

SNL2013 CHAPTER F-21.1

FOOD PREMISES ACT

Amended:

CHAPTER F-21.1

AN ACT RESPECTING FOOD SAFETY IN FOOD PREMISES

(Assented to December 10, 2013)

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20. SNL2005 cS-16.2 Amdt.

21. CNLR 1022/96 Amdt.

22. NLR 78/99 Amdt.

23. RSNL1990 cF-21 Rep.

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

Short title

1. This Act may be cited as the Food Premises Act.

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Definitions

2. In this Act

(a) "approved source" means an establishment that is subject to inspection by the Government of Canada, a provincial or territorial government or an agency of those governments under whose authority food safety standards are established or enforced;

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

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

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

(e) "health hazard" means a condition or circumstance in a food premises that has or is likely to have an adverse effect on the health of a person and includes the physical, chemical or biological contamination of food;

(f) "inspector" means a person or a class of persons designated under section 8;

(g) "minister" means the minister appointed under the Executive Council Act to administer this Act;

(h) "operator" means a manager, owner, licensee or lessee of a food premises;

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

(j) "unfit for human consumption" means presents a risk to human health due to possible physical, chemical or biological contamination.

2013 cF-21.1 s2

PART I

FOOD SAFETY

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Prohibition

3. A person shall not sell or distribute to a person any food which is unfit for human consumption.

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Approved source

4. (1) Food which is used in a food premises shall be obtained from an approved source.

(2) Notwithstanding subsection (1),

(a) an operator may obtain fresh fruit and vegetables from a farmer; and

(b) a licensed in-province retail fish establishment may obtain fish from a fish harvester.

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Prevention of health hazard

5. Food in a food premises and food being transported shall be prepared, manufactured, handled, cut, processed, packaged, displayed, stored, offered for sale, sold or served in a manner that prevents it from being unfit for human consumption.

2013 cF-21.1 s5

PART II

LICENSING AND APPROVALS

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Licensing

6. (1) The minister may issue a licence to operate a food premises.

(2) A person shall not operate a food premises without a licence.

(3) A licence shall be issued only to a specific person and with respect to a specific food premises.

(4) The minister may amend, suspend, cancel or refuse to renew a licence or add or impose terms or conditions on a licence.

(5) A licence is non-transferable.

(6) A licence issued under this section shall be affixed in a conspicuous place in the food premises.

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Construction or alteration of food premises

7. A person shall not construct or alter a food premises unless plans and specifications prescribed in the regulations respecting the design and construction of the food premises are submitted to and approved by an inspector.

2013 cF-21.1 s7

PART III

INSPECTION AND COMPLIANCE

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Inspectors

8. (1) The minister may designate persons or classes of persons to act as inspectors for the purpose of this Act and the regulations.

(2) A person shall not interfere with, obstruct, attempt to obstruct, or fail to cooperate with, an inspector while he or she is exercising powers or carrying out duties or functions under this Act or the regulations.

(3) A person shall not knowingly make a false or misleading statement, either orally or in writing, to an inspector while he or she is exercising powers or carrying out duties or functions under this Act or the regulations.

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Powers of inspectors re: compliance

9. (1) An inspector may, during regular business hours, for a purpose related to the administration or enforcement of this Act or the regulations, inspect or examine a food premises, processes, books and records of a person that the inspector may consider relevant for the purpose of determining compliance with this Act or the regulations, and the inspector may, without a warrant,

(a) enter any premises

(i) which is a food premises,

(ii) where anything is done or is suspected by the inspector of being done in connection with a requirement of this Act or the regulations, or

(iii) where any property, or books and records respecting food safety are or may be kept;

(b) make copies or extracts or take photographs, videos or audiotapes of facilities, equipment or food that the inspector considers necessary;

(c) take food samples;

(d) require the operator or an employee of a food premises to give the inspector all reasonable assistance, including the production of books and records as requested by the inspector, and to answer all proper questions relating to the administration or enforcement of this Act or the regulations and, for that purpose, require the operator or an employee to attend at the premises with the inspector; and

(e) require the operator or an employee to make available the means to generate and manipulate books and records that are in machine readable or electronic form and any other means or information necessary for the inspector to assess the books and records.

(2) Notwithstanding subsection (1), an inspector shall not enter a dwelling-house without the consent of the occupant except under the authority of a warrant issued under this Act.

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Order of inspector

10. (1) Where an inspector finds that the operator or an employee of a food premises is not in compliance with a provision of this Act or the regulations, the inspector may order the operator or an employee to comply with the provision and may require the order to be carried out immediately or within the period of time that the inspector specifies.

(2) Notwithstanding subsection (1), where an inspector reasonably believes that the food premises or something in or on the food premises poses an immediate health hazard, the inspector may, in writing, order the operator or an employee of a food premises to immediately stop all or a portion of the preparation, manufacturing, handling, cutting, processing, packaging, display, storage, sale or service of food and before resuming operations, to take the remedial measures specified in the inspector's order that are necessary to ensure that the processes can be performed or provided without further risk to the health and safety of others.

(3) An inspector may order an operator or employee of a food premises to close the food premises where

- (a) the food premises is operating without a valid licence; or
- (b) the conditions described in subsection (2) exist.

(4) Within 24 hours of the issuance of an order under subsection (3) an inspector shall give written notice of that order to the operator outlining the reasons for the closing.

(5) An order of an inspector issued under subsection (3) shall

- (a) where required by an inspector, be posted on the food premises in a location that is visible to the public and unobstructed from view; and
- (b) remain in effect until the remedial action has been taken to the satisfaction of the inspector.

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Contravention of Act suspected

11. (1) Where, during the course of an inspection or examination under section 9, or otherwise where an inspector believes on reasonable grounds that there has been a contravention of this Act or the regulations, the inspector may, with a warrant issued under this Act, seize and take away anything that may provide evidence with respect to a suspected offence under this Act or the regulations as evidence of a contravention and may retain those things until the time they are required in a court proceeding.

(2) A Provincial Court judge who is satisfied upon oath or affirmation that there are reasonable grounds for believing there is in or on a food premises or any premises anything that may provide evidence with respect to a suspected offence under this Act or the regulations, may issue a warrant authorizing an inspector to enter the premises for the purpose of investigating the suspected offence and to

(a) search;

(b) examine the contents of the food premises and make those inquiries that the inspector considers necessary;

(c) copy, extract, photograph, video, seize and take away evidence, books and records; and

(d) seize, take away, hold and store food.

(3) The operator or an employee of a food premises referred to in this section or a person present at the food premises shall not obstruct an inspector in the carrying out of his or her duties under this section as authorized by the warrant.

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

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

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Disposition of food seized

12. (1) Where, following a seizure under section 11 , proceedings are not taken, charges are withdrawn or proceedings are taken and the person charged is acquitted, the inspector or other person having custody of the food seized under section 11 shall return it to the person from whom it was seized.

(2) Notwithstanding subsection (1), where food was seized under section 11 and an examination by, or tests ordered by the inspector discloses that the food is unfit for human consumption, the food shall be disposed of or destroyed as ordered by the inspector.

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Disposition of documents

13. (1) Where an inspector removes documents or records from a food premises for the purpose of section 11, and makes a copy or extract of them or a part of them, the inspector shall give a receipt to the operator or an employee of the premises for the documents or records removed.

(2) Where documents or records are removed from a food premises, the documents or records shall be returned to the operator or an employee as soon as the copies or extracts have been made.

(3) A copy or extract of a document or record related to an inspection, examination, test or inquiry purporting to be certified by the inspector is admissible in evidence in an action, proceeding or prosecution as proof, in the absence of evidence to the contrary, of the original without proof of appointment, designation, authority or signature of the person purporting to have certified the copy.

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Telewarrant

14. (1) Where, in the opinion of an inspector it would not be practical to appear in person before a Provincial Court judge to apply for a warrant, the inspector may make the application by telephone, facsimile or other means of telecommunication.

(2) Where an application for a warrant is submitted by telephone, facsimile or other means of telecommunication, the information to support the application shall be given under oath or affirmation, and the oath or affirmation may be administered by telephone, facsimile or other means of telecommunication.

(3) The sworn or affirmed information submitted by telephone, facsimile or other means of communication shall include a statement of the

(a) circumstances that make it impractical for the inspector to appear personally before a Provincial Court judge; and

(b) the grounds relied upon by the inspector for believing that a person has contravened this Act or the regulations or that entry onto public or private premises where a contravention of this Act or the regulations is believed to occur has been denied.

(4) The sworn or affirmed information submitted by telephone, facsimile or other means of telecommunication by an inspector shall specify the name of the person giving evidence, the facts and the manner and location in which evidence was received, and a record of that information shall be filed by the Provincial Court judge with the court over which the judge presides.

(5) Where an inspector acts under the authority of a warrant obtained under this section, he or she shall provide a facsimile of the warrant to the operator or an employee of the premises at the time the warrant is carried out.

(6) In subsection (5), "facsimile" includes a record produced by electronic means or a written record of a telephone conversation made by both parties to the conversation while it is in progress and which the parties have confirmed as to its accuracy by reading their record of the conversation to one another at the end of the conversation.

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Presumption –food for sale

15. Where food is found upon a premises ordinarily used for the sale or storage of the food, or similar food, that food shall be considered to be held for sale.

2013 cF-21.1 s15

PART IV

GENERAL

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Action barred

16. An inspector or another person exercising a power or performing a duty or function under this Act or the regulations is not liable for exercising the power or performing the duty or function in good faith.

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Protection from liability

17. (1) A person who reports to an inspector or peace officer a violation or suspected violation of this Act or the regulations is not liable to a civil action in respect of the allegation contained in the report or for anything done in good faith to assist an inspector or peace officer in an inspection or investigation.

(2) A person shall not dismiss, suspend, discipline, demote, harass or otherwise disadvantage or penalize an individual where

(a) the individual, acting in good faith and on the basis of reasonable belief, has disclosed to an inspector that another person has contravened or is about to contravene a provision of this Act or the regulations;

(b) the individual, acting in good faith and on the basis of reasonable belief, has done or stated an intention of doing an act that is required to be done in order to avoid having a person contravene a provision of this Act or the regulations;

(c) the individual, acting in good faith and on the basis of reasonable belief, has refused to do or stated an intention to refuse to do an act that is in contravention of this Act or the regulations; or

(d) another person believes that the individual will do an act described in paragraph (a), (b) or (c).

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Regulations

18. The minister may make regulations

(a) prescribing the manner in which food intended for human consumption shall be produced, prepared, manufactured, handled, cut, processed, packaged, served, displayed, stored, offered for sale, advertised, exposed for sale, sold, transported or delivered;

(b) prescribing the manner in which packages shall be labelled in order to disclose the nature or method of preparation of the contents, the date of preparation and method of storage;

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

(d) prescribing the plans and specifications required to be submitted to an inspector for the construction or alteration of a food premises;

(e) respecting the licensing of food premises;

(f) exempting particular food premises from the requirements of this Act or the regulations;

(g) prescribing food safety standards for food premises;

(h) establishing qualifications and standards to be met by food premises employees;

(i) respecting the records required to be kept by food premises; and

(j) prescribing requirements respecting the control of pests in food premises.

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Offence

19. (1) A person who contravenes this Act or the regulations or an order made under this Act or the regulations or who fails to cooperate with an inspector or comply with an order of an inspector is guilty of an offence and liable, on summary conviction,

(a) for a first offence, to a fine of not less than \$250 and not more than \$2,500 or to imprisonment for a term of not less than one month or more than 6 months, or to both a fine and imprisonment;

(b) for a second offence to a fine of not less than \$2,500 and not more than \$5,000 or to imprisonment for a term of not less than 2 months or more than 6 months, or to both a fine and imprisonment; and

(c) for a third and subsequent offence to a fine of not less than \$5,000 and not more than \$25,000 or to imprisonment for a term of not less than 2 months or more than 6 months, or to both a fine and imprisonment.

(2) Each contravention of this Act or the regulations constitutes a new and separate offence.

(3) Where an offence under this Act or the regulations is committed or continued on more than one day, the person who committed the offence is liable to be convicted for a separate offence for each day on which the offence is committed or continued.

(4) For the purpose of subsections (2) and (3), a conviction for an offence more than one year after the date of the last previous conviction shall be considered to be a conviction for a first offence.

(5) Where a person is convicted of an offence under this Act or the regulations, in addition to another punishment that may be imposed under this Act, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order requiring the offender to comply with those conditions that the court considers appropriate and just in the circumstances for securing the offender's good conduct and for preventing the offender from repeating the same offence or committing other offences.

(6) With respect to an offence under this Act or the regulations, a complaint may be made and a summons issued by means of a ticket under the Provincial Offences Act.

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SNL2005 cS-16.2 Amdt.

20. Paragraph 4(1)(g) of the Smoke-free Environment Act, 2005 is amended by deleting the reference "Food and Drug Act " and substituting the reference "Food Premises Act ".

2013 cF-21.1 s20

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CNLR 1022/96 Amdt.

21. (1) Subsections 5(1), (3) and (4) of the Food Premises Regulations are repealed.

(2) Section 47 of the Food Premises Regulations is repealed.

2013 cF-21.1 s21

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NLR 78/99 Amdt.

22. Section 2 of the Provincial Offences Ticket Regulations, 1999 is amended by adding immediately after paragraph (i) the following:

(i.1) a provision of the Food Premises Act or a regulation made under that Act;

2013 cF-21.1 s22

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RSNL1990 cF-21 Rep.

23. The Food and Drug Act is repealed.

2013 cF-21.1 s23

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