous substances – No person in possession or charge of any poison or poisonous substance shall put it in any cupboard, box, shelf, or other place of storage in which articles of food or drink are stored or kept for ready use, or in any place to which young children or unauthorised persons have ready access.

24. Restriction on possession of certain poisons – (1) No person shall be in possession of any prescription poison or any restricted poison, knowing it to be such a poison, unless he or she is:

- (a) a person licensed or otherwise authorised under this Act or regulations to sell it or to be in possession of it for the purposes of a business or for a prescribed purpose; or
- (b) a carrier or an employee of a carrier, and is in possession of it in the ordinary course of the business of a carrier; or
- (c) a person to whom the poison, being a prescription poison, has been lawfully supplied for his or her use, as a patient under the care of a medical practitioner; or
- (d) a person to whom the poison, being a prescription poison, has been lawfully supplied for administration to any animal under the care of a veterinary surgeon; or
- (e) a person who has possession of any prescription poison only for the purpose of administering it to the person or animal for whom it has been

prescribed by a medical practitioner or veterinary surgeon, as the case may be; or

- (f) a person who has lawfully purchased or procured the poison, being a restricted poison, from a person licensed or otherwise authorised under this Act to sell it.

(2) In any proceedings under this section against any person in which it is proved that he or she had in his or her possession any prescription poison or any restricted poison, the person charged has the onus of proving that he or she did not know that it was a prescription poison or a restricted poison, or that he or she was in possession of it under any of the provisions of subsection (1)(a) to (f).

Division 2 – Toxic and Prohibited Substances

25. Information to be furnished concerning toxic substances – (1) Subject to any regulations, a person who intends to import or manufacture or prepare any toxic substance which has not previously been either imported into or manufactured or prepared in Samoa shall, before so importing or manufacturing or preparing it, notify the Chief Executive Officer in writing of his or her intention.

(2) In addition to any such notification that person shall provide to the Chief Executive Officer the following particulars, namely:

- (a) the nature and toxicity of the substance;
- (b) the purpose for which it is intended to be used;
- (c) the method of distribution and use;
- (d) such other particulars as the Chief Executive Officer may require.

(3) The Chief Executive Officer may require an importer, proprietor, or seller of a toxic substance to furnish in respect of that substance any of the particulars specified in subsection (2), together with such information as he or she has in his or her possession as to the date of any sale of that substance which has taken place within the preceding 3 years, the quantity so sold, and the names and addresses of the persons to whom it has been sold.

(4) All information given pursuant to this section shall:

- (a) if the person giving it so requests, be treated by the Chief Executive Officer as confidential; and

- (b) not be disclosed by him or her or by any other person except for the purposes of the administration of this Act or for the purposes of any investigation or proceedings in respect of an alleged offence.

26. Power of Minister to prohibit importation, sale, or use of toxic substances – The Minister may, by notice in a newspaper circulating in Samoa, prohibit the importation, manufacture, sale, possession, or use of any specified toxic substance, either absolutely or subject to such conditions as he or she thinks fit, for a specified period not exceeding one year: **PROVIDED THAT** this power are not to be exercised more than once in respect of any substance so specified.

27. Sale of prohibited substances – No person shall sell a prohibited substance except to the extent and in the circumstances approved by the Minister, either generally or in relation to a particular case or class of cases.

Division 3 – General Provisions

28. Control of advertisements – (1) This section applies to:

- (a) any substance, being a poison or a poisonous substance or a toxic substance;
- (b) any preparation containing any poison or poisonous substance or toxic substance.

(2) A person commits an offence against this Act who, being the seller of any substance or preparation to which this section applies, or being the agent or servant of the seller, publishes or causes or permits to be published an advertisement relating, or calculated or likely to cause any other person to believe that it relates to that substance or preparation, if the advertisement:

- (a) fails to make a statement required by any regulations to be made in an advertisement in respect of that substance or preparation; or
- (b) makes a statement prohibited by any regulations; or
- (c) directly or by implication qualifies or is contrary to any particulars required by any regulations to be included in an advertisement or to be included in a label borne on the substance or preparation; or

- (d) directly or by implication states or suggests that the substance or preparation is not poisonous or is harmless.

29. Power of entry, inspection, and segregation – (1) In this section and in section 30, “officer” means any officer under this Act or any member of the Police Service.

(2) Subject in the case of a dwelling house to the provisions of subsection (7), an officer may at all reasonable times enter into and inspect any premises, land, vessel, aircraft, vehicle, or place where he or she has reasonable grounds for believing that there is therein a substance that is a poison or a poisonous substance or a toxic substance:

PROVIDED THAT, subject to Part 4 of the Health Ordinance 1959, no officer shall enter into or inspect any vessel or aircraft on its arrival in Samoa from overseas until it has been cleared by an officer of Customs, except at the request of an officer of Customs.

(3) An officer may mark, seal, or otherwise secure, or impound:

- (a) a poison or poisonous substance kept for sale, or for packing for the purposes of sale, on any premises in respect of which no licence for the sale or packing of that poison or substance is in force;
- (b) a poison or poisonous substance or toxic substance the packing or labelling of which does not in his or her opinion conform to the requirements of this Act or of any regulations;
- (c) a poison or poisonous substance or toxic substance the container of which is damaged, if in his or her opinion there is a risk of leakage of the contents of the container;
- (d) any foodstuff or stock food, or any article whatsoever, if he or she has reason to suspect that it is or may be contaminated by any poison or poisonous substance or toxic substance:

PROVIDED THAT no officer shall exercise any of his or her powers under this subsection in any case to which section 35 applies except at the request of an officer of Customs.

(4) If a thing is marked, sealed, secured, or impounded by an officer under this section, that officer or the Chief Executive

Officer shall, as soon as practicable, take or cause to be taken all reasonable measures to have that thing removed to a place or security, or properly packed and labelled, or cleansed or decontaminated, or destroyed, as the circumstances of the case may require:

PROVIDED THAT, unless in the opinion of the officer or the Chief Executive Officer the destruction of the thing is urgently necessary for the protection of the health of the public or of persons likely to be exposed to contamination, it shall not be destroyed until:

- (a) in the case of an application being made to a District Court under section 31, the Court has made an order for its destruction; or
- (b) the time for making such application has expired without an application being made.

(5) Subject to any order made by a District Court under section 31, the reasonable costs and expenses incurred in the packing, labelling, cleansing, decontamination, or destruction of anything under subsection (4) shall be recoverable from the owner thereof as a debt due to the State. Nothing in this subsection affects a right of action that the owner may have against any other person.

(6) Subject to any such order as aforesaid, a person commits an offence against this Act who, without the authority of an officer or of the Chief Executive Officer, removes or interferes with anything that has been marked, sealed, secured, or impounded under this section or any such mark or seal.

(7) Unless he or she has reasonable ground for believing that imminent danger to the public or to any person exists, an officer shall not enter a dwelling house under the powers conferred by subsection (2), except pursuant to a warrant by a District Court Judge or Faamasino Fesoasoani issued under subsection (8).

(8) Where a District Court Judge or Faamasino Fesoasoani is satisfied, on an application in writing made on oath, that there is reasonable ground for suspecting that a breach of this Act or of any regulations has been or is being committed, or that preparation has been made to commit such a breach, within a dwelling house, the District Court Judge or Faamasino Fesoasoani may, by warrant under his or her hand, authorise an officer named in the warrant together with any constable to enter and search the dwelling house, if necessary by force, at such time

or times in the day or night as are mentioned in the warrant. Every such warrant shall continue in force until the purpose for which it was granted has been satisfied.

(9) If anything is marked, sealed, secured, or impounded by an officer under this section, that officer or the Chief Executive Officer shall forthwith give notice in writing of the action that has been taken to the owner, or to the consignor or consignee, or to the agent of the owner, of the thing in question if his or her name and address are attached thereto or are otherwise known to, or can be readily ascertained by the officer or Chief Executive Officer and the address is that of a place in Samoa.

30. Powers in respect of contaminated premises, etc. – (1)

An officer may mark, seal, or otherwise secure any land or premises, or a vessel, aircraft, or vehicle, or any part of any premises, vessel, aircraft, or vehicle, if he or she has reason to suspect that it may have been contaminated by a poison or poisonous substance or toxic substance.

(2) In such case, that officer or the Chief Executive Officer shall, as soon as practicable, take or cause to be taken all reasonable measures to have the land, premises, vessel, aircraft, or vehicle, or such part as aforesaid, decontaminated or cleansed, as the circumstances of the case may require.

(3) Subject to any order made by a District Court under section 31, the reasonable costs and expenses incurred in such decontamination or cleansing as aforesaid shall be recoverable from the owner of the land, premises, vessel, aircraft or vehicle as a debt due to the State. Nothing in this subsection shall affect any right of action that the owner may have against any other person.

(4) Subject as aforesaid, a person commits an offence against this Act who, without the authority of such officer or of the Chief Executive Officer, enters into or upon any land, premises, vessel, aircraft, vehicle, or part thereof that has been marked, sealed, or secured under this section or removes or interferes with any such mark or seal:

PROVIDED THAT it is a defence to a charge under this section of entry if the person charged proves that the entry was urgently necessary by reason of an emergency.

(5) Where any land, premises, vessel, aircraft, or vehicle, or any part of any premises, vessel, aircraft, or vehicle is marked,

sealed, secured, or impounded by an officer under this section, the officer or the Chief Executive Officer shall forthwith give notice in writing of the action that has been taken to the owner of the land, premises, vessel, aircraft, or vehicle if his or her name and address or that of his or her agent are known to, or can be readily ascertained by, the officer or the Chief Executive Officer and the address is that of a place in Samoa.

31. District Court may order return of property or compensation – (1) A person claiming an estate or interest in real or personal property marked, sealed, secured, or impounded under section 29 or section 30 may, within 14 days thereafter, apply to a District Court for an order:

- (a) that the property shall be returned or otherwise made available to him or her, or that he or she shall have access to it for any purpose;
- (b) where he or she has suffered a loss or damage as a result of the cleansing, decontamination, or destruction of the property that he or she shall be paid, in accordance with this section, such sum by way of compensation for that loss or damage as the Court thinks fit;
- (c) that the applicant, being the owner of the property, be relieved from liability for the payment of the whole or a part of any costs and expenses for which he or she would otherwise be liable under either of the said sections.

(2) On any such application, the Court may make such order as it thinks fit, and any such order may be made upon and subject to such terms and conditions as the Court thinks fit:

PROVIDED THAT no order for the payment of compensation under this section in respect of any such loss or damage as aforesaid shall be made in any case where the Court is satisfied that the cleansing, decontamination, or destruction from which the loss or damage resulted was necessary for the protection of the health of the public or of persons likely to be exposed to contamination.

(3) If the Court makes an order for the payment of a sum by way of compensation to a person under this section, the sum so awarded shall be recoverable by that person as a debt due from the state.

(4) An application to the Court under this section shall be made and dealt with by way of originating application, on notice.

(5) An order made by the Court under this section is final and binding on all parties.

32. Release or return by Chief Executive Officer –

Nothing in sections 29, 30 and 31 prevents the release or return by the Chief Executive Officer of anything or property marked, sealed, secured or impounded under section 29 or 30 at any time, whether before or after the making of an application under section 31, after the Chief Executive Officer is satisfied that the reason for marking, sealing, securing or impounding the same no longer exists, subject to the owner paying, or acknowledging in writing that he or she is liable to pay to the state the costs and expenses referred to in section 29(5) or 30(3).

33. Procuring of samples – (1)

On payment or tender to a person selling or marking or packing, or using in a manufacturing, industrial, or other process, a substance, being a poison or a poisonous substance or a toxic substance, or to his or her agent or servant, of the current market value of the samples referred to in this section, an officer may at any place demand and select and take or obtain samples of that substance.

(2) The officer may require such person, or his or her agent or servant, to show and permit the inspection of the container in which the substance is at the time kept, and to take therefrom the sample demanded, and to copy therefrom particulars of the labelling.

(3) If a substance is kept for retail sale in an unopened container, no person shall be required by an officer to sell less than the whole of the contents of the container.

(4) A person commits an offence against this Act who refuses or neglects to comply with a demand or requisition made by an officer pursuant to this section, unless the person proves that he or she had no knowledge or reason to believe that the sample demanded was required for the purposes of this Act.

(5) For the purposes of this section, a person who is in possession of any such substance as aforesaid which in the opinion of the officer is intended for sale shall, until the contrary is proved, be deemed to be the seller thereof or, as the case may be, the agent or servant of the seller.

(6) Where a poison or poisonous substance or toxic substance is also a drug, the officer shall, in procuring a sample under this section, if it is required for the purposes of analysis, follow the procedure laid down in section 25(1) to (4) of the Drugs Act 1967; and sections 26(3) and (4), 28 and 29 of that Act apply for the purposes of this Act as if the sample had been taken under that Act.

PART 3 CARRIAGE OF POISONS

34. Packing of imported poisons, etc. – (1) A poison or poisonous substance imported into Samoa by a person shall be strongly and securely packed to the satisfaction of the Minister or in the prescribed manner.

(2) The obligation to comply with the requirements of this section shall lie on the person importing or causing to be imported that poison or poisonous substance.

35. Ships or aircraft arriving with certain poisons on board – (1) This section applies only to such poisons or poisonous substances as may be prescribed in that behalf by regulations.

(2) When a ship or aircraft arrives in Samoa having on board a poison or poisonous substance to which this section applies, the following provisions apply:

- (a) the master of the ship or the pilot in command of the aircraft, when reporting the ship's arrival to the Customs as required by law, shall inform the officer of Customs at the port or place of arrival in writing how many and what containers of any poison or poisonous substance are on board, and the place or position in which they are stowed;
- (b) the master or pilot or any person shall not remove any such container from the ship or aircraft until an officer of Customs has viewed and examined the container in the position where it is stowed;
- (c) that officer may inspect the container, and for that purpose, if the container is contained in any other case or covering of any kind, the officer may require the case or covering to be opened;
- (d) if on such inspection it appears to the officer that a container has not been stowed apart from goods

of any kind suitable for the food for humans or animals, and that by reason thereof or of breakage or leakage or from any other cause there is reasonable ground in his or her judgment, or in that of any skilled person whom he or she calls to his or her assistance, for believing that in any manner whatsoever the contents of any such container may have become mixed with or may have contaminated or injuriously affected any such goods, he or she shall refuse to allow such goods to be landed or shall allow them to be landed only for the purpose of being reshipped, destroyed, or otherwise disposed of;

(e) for the purposes of this section an officer of Customs has all such powers and authorities as he or she might exercise under the Customs Act 2014 in respect of goods imported into Samoa from beyond the seas.

(3) If the master or pilot or any other person commits or allows to be committed a breach of this section, he or she is taken to have committed an offence against this Act.

36. Valuation and forfeiture of goods not allowed to be landed – (1) The Minister may direct such steps as he or she thinks fit to be taken for the valuation of any goods which, under section 35, are not allowed to be landed or are allowed to be landed only for the purpose of being reshipped, destroyed, or otherwise disposal of; and the value so ascertained together with all costs and expenses of the valuation, including the cost of the assistance of any skilled person, shall be recoverable as a debt jointly and severally due to the State by the master or pilot and owners of the ship or aircraft.

(2) All such goods shall be forfeited to the State, and may be disposed of in such manner as the Minister directs, whether a person is liable to be convicted of an offence against this Act or not.

(3) The value of such goods, if and when ascertained and recovered as hereinbefore provided, shall be paid to the owner of the goods or other person lawfully entitled thereto out of money appropriated by Parliament for the purpose.

37. Sending or carrying poison under false description –

A person commits an offence against this Act who knowingly sends or attempts to send by or carries or attempts to carry in a ship or aircraft, or sends or delivers to a warehouse owner or carrier, a poison or poisonous substance under a false description, or falsely describes the sender or carrier thereof, or who knowingly causes or assists in the commission of any such act.

PART 4**GENERAL AS TO OFFENCES**

38. Obstruction of officers – A person commits an offence against this Act who wilfully obstructs, hinders, resists, or deceives any other person in the execution of any powers conferred on that other person by or pursuant to this Act.

39. Aiding in Samoa offence against corresponding law of another country – A person commits an offence against this Act who, in Samoa, aids, abets, incites, counsels or procures the doing or omission in any place outside Samoa of an act, if that doing or omission is punishable under the provisions of a law corresponding to this Act and in force in that place.

40. Penalty for false statement – (1) A person commits an offence against this Act who, for the purpose of obtaining, whether for himself, herself or any other person, the grant of a licence under this Act, or for any other purposes in relation to this Act:

- (a) makes a declaration or statement which to his or her knowledge is false in any particular; or
- (b) utters, produces, or makes use of any such declaration or statement as aforesaid that he or she knows to be false or a document containing the same; or
- (c) utters, produces, or makes use of a document that he or she knows not to be genuine.

(2) A person who commits an offence against this section is liable to a fine not exceeding 3 penalty units or to imprisonment for a term not exceeding 6 months or, to both.

41. Offences generally – A person commits an offence against this Act who acts in contravention of or fails to comply in any respect with a provision of this Act.

42. General penalty – A person who commits an offence against this Act for which no penalty is provided elsewhere than in this section is liable to a fine not exceeding 3 penalty units and, if the offence is a continuing one, to a further fine not exceeding 1 penalty unit for every day on which the offence has continued.

43. Limitation of information – An information for an offence under this Act or any regulations may be laid at any time within 4 years from the time when the matter of the information arose.

44. Liability of principal for sales by agent, etc. – (1) Where a person sells or packs or has in his or her possession for sale or packing a poison or poisonous substance or toxic substance as the agent or servant of any other person, that other person shall be under the same liability as the agent or servant for an offence against this Act committed in respect of such sale, packing, or possession.

(2) If a company is convicted of an offence against this Act, a director and an officer concerned in the management of the company commit the like offence unless he or she proves that the offence was committed without his or her knowledge or consent.

PART 5 MISCELLANEOUS

45. Notification of poisoning – (1) Where in a hospital a person who is attended by a medical practitioner is found to be suffering from poisoning, the Medical Superintendent or other Medical Officer for the time being in charge of the hospital shall forthwith give notice in the prescribed form to the Chief Executive Officer.

(2) A Registrar of Births and Deaths who in his or her official capacity becomes aware that a deceased person was affected by poisoning shall forthwith notify the Chief Executive Officer of the death and of the fact that the person was so affected.

46. Powers of the Chief Executive Officer to require information – (1) If in the opinion of the Chief Executive Officer there is reasonable ground for suspecting that a person is in possession of a poison or poisonous substance or toxic substance:

- (a) for the purpose of sale, or
- (b) for the purpose of manufacturing a preparation for sale, or
- (c) for use in his or her trade or calling,–

in breach of this Act or of any regulations, the Chief Executive Officer may require that person:

- (aa) to produce for his or her inspection, or
- (bb) to produce to any officer specially authorised by the Chief Executive Officer in that behalf, any books or documents dealing with the reception, possession, purchase, sale, or delivery of such poison, poisonous substance, toxic substance, or preparation.

(2) The Chief Executive Officer may make or cause to be made copies of or extracts from such books or documents, and the copies or extracts, certified as such by him or her or by any specially authorised officer, are taken to be true and correct copies or extracts, unless the contrary is proved.

(3) A person commits an offence against this Act who refuses or neglects to comply with a requisition made pursuant to this section.

(4) An officer commits an offence against this Act who does not maintain the secrecy of all matters which come to his or her knowledge in the performance of his or her official duties under this section, or who communicates any such matter to a person, except for the purpose of carrying into effect the provisions of this Act.

47. Statements by Chief Executive Officer as to poisons, etc. – (1) The Chief Executive Officer may, for the purpose of protecting the public, publish statements relating to a poison or poisonous substance or toxic substance, or to a matter contained or implied in advertisements, either generally or in a particular advertisement or class or classes of advertisements, relating to a poison or poisonous substance or toxic substance.

(2) A statement published under this section is privileged; and nothing in section 48 applies in respect thereof.

48. Appeals – (1) A person who is directly affected by a decision or requirement of the Chief Executive Officer under this Act or any regulations, not being a decision or requirement under section 29 or 30, and is dissatisfied with that decision or requirement, may, within 21 days after notice of that decision or requirement is given to him or her, given notice of appeal, in writing, to the Minister.

(2) The Minister may appoint a Committee of 1 or 3 persons to hear the appeal. No officer or employee of the Ministry shall be appointed as a member of such committee, but it may consist of or include persons who are not members of the Public Service.

(3) The parties to the appeal are entitled to be heard either personally or by their solicitors, counsel, or agents.

(4) For the purpose of hearing the appeal, the Minister or the Committee is taken to be a Commission under the Commissions of Inquiry Act 1964, and the provisions of that Act, except sections 16 and 17 of that Act (which relate to costs), apply as if the hearing of the appeal were an inquiry under that Act:

PROVIDED THAT the Chairperson of any such Committee may exercise all the powers of the Committee in respect of citing parties and summoning witnesses, and may do any other act preliminary or incidental to the hearing or consideration of a matter by the Committee.

(5) The Minister or the Committee may allow or dismiss an appeal wholly or in part, and may make such modification in a decision or requirement appealed against as he or she or it thinks fit, and may make or impose a new decision or requirement in substitution for or in addition to the one appealed against.

49. Power to restrict publication of name of poison – (1)

Where, in the course of proceedings in a Court or before a Coroner, reference is made to a poison, the Court or Coroner may in its or his or her discretion order that the name of that poison shall not be published in relation to those proceedings at any time before the expiration of a period of 5 years from the date of the final disposal of those proceedings:

PROVIDED THAT no order made under this subsection applies to the publication of that name to scientists or to members of the legal, medical, dental, veterinary, nursing, or pharmaceutical professions or to persons studying to become scientists or members

of those professions or in a publication of a scientific or technical character solely or mainly intended for circulation among scientists or members of those professions or persons so studying.

(2) If the publication of the name of a poison is prohibited under this section in relation to any proceedings no person shall, within the said period of 5 years, publish the name of that poison or a name or particular likely to lead to the identification of that poison as the poison to which reference was made in those proceedings.

(3) Nothing in this section limits the provisions of any other enactment relating to the prohibition or regulation for the publication of reports or particulars relating to any judicial proceedings.

50. Protection of persons acting under authority of Act –

A person who does an act in pursuance or intended pursuance of any of the provisions of this Act shall not be under any civil or criminal liability in respect thereof, whether on the ground of want of jurisdiction, or mistake of law or fact, or on any other ground, unless he or she has acted in bad faith or without reasonable care.

51. Regulations and savings – (1) The Head of State, acting on the advice of Cabinet, may make regulations (additional to any regulations made under section 5) necessary or expedient for giving full effect to the provisions of this Act.

(2) Without limiting subsection (1), regulations may be made under this section for all or any of the following purposes:

- (a) prescribing forms, fees, registers, particulars, notifications, and records for the purposes of this Act; and the method of keeping such registers and records; and prescribing the persons or classes of persons by whom any such records shall be kept or notifications given;
- (b) prescribing conditions of licences under this Act; and providing for or regulating the custody, production, cancellation, or revocation of licences;
- (c) prohibiting, restricting, or regulating the sale, distribution, custody, carriage, handling, or use of a poison, poisonous substance, or toxic substance,

- or of a class thereof; prescribing the persons by whom and the conditions on which poisons or poisonous substances or classes thereof may be sold; enabling the Minister to permit and control the sale of prohibited substances; and restricting the use of a poison or class of poisons to persons licensed in accordance with the regulations;
- (d) prohibiting, restricting, or regulating the importation, manufacture, sale or use of any apparatus intended for use or capable of being used for the handling, application or dissemination of a poison or poisonous substance or toxic substance or of a class thereof;
 - (e) regulating the packing and labelling of, and the marking of vehicles carrying, poisons or poisonous substances or toxic substances, and prescribing requirements to be complied with in respect of such packing and labelling; and prescribing methods of treatment or disposal of containers that have been used to convey, hold or store poisons or poisonous substances or toxic substances;
 - (f) providing for the notification of damage to or leakage from containers of poisons or poisonous substances or toxic substances, or of suspected contamination of goods, in the course of transportation by any means;
 - (g) prescribing methods to be used in the colouring of a poison or poisonous substance;
 - (h) restricting and regulating advertisements for poisons or poisonous substances or toxic substances, and statements made in any such advertisement;
 - (i) providing for the safety, health, and welfare of persons handling poisons or poisonous substances or toxic substances; and for that purpose regulating the construction, ventilation, lighting, and sanitation of premises where poisons or poisonous substances or toxic substances are used, prepared, packed or stored, and requiring the provision of protective clothing, washing facilities and first aid and other facilities;

- (j) prohibiting or restricting the employment of a specified class of persons in any manufacture or process in which a poison or poisonous substance or toxic substance is handled or used, or modifying or limiting the hours of employment of persons or classes of persons engaged in any such manufacture or process;
- (k) prescribing the poisons and poisonous substances to which section 35 applies;
- (l) imposing conditions to be complied with by medical practitioners, dentists and veterinary surgeons in respect of the issue of prescriptions containing poisons or poisonous substances;
- (m) prohibiting or restricting the sale or supply of a specified substance or class of substances except pursuant to the order or prescription of a medical practitioner, dentist or veterinary surgeon;
- (n) regulating the dispensing and compounding of poisons and poisonous substances;
- (o) providing for the obtaining of information in respect of persons addicted or habituated to the use of poisons, and for the prohibition, restriction or regulation of the supply of poisons to such persons;
- (p) providing for the exemption of preparations or classes of preparations, either wholly or partly, from any of the provisions of this Act or of the regulations;
- (q) prescribing fines not exceeding 2 penalty units for the breach of a regulation made under this Act and, in the case of a continuing breach, not exceeding 1 penalty unit for every day on which the breach has continued.

(3) Despite anything in any regulations, a person, at any time within 12 months after the date of the making of the regulations, may sell a poison or poisonous substance or toxic substance the sale of which by him or her is otherwise lawful, if at the said date the poison or poisonous substance or toxic substance was part of the existing stock-in-trade in Samoa of a person lawfully carrying on business there, and since the said date no act has been done whereby the poison or poisonous substance or toxic substance

fails to conform to the regulations. For the purpose of this subsection any goods purchased before the said date for importation into Samoa shall be deemed to be part of the purchaser's stock-in-trade in Samoa at the said date.

(4) In any proceedings for any offence against any regulations in which subsection (3) is pleaded in defence the burden of proof that the provisions of that subsection are applicable shall lie on the person charged.

REVISION NOTES 2008 – 2019

This is the official version of this Act as at 31 December 2019.

This Act has been revised by the Legislative Drafting Division from 2008 – 2019 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.
- (b) Insertion of the commencement date.
- (c) Other minor editing has been done in accordance with the lawful powers of the Attorney General, where appropriate:
 - (i) “Every” and “any” changed to “a/an”
 - (ii) Present tense drafting style:
 - “shall be” changed to “is/are” or “is/are to be”
 - “shall have” changed to “has”
 - “hereby”, “thereby”, “for the time being” and “from time to time” removed
 - (iii) Offence provisions
 - “shall be guilty” changed to “commits”
 - (iv) Use of plain language:
 - “notwithstanding” changed to “despite”
 - “in the case of” changed to “for”
 - “in accordance with” changed to “under”
 - “furnish” changed to “provide”
 - “where” changed to “if”
 - “deemed” changed to “taken”
 - (v) Removal of superfluous terms
 - “the generality of”
 - “against this Act” i.e. offence against this Act
 - “the term”
 - “the provisions of”
 - (vi) “the foregoing provisions of this section”, “the preceding subsection” and similar wording changed to the actual section/subsections.
 - (vii) Sections 2 (definitions of “sale for extended purpose” &

- “toxic substance), 21(2), 25(4) and 46(1) paragraphed.
- (d) Under the Arrangement of Provisions section 32, reference to “Director” substituted with “Chief Executive Officer”.

The following amendments were made to this Act since the publication of the *Consolidated and Revised Statutes of Samoa 2007*:

By the Food Act 2015 which commenced on 3 June 2015:

Section 3 for “Food and Drugs Act 1967”, substitute “Drugs Act 1967”;

Section 33 In subsection (6) for “Food and Drugs Act 1967”, substitute “Drugs Act 1967”.



Lemalu Hermann P. Retzlaff
Attorney General of Samoa

*This Act is administered by
the Ministry of Health.*
