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Summary of the Foodstuffs, Cosmetics and Disinfectants Act, 1972¹

The Foodstuffs, Cosmetics and Disinfectants Act, 1972² (Act No. 54 of 1972), assented to on May 19, 1972, and published on June 2, 1972, is enacted to **control the sale, manufacture, and importation of foodstuffs, cosmetics, and disinfectants** in the Republic of South Africa, and to provide for incidental matters.

The Act defines these products and related activities comprehensively:

Definitions of Products and Activities

- **Foodstuff:** Any article or substance (excluding a drug under the Drugs Control Act, 1965) ordinarily eaten or drunk by humans, or purported to be suitable, manufactured, or sold for human consumption. This also includes any part or ingredient of such an article or substance, or any substance intended to be used as a part or ingredient.
- **Cosmetic:** Any article or substance (excluding a drug under the Drugs Control Act, 1965) intended to be rubbed, poured, sprinkled, sprayed on, or otherwise applied to the human body for **cleansing, beautifying, promoting attractiveness, or improving or altering appearance**. It includes any part or ingredient.
- **Disinfectant:** Any article or substance used or intended to be used as a **germicide, preservative, antiseptic, deodorant, or cleansing material** that is not a cosmetic.
- **Sell:** This term is broad, encompassing to offer, advertise, keep, display, transmit, consign, convey, or deliver for sale, or to exchange or dispose of to any person, whether for consideration or not. "Sold," "selling," and "sale" have corresponding meanings.
- **Manufacture:** Includes **production, preparation, processing, preservation, or other manufacturing process**. As a verb, it has a corresponding meaning. For the purpose of prohibitions, "manufactures" also includes treating a product in a way that renders it a "prohibited article," or adding/abstracting substances with the same result.
- **Import:** Means to **import into the Republic by any means**, with "importation" having a corresponding meaning.
- **Prohibited Article:** Any foodstuff, cosmetic, or disinfectant that, in terms of the Act, **may not be sold, manufactured, or imported for sale**, or that does not comply with the Act's provisions in all respects.

¹ Source: Google NotebookLM

² Source: <https://www.gov.za/documents/foodstuffs-cosmetics-and-disinfectants-act-2-jun-1972-0000>

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- **Advertisement/Advertise:** Refers to any written, pictorial, visual, or other descriptive matter or verbal statement intended to **promote the sale or encourage the use** of a foodstuff, cosmetic, or disinfectant.
- **Label/Label:** Any brand, mark, or descriptive matter appearing on, attached to, or packed with a product or its package. As a verb, it means to apply such descriptive matter.
- **Treated:** Means coloured, stained, powdered, polished, coated, or steamed, or mixed, preserved, flavoured, diluted, or thickened with any substance, or treated in any other manner.

Regulation of Sale, Manufacture, and Importation

The Act primarily regulates these activities through a system of **prohibitions, standards,** and the Minister's power to issue **regulations:**

1. **General Prohibitions (Section 2):** It is an offense to **sell, manufacture, or import for sale** any foodstuff, cosmetic, or disinfectant that:
 - Contains or has been treated with a **prohibited substance**.
 - Contains a particular substance in a **greater measure than permitted by regulation** or has been treated with such a substance beyond permitted limits.
 - **Does not comply with prescribed standards** of composition, strength, purity, quality, or other attributes.
 - **The sale of which is prohibited by regulation.**

Specifically for **foodstuffs or cosmetics**, it is an offense if the product:

- Is **contaminated, impure, or decayed**, or is (or is deemed by regulation to be) **harmful or injurious to human health**.
- Contains or has been treated with a contaminated, impure, decayed, or harmful/injurious substance.

For **foodstuffs exclusively**, it is an offense if:

- It contains or has been treated with a substance **not naturally present** in a normal, pure, and sound condition.
- Any substance has been added to **fraudulently increase its mass or volume** with the object to deceive.
- Any substance or ingredient has been abstracted, removed, or omitted, resulting in **diminished or detrimentally affected nutritive value** or other properties compared to a normal, pure, and sound foodstuff.
- It has been treated to **conceal its damaged, unsound, or inferior quality**, whether entirely or partly.

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However, there are **exceptions for foodstuffs** regarding these specific prohibitions, such as when a non-harmful substance is added or removed as necessary for commercial manufacture without intent to deceive, or when a foreign substance is unavoidably present within regulated limits due to collection or manufacturing processes.

2. **Sale of Mixed or Blended Foodstuffs (Section 3):** It is an offense to sell a foodstuff that is a mixture, compound, or blend of different foodstuffs or different kinds/grades of the same foodstuff, **unless it is sold in a package with a label** that complies with regulations, clearly states it's a mixture/compound/blend, and specifies the names, kinds, grades of ingredients, and their proportions or amounts. This rule may not apply if the product is taken directly from properly labelled bulk stock, or if it is a patented foodstuff with the patent number on the label, or if it is exempted by regulation.
3. **Prohibited Processes, Methods, Appliances, and Containers (Section 4):** The Act prohibits the **employment or use of any prohibited process or method, or a prohibited appliance, container, or other object** in connection with the manufacture, treatment, packing, labelling, storage, or conveyance of any foodstuff, cosmetic, or disinfectant. It also prohibits using such items for preparing, serving, or administering foodstuffs or cosmetics in trade or business, and **selling or importing products** where such prohibited items or methods were used in their production.
4. **False Description and Advertising (Section 5):** It is an offense to **publish a false or misleading advertisement** of any foodstuff, cosmetic, or disinfectant. It is also an offense to **describe for purposes of sale, or to sell or import for sale**, any such product in a manner that is false or misleading regarding its origin, nature, substance, composition, quality, strength, nutritive value, or other properties, or the time, mode, or place of its manufacture. An exception exists for geographical names generally accepted as generic terms for a particular type or variety of foodstuff, provided the product matches that type.

Enforcement and Administration

The Act provides for the appointment of **inspectors** and **analysts** to ensure compliance.

- **Inspectors** can enter premises, inspect products and equipment, take samples, demand information, examine documents, and seize evidence related to contraventions. They are required to show written authority.

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- **Analysts** are authorised to analyse or examine samples using prescribed methods and forms, providing reports for legal proceedings. Courts can order further analysis of samples.

For **imported articles**, if a sample is taken at an import harbour, the consignment may be **detained** until analysis is complete, or released under a guarantee. If found non-compliant, the Secretary has discretion to order the articles to be **confiscated and destroyed, returned to the port of origin, or imported under specific conditions** (e.g., relabelling), or otherwise disposed of.

The **Minister has broad powers to make regulations** covering:

- Prescribing product nature, composition, and standards (composition, strength, purity, quality).
- Prohibiting, restricting, or regulating the use of substances, appliances, containers, processes, or methods in manufacture, treatment, packing, labelling, storage, conveyance, serving, or administering.
- Prescribing foreign substances deemed unavoidably present and their limits.
- Declaring foodstuffs, cosmetics, or substances as harmful.
- Prohibiting the sale of specific products or classes of products.
- Prescribing or prohibiting names under which products may be sold (with an exception for existing trademarks/names unless misleading).
- Regulating packing, including material, condition, and form of packages.
- Prescribing labelling requirements, including information to be reflected and its arrangement.
- Exempting products from labelling requirements.
- Prescribing powers and duties of inspectors and analysts.
- Generally, any matter considered necessary to attain the Act's objects. Regulations can specify penalties within certain limits. The Minister must generally publish proposed regulations for public comment before enactment.

Liabilities and Penalties

- **Penalties:** Any person convicted of an offense under the Act is liable to fines and/or imprisonment, with increasing severity for subsequent convictions:
 - **First conviction:** Up to R400 fine or 6 months imprisonment or both.
 - **Second conviction:** Up to R800 fine or 12 months imprisonment or both.
 - **Third or subsequent conviction:** Up to R2000 fine or 24 months imprisonment or both. Magistrate's courts have jurisdiction to impose these penalties.

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- **Forfeiture:** The court may declare any foodstuff, cosmetic, disinfectant, appliance, or other object involved in the offence to be **forfeited to the State**, to be destroyed or dealt with as the Secretary directs.
- **Liability of Employer/Principal:** An act or omission by an employee, manager, or agent that constitutes an offence is **deemed to be the act or omission of their employer or principal**, who may be convicted unless they prove they did not permit the act, took reasonable preventative measures, or that the act was outside the employee's scope of employment. The employee, manager, or agent remains liable.
- **Liability of Importer/Manufacturer/Packer:** The person indicated on the label of a non-compliant sealed package as the importer, manufacturer, or packer is **presumed to have imported, manufactured, or packed the article** and may be convicted, unless they prove otherwise or that the non-compliance was due to deterioration after leaving their possession and beyond their control.
- **Warranties:** A written warranty can serve as a special defence against charges of selling or importing non-compliant articles, provided the warranty meets specific conditions (e.g., furnished by a Republic resident, guarantees compliance, identifies the article) and the accused had no reason to suspect non-compliance. Furnishing a false or misleading warranty is an offence.
- **Special Defences:** Other defences include proving that the article was not for human consumption or use, or, for false advertising, proving that the publisher was not the seller and did not know the advertisement was false.
- **Proof of Facts and Presumptions:** The Act includes provisions for *prima facie* proof (e.g., analyst certificates, inspector's copies of documents) and presumptions (e.g., articles found on premises are presumed to be used for the relevant activity, a sample is presumed sold by the seller, manufacturing/importing is presumed for sale).
- **Local Authority Administration:** The Minister may authorise local authorities to enforce specific provisions of the Act within their jurisdiction, granting them the right to prosecute, with fines recovered going to the local authority.

The Act also contains provisions regarding time limits for prosecutions based on sample analysis, confidentiality of information obtained under the Act, offences related to obstruction or false representation, delegation of powers, and the non-invalidating of documents due to formal defects if meaning is clear. It repealed the Food, Drugs and Disinfectants Act, 1929.