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1 AN

2 ACT

3
4 to provide for the health, safety and welfare of the people by prohibiting the importation,
5 production, processing, handling, distribution, and domestic trade of unsafe, unwholesome
6 and poor quality food.

7 **BE IT ENACTED BY THE NITIJELA OF THE REPUBLIC OF THE MARSHALL**
8 **ISLANDS:**

9 PART 1 - PRELIMINARY

10 Section 1. **Short Title.**

11 This Act may be cited as the Food Safety Act, 2010.

12 Section 2. **Interpretation.**

13 In this Act, unless the context otherwise requires -

14 (a) **“adulterated”**, in relation to a food, means:

15 (i) it contains, or is mixed with, any substance which reduces its properties as
16 compared with such food in a normal or non-deteriorated state;

17 (ii) a substance has been removed from it so that its properties are reduced as
18 compared with such food in a normal or non-deteriorated state;

19 (iii) it contains a substance which is not permitted for use in food;

20 (iv) it contains more of a substance than is permitted;

21 (v) it is prepared so that the damage, deterioration, or inferiority is or may be
22 concealed;

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- 1 (vi) it is the product of an animal that died naturally of disease; or in the case
2 of a warm-blooded animal, in any way other than by legal slaughter;
- 3 (vii) it consists wholly or in part of any diseased or putrid or rotten animal or
4 vegetable substance whether manufactured or not;
- 5 (viii) it contains a hazard or any physical, chemical or biological agent that is or
6 is likely to be injurious to the health of the person consuming the food,
7 whether added with intent or otherwise;
- 8 (ix) the food comes into contact with a material that contains a substance
9 which may render the food unfit for human consumption;
- 10 (x) it contains a foreign substance;
- 11 (xi) it is in a sealed package which is damaged and can no longer protect the
12 contents from contamination or deterioration; or
- 13 (xii) it is in a package and any contents of the package are different from what
14 the label states the package contains.

15 (b) **“advertise”** means use of words, whether written or spoken, symbolic or
16 pictorial representation or design, or any other representation that has the effect of
17 promoting a product for sale.

18 (c) **“article”** means

- 19 (i) any food or
- 20 (ii) anything used to label or advertise food or
- 21 (iii) anything or machine used for the preparation, preservation, packing, storing
22 or displaying of any food.

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1 (d) **“charity and community food business operations”** refers to charitable,
2 community based or other socially beneficial organisations that sell food to raise
3 funds for charitable or community purposes and not for personal financial gain, and
4 shall include, but not necessarily be limited to community markets, bazaars, raffles,
5 school fundraising activities, church fundraising activities and district stalls;

6 (e) **“date of minimum durability”** (“best before”) means the date which signifies the
7 end of the period under any stated storage conditions during which the product will
8 remain fully marketable and will retain any specific qualities for which tacit or express
9 claims have been made. However, beyond the date the food may still be perfectly
10 satisfactory.

11 (f) **“food”** means any substance, whether processed, semi-processed or raw, which is
12 intended for human consumption, and includes drinks, packaged water, chewing gum
13 and any substance which has been used in the manufacture, preparation or treatment of
14 “food” but does not include cosmetics or tobacco or substances used only as drugs.

15 (g) **“food business”** means any undertaking, whether for profit or not, and whether
16 public or private, carrying out any of the activities related to any stage of production,
17 processing and distribution of food for sale. While not limited to the following, food
18 businesses include restaurants, bakeries, caterers, food wholesalers and retailers, fish
19 vendors, food sellers, meat butcheries, food processors, food importers and food
20 exporters.

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1 (h) **“food handler”** means any person who directly handles packaged or unpackaged
2 food, food equipment and utensils, or food contact surfaces and is therefore expected to
3 comply with food hygiene requirements;

4 (i) **“food inspector”** means a person appointed under Section 10 of this Act;

5 (j) **“label”** means any tag, brand, mark, pictorial or other descriptive matter, written,
6 printed, stencilled, marked, embossed or impressed on, or attached to, a container of
7 food.

8 (k) **“Minister”** means the Minister for Health

9 (l) **“Premises”** means:

10 (i) any building or tent or other structure, permanent or temporary, the land on
11 which it is situated, and any adjoining land used in connection with it;

12 (ii) any vehicle or vessel; and

13 (iii) any place, including a street, open space, or place of public resort, used in the
14 preparation, preservation, packaging or storage of any article

15 (m) **“operator”** means any person who is in charge of, responsible for the operations
16 of, directs or controls the production, processing, handling or sale of food for a food
17 business premises.

18 (n) **“registered with the Ministry of Health”**, in relation to food business premises,
19 means that all food businesses other than those exempted under Part 3 of the Act, shall
20 be required to inform the Ministry of Health, in writing using a form available from the

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1 Ministry of Health, of their intention to operate and shall identify the address (es) and
2 telephone contact number of the premises to be used in handling, storage and sale of
3 food. This registration will facilitate the inspection of the premise prior to initiating
4 operations.

5 (o) “**reasonable evidence that public health is at immediate risk**” means that the
6 food inspector has reasonable evidence that if the business is not closed, consumers
7 may have their health put at risk by unsafe food. While not being limited to the
8 following conditions, this may include where the food business operations cannot
9 effectively separate raw food and cooked food or where the food business operations
10 cannot effectively control its cooking operations or its cold storage operations. It shall
11 not be taken to mean that the premises have flaws in the floors, walls or ceilings; nor
12 that the premises are not well cleaned; nor that food handlers do not have a health
13 certificate; nor any other condition unless that flaw; lack of a certificate; or other
14 condition, is likely to place the public health at immediate risk.

15 (p) “**Secretary**” means the Secretary of Health, Ministry of Health.

16 (q) “**sell**” means to offer, advertise, keep, deliver, or prepare for sale or exchange, to
17 dispose of for consideration, or to deliver in pursuance of a sale or exchange.

18 (r) “**suitably qualified person**”, in relation to certified food inspectors, means for a
19 transitional period up until 2015, those persons identified as suitably qualified by the
20 Secretary and may include persons with no formal qualifications in an area of relevance
21 to inspection but who have satisfactorily completed a short-course training, approved by

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1 the secretary, in the area of food safety and food inspection, After the transitional period
2 , the term shall mean a person with formal qualifications at diploma or degree level
3 from an accredited college or University in an area of study approved by the Secretary
4 as being an area of relevance to food safety. The Secretary may still require the person
5 to have also satisfactorily completed short-course training, approved by the Secretary,
6 in an area of food safety and food inspection.

7 (s) “**unsanitary conditions**” means such conditions as could cause contamination of a
8 food with dirt or filth, or could render the food injurious or dangerous to health,
9 whether such contamination or injury or danger actually occurs or not.

10 (t) “**use-by date**” (Recommended Last Consumption Date, Expiration Date) means
11 the date which signifies the end of the estimated period under any stated storage
12 conditions, after which the product probably will not have the quality attributes
13 normally expected by the consumers. After this date, the food shall not be regarded as
14 marketable.

15 PART 2 –GENERAL PROVISIONS

16 Section 3. **Registration and licensing of food businesses.**

17 (1) All food businesses' premises, other than those food businesses engaged in
18 primary production only, shall be registered with the Ministry of Health before
19 initiating operations.

20 (2) No fee shall be applicable to this registration process unless otherwise determined
21 as may be necessary from time to time.

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1 (3) The Ministry of Health shall maintain a register of all food business' premises,
2 registered in accordance with Subsection (1).

3 (4) When obtaining a license from the relevant local authority, a food business'
4 premises shall be inspected by a food inspector prior to the license being provided
5 and the business initiating operations.

6 (5) Notwithstanding a business being in possession of a license provided by the
7 relevant licensing authority, no food business shall initiate operations until it
8 meets the requirements of this Act and its regulations and standards.

9 (6) A license, or a true copy of it, relevant for the particular food business and current
10 for the period of operation, shall be displayed in all premises covered under this
11 Act.

12 (7) Notwithstanding Subsections (1) to (5) of this Section, charity and community
13 food business operations shall be deemed to have met the requirements of this
14 section by informing the food inspector of their intention to operate before starting
15 operations and shall received a written permission from the food inspector to
16 operate for a defined period.

17 **Section 4. Food safety obligations.**

18 (1) Operators of food businesses have an obligation to put in place procedures as
19 prescribed in the regulations, and any additional precautions necessary, to ensure
20 the safety of food imported, exported, processed, handled, stored, displayed or
21 sold by the business.

22 (2) Food that carries a use-by date or a minimum durability date, or is required by

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1 regulations under this Act to carry such a date, shall bear the date in a manner that
2 is easily visible and likely to be read and understood by an ordinary consumer
3 under customary conditions of purchase and use.

4 **Section 5. Training of food handlers.**

5 (1) All food handlers shall, prior to starting work in a food business, be required to
6 undergo training by the health authorities or by a organization accredited by the
7 health authorities for such training.

8 (2) Charity and community food business operations shall be provided a food handler
9 information sheet by the Ministry of Health when the business informs the
10 Ministry of Health of their intention to operate food business subject to Section
11 3(6) of this Act.

12 (3) For the purposes of Subsection (1), food handlers involved in charity and
13 community food business operations shall read and follow the training guidance
14 provided under Subsection (2).

15 **Section 6. Health of food handlers.**

16 (1) All food handlers shall, prior to starting work in a food business, be required to
17 undergo medical screening tests prescribed by the Secretary and shall be required
18 to undertake such examinations on a six monthly basis while continuing
19 employment as a food handler.

20 (2) No person shall be employed as a food handler, or handle food, if that person has
21 not been cleared by the medical examinations under Subsection (1) and hold a

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1 health certificate.

2 (3) A food handler employee in all premises covered under this Act, shall displayed
3 on a food business' premises in a manner that is easily visible to a food inspector
4 during an inspection a health certificate, or a true copy of it.

5 (4) Notwithstanding Subsection (3), where the business is a charity or community
6 business, and the premises may be mobile or non-fixed, all food handlers in the
7 business shall, while handling, transporting and selling food, carry with them their
8 health certificate and make it available for inspection at the request of food
9 inspector.

10 (5) Health certificate shall include a recent passport style photograph of the food
11 handler to assist in confirmation that the health certificate belongs to a given
12 individual.

13 Section 7. **Obtaining food from closed areas.**

14 (1) If the Secretary is of the opinion that any food handler of any specified class of
15 food if cultivated, taken, harvested or obtained in or from a specific area may be
16 dangerous or injurious to persons consuming the food or the public, the Secretary
17 may by order prohibit the person from cultivating, taking, harvesting or obtaining
18 of the food in or from that area.

19 (2) The Secretary shall, unless the urgency of the matter otherwise requires, give five
20 days' notice in writing of the reasons of the intended prohibition order under
21 Subsection (1).

22 (3) If a prohibition order made under Subsection (1) is within the jurisdiction of any

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1 other department, the Secretary must consult the department before making an
2 order under Subsection (1).

3 (4) The Minister, if it is necessary in the public interest, may exercise the power
4 conferred on the Secretary by Subsection (1).

5 **Section 8. Prohibited product.**

6 (1) If in the opinion of the Secretary there is a public health concern, the Secretary
7 may, by order, declare any food a prohibited product.

8 (2) A food declared as a prohibited product under Subsection (1) shall be prohibited
9 from being imported, produced, prepared, stored, displayed or sold.

10 (3) The Minister, if it is necessary in the public interest, may exercise the power
11 conferred on the Secretary by Subsection (1).

12 **Section 9. Food safety from farm-to-table.**

13 (1) Safety of food for human consumption depends on good hygienic practices in:

14 (a) the primary production, slaughter, and butchering of animals:

15 (b) the harvesting and handling of fish and fisheries products: and

16 (c) on good hygienic practices in the production of plants for food.

17 (2) Secretary may, after consultation with the appropriate Ministry or Authority with
18 responsibility for these areas of primary production:

19 (a) establish regulations and standards to better protect human health: or

20 (b) request the relevant Ministry or Authority to establish such

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1 regulations and standards for food safety from farm-to-table.

2 PART 3 – INSPECTION AND ANALYSIS

3 Section 10. **Appointment of Food Inspectors.**

4 (1) The Secretary may appoint suitably qualified persons to be certified food
5 inspectors to administer and enforce the provisions of this Act, its regulations and
6 standards.

7 (2) The Secretary may, consult with other appropriate Ministries, national authority or
8 local government, to appoint personnel from another Ministry, national authority
9 or local government to a task force for food inspection purposes. For the period of
10 time in which the task force is conducting an inspection under this Act, its
11 regulations and standards, the members of the task force will have the powers,
12 functions and responsibilities of a food inspector.

13 (3) With respect to food being imported into the Republic of the Marshall Islands, the
14 Secretary of Health may request the support of suitably qualified persons in the
15 Ministry of Resources and Development to support the work of food inspectors in
16 protecting human health through inspection of the safety of the imported food at
17 the point of entry of the food into the country.

18 Section 11. **Certification of food inspectors.**

19 (1) For an individual to be certified food inspector:

20 (a) the Secretary shall have determined that the person is worthy of public trust and

1 confidence

2 (b) be a suitably qualified person; and

3 (c) the Secretary shall have appointed the person as a certified food inspector.

4 (2) While on duty, a food inspector shall wear a badge or alternative form of
5 identification to confirm that they are a certified food inspector under this Act.

6 Section 12. **Powers of entry and search.**

7 (1) For the purposes of this Act, a Food Inspector may at all reasonable times:

8 (a) stop and detain any vehicle or vessel the inspector knows or reasonably
9 suspects is being used for the production, processing, handling, storage,
10 display or sale of any food or article under this Act; and

11 (b) enter any premises the inspector knows or reasonably suspects are being used
12 for the production, processing, handling, storage, display or sale of any food
13 or article under this Act.

14 (2) Before exercising powers of entry and search under this section, the Secretary of
15 Health shall with the assistance of the Attorney General's Office or the Police
16 Commissioner, obtain a search warrant in accordance under Article II, Section 3 of
17 the Constitution.

18 (3) Subject to Subsections (1) and (3), a Food Inspector, accompanied by a Police
19 Officer and other members of taskforce from other government agent, may:

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- 1 (a) search for, examine and take samples of any article subject to this Act;
- 2 (b) open and inspect any room, place, container or package that the food
- 3 inspector knows or reasonably suspects contains any article subject to this
- 4 Act;
- 5 (c) examine any documents (electronic or hardcopy) that could contain any
- 6 relevant information about articles subject to this Act and make copies of
- 7 them;
- 8 (d) obtain photographic evidence of any article or condition subject to this Act;
- 9 (e) question with respect to matters under this Act any person the food inspector
- 10 finds thereon; and
- 11 (f) make such inquiry and examination as the food inspector believes to be
- 12 necessary or desirable to assist the discharge or exercise of any function or
- 13 power under this Act to ascertain whether any contravention of any provision
- 14 of this Act has been, is being or is likely to be committed.
- 15 (2) Upon completion of an inspection, a food inspector shall prepare a written
- 16 inspection report for the information of the food business owner and for health
- 17 authorities.
- 18 (3) The Secretary may publish the findings of inspections in a public manner so as to
- 19 inform consumers to what extent food businesses comply with good hygienic
- 20 practice, the Act, its regulations and standards.

21 **Section 13. Powers of temporary closure.**

- 22 (1) The Secretary may order the temporary closure, for a minimum period of three

- 1 days. of any premises where either:
- 2 (a) a food inspector has reasonable evidence that public health is at immediate
3 risk until corrective action identified as necessary in an inspection is taken; or
4 (b) any premises fails, after 3 re-inspections undertaken within a reasonable
5 period, to implement a corrective action identified as necessary by a food
6 inspector.
- 7 (2) After three days temporary closure, an owner or operator of food premises may
8 request a food inspector to re-inspect the premises to determine the compliance of
9 the premises with this Act, its regulations and standards and the food inspector
10 shall carry out that re-inspection within 72 hours of receiving the request for re-
11 inspection.
- 12 (3) Where premises are found, upon re-inspection under Subsection (2) to be in
13 compliance with this Act, its regulations and standards, the Secretary shall
14 immediately lift the order for temporary closure of the premises.
- 15 (4) Where a food business:
- 16 (a) fails to stop its operations and close its premises within 1 day of the Secretary
17 ordering the temporary closure of its premises; or
18 (b) is found on more than three occasions in a twelve month period to be subject
19 to a temporary closure order,
- 20 the Secretary shall request the authority responsible for issuing business' license
21 to immediately revoke the license of the business regardless of the number of

1 premises and activities covered by the license.

2 (5) Before revoking the licence, the Secretary shall give 10 days to the owner of the
3 business to show cause, the failure of which, the authority issuing trading licenses shall
4 be required to take action as requested by the Secretary under Subsection (4) as soon as
5 it is practically possible to do so.

6 (6) Where a food business has had its license revoked under Subsection (5), the owner
7 or operator shall not be permitted to apply for a new food business license within 3
8 months of having the license revoked.

9 **Section 14. Sampling.**

10 (1) Where a food inspector reasonably believes there may be a contravention of this
11 Act, its regulations and standards, the food inspector may demand and obtain
12 samples of any food as required for the purposes of this Act.

13 (2) Samples taken under this Act may be forwarded under seal in any convenient way
14 to an analyst.

15 (3) Where an analyst certifies that the seal of any sample was unbroken, the
16 certification shall be sufficient evidence of identity of the sample.

17 **Section 15. Analysis.**

18 (1) The Secretary may accredit suitably qualified persons or laboratories, located
19 either within or outside the Republic of the Marshall Islands, to be analysts for
20 performing laboratory and field tests for the purposes of this Act.

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- 1 (2) Any accredited analyst analysing any food submitted for the purposes of this Act
2 may give a certificate of the result of the analysis.
- 3 (3) In any legal proceeding under this Act, the production of a certificate purporting
4 to be signed by an analyst shall be prima facie evidence of the identity of the food
5 analysed and of the result of the analysis.
- 6 (4) A copy of the result of any analysis shall, on demand, be supplied to the person
7 from whom the sample was procured.
- 8 (5) The court may, in case of a conviction, award the cost of analysis against the
9 defendant as part of the costs of the prosecution.

10 PART 4 – SEIZURE, DESTRUCTION AND FORFEIT

11 Section 16. **Seizure of articles.**

- 12 (1) A food inspector accompanied by a police officer and other members of the task
13 force may seize any article which contravenes this Act or its regulations or
14 standards.
- 15 (2) In exercising powers of seizing articles under this section, the Secretary of Health
16 shall with the assistance of the Attorney General's Office or the Police
17 Commissioner, obtain a search warrant in accordance under Article II, Section 3
18 of the Constitution.
- 19 (3) Any food inspector seizing an article under Subsection (1) shall include a
20 statement of such seizure in a written inspection report and make such written
21 notice available to the owner or operator of the premises in as short a time as
22 practically possible.

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- 1 (4) If a food inspector has seized articles for the purposes of this Act he or she may—
- 2 (a) retain them for as long as necessary for those purposes, unless otherwise
- 3 directed by the court; or
- 4 (b) dispose of any articles as the court directs.
- 5 (5) The owner of the articles seized under subsection (1) of this section may, within
- 6 one month from the date of seizure, make a claim in court for recovery of the
- 7 same. If after trial the court finds that the article was used in the commission of an
- 8 offence, the court shall forfeit the same.
- 9 (6) If no claim is presented within the time prescribed under Subsection (4), articles
- 10 seized, shall forfeit to the Republic.
- 11 (7) If a food inspector has seized records for the purposes of this Act and if the person
- 12 otherwise entitled to possession of the records requests their return, the entitled
- 13 person shall be provided the original records as soon as the inspector has obtained
- 14 and certified a copy to be a true copy of the records. Such a certified copy shall
- 15 be received in all courts and elsewhere as evidence of the matters contained in it
- 16 as if it were the original.

17 **Section 17. Destruction and disposal of seized food.**

- 18 (1) Any food seized by an authorized food inspector under Section 10 of this Act,
- 19 shall be destroyed and disposed by the food inspector where:
- 20 (a) a court has so ordered;
- 21 (b) a food inspector has reasonable evidence that public health is at immediate

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- 1 risk if the food were not destroyed and disposed of;
- 2 (c) a food inspector has reasonable evidence that the retention of the seized food
- 3 would enable the food to become a public nuisance due to its possible
- 4 deterioration; or
- 5 (d) the owner agrees in writing to its destruction and disposal.
- 6 (2) Where a food is destroyed and disposed of by the food inspector under subsection
- 7 (1) all reasonable costs for destruction and disposal shall be borne by the owner of
- 8 the article or, where a person is convicted, the person so convicted.

9 Section 18. **Liability.**

- 10 (1) No food inspector, task force member or analyst shall be liable for any actions
- 11 taken while executing his or her duties under this Act, unless he or she has acted
- 12 in bad faith or without reasonable care.

13 PART 5 – OFFENCES AND PENALTIES

14 Section 19. **Food safety offences.**

- 15 (1) It shall be an offence for a person to:
- 16 (a) imports, exports, produces, processes, handles, stores, displays or sells food
- 17 that is unfit for human consumption, adulterated, damaged, deteriorated, or
- 18 perished;
- 19 (b) imports, exports, produces, processes, handles, stores, displays, sells or
- 20 advertises food that does not comply with any regulations promulgated under

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- 1 this Act or a prescribed standard for that food;
- 2 (c) produces, processes, handles, stores, displays or sells food under unsanitary
- 3 conditions;
- 4 (d) conducts a food business contrary to Sections 3 of this Act;
- 5 (e) imports, exports, stores, displays, sells or advertises any food contrary to
- 6 Section 4 of this Act or after its use-by-date or minimum durability date;
- 7 (f) marks any article or takes any other action so as to make an use-by-date or a
- 8 'best before" date not easily visible;
- 9 (g) refuses or fails to give to a food inspector all reasonable assistance or any
- 10 information which such person may reasonably be expected to possess;
- 11 (h) knowingly makes a false or misleading statement, either verbally or in
- 12 writing, to any food inspector in the performance of his or her functions
- 13 under this Act, its regulations or standards;
- 14 (i) shall give, pay, or offer, directly or indirectly, to any food inspector or any
- 15 other officer or employee of the Republic authorized to perform any of the
- 16 duties prescribed by this Act or its regulations and standards, any money or
- 17 other thing of value, with intent to influence said food inspector or other
- 18 officer or employee of the Republic in the discharge of any duty specified in
- 19 this Act;
- 20 (j) cultivates, takes, harvests or otherwise obtains food from an area declared
- 21 closed for such Action under Section 7 of this Act;
- 22 (k) imports, produces, prepares, stores, displays or sells a food prohibited under
- 23 Section 8 of this Act;

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- 1 (b) on the importation and exportation of food;
- 2 (c) on primary production, processing, preparation, packaging, storage,
- 3 transportation, display and selling practices for all food;
- 4 (d) prescribing standards;
- 5 (e) regulating fortification of any food;
- 6 (f) on the inspection, sampling and analysis of food and providing for fees for
- 7 inspection, analysis and destruction and disposal;
- 8 (g) providing for the tracing and recall of food where necessary;
- 9 (h) regulating breast milk substitutes; and
- 10 (i) on any other matter necessary or convenient for carrying out or giving effect
- 11 to this Act.

12 Section 22. **Effect on other Acts.**

13 (1) This Chapter prevails over Title 7, Chapter 1, Subsections 103, 111, 112 and
14 114 of the Public Health, Safety and Welfare Act, in those aspects related to
15 food, food premises sanitation, food safety and penalties for improper
16 practices related to food.

17 (2) Where the requirements of this Act conflict with the Public Water Supply
18 Regulations 1994 and public health may be affected adversely by such a
19 conflict, the requirements under this Act shall prevail.

20 Section 23. **Administration of the Act.**

21 The Administration and regulations promulgated under this Act shall be administered

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1 by the Ministry of Health.

2 Section 24. **Effective date**

3 This Act shall take effect on the date of certification in accordance with Article IV of
4 the Constitution and Rules and Procedures of the Nitijela.

5

6

7

CERTIFICATE

8 **I hereby certify:**

9 1. That Nitijela Bill No: 35ND1 was passed by the Nitijela of the Republic of the
10 Marshall Islands on the 23rd day of February, 2010; and

11 2. That I am satisfied that Nitijela Bill No: 35ND1 was passed in accordance with the
12 relevant provisions of the Constitution of the Republic of the Marshall Islands and the Rules
13 of Procedures of the Nitijela.

14

15 I hereby place my signature before the Clerk this 24th day of March, 2010

16

17

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Attest:

1

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4

Alvin T. Jacklick

Lena E. Tiobech

5

Speaker

Acting Clerk

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Nitijela of the Marshall Islands

Nitijela of the Marshall Islands

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