

SAMOA

Arrangement of Provisions

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2006, No. 3**AN ACT to amend the Narcotics Act 1967.***[1st March 2006]*

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

1. Short title and commencement-(1) This Act may be cited as the Narcotics Amendment Act 2006.

(2) This Act shall come into force on the date of assent of the Head of State.

(3) Notice of commencement of this Act shall be published in Samoan and English in the Savali and one other newspaper circulating in Samoa.

2. Principal Act - In this Act, “Principal Act” means the Narcotics Act 1967.

3. Interpretation - Section 2 of the Principal Act is amended by omitting the definition of “Director” and inserting in subsection (1) in the proper alphabetical position the following definitions:

- “‘Chief Executive Officer’ or ‘CEO’ means the Chief Executive Officer of the Ministry of Health;
- ‘controlled precursor’ means a substance prescribed by the Head of State under subsection 5(3);
- ‘controlled quantity’ in relation to a controlled precursor means a quantity prescribed by the Head of State under subsection 5(4) as a quantity that is to be regarded as a controlled quantity of that controlled precursor;
- ‘trafficable quantity’ in relation to a narcotic means a quantity not less than the quantity prescribed by the Head of State under subsection 5(2) as a trafficable quantity of that narcotic.”.

4. Head of State may amend lists of narcotics or prohibited plants - Section 5 of the Principal Act is amended by adding at the end:

“(2) The Head of State acting on the advice of Cabinet may by order prescribe in relation to a narcotic, a quantity that is to be regarded as a trafficable quantity of that narcotic.

(3) The Head of State acting on the advice of Cabinet may by order prescribe a substance (including a growing plant) as a controlled precursor if Cabinet is satisfied that there is a substantial risk that the substance concerned may be used to unlawfully manufacture a narcotic substance.

(4) The Head of State acting on the advice of Cabinet may by order prescribe in relation to a controlled precursor, a quantity that is to be regarded as a controlled quantity of that controlled precursor.”.

5. Importation and exportation - Section 10 of the Principal Act is amended by inserting after subsection (3):

“(3A) No person shall import into Samoa a controlled quantity of a controlled precursor except under a licence granted by the CEO.”.

6. Issue of search warrants - Section 14 of the Principal Act is amended by inserting in subsection (1) “or evidence of any offence” after “document” last occurring.

7. Penalty for illegal import or export of narcotics - Section 17 of the Principal Act is amended:

(a) by omitting from subsection (1) “a fine not exceeding \$400 or to imprisonment for a term not exceeding 2 years or to both such fine and imprisonment” and substituting “:

(a) in the case of a trafficable quantity of a narcotic - to a fine not exceeding 500 penalty units or to imprisonment for a term not exceeding 7 years or both; and

(b) in any other case - to a fine not exceeding 100 penalty units or to imprisonment for a term not exceeding 2 years or both.”;

(b) by omitting from subsection (2) “a fine not exceeding \$400 or to imprisonment for a term not exceeding 2 years or to both such fine and imprisonment,” and substituting “:

(a) in the case of a trafficable quantity of a narcotic - to a fine not exceeding 500 penalty units or to imprisonment for a term not exceeding 7 years or both; and

(b) in any other case - to a fine not exceeding 100 penalty units or to imprisonment for a term not exceeding 2 years or both.”.

- 8. Penalty for unlawful supply or possession of narcotics**
- Section 18 of the Principal Act is amended -
(a) by omitting subsection (1) and substituting:

“(1) A person who contrary to the provisions of this Act or the regulations:

- (a) deals in or has possession of any narcotic; or
 - (b) sells, gives, supplies or administers or offers to sell, give, sell or supply any narcotic to any person,
commits an offence and is liable to,
 - (c) in the case of a trafficable quantity of a narcotic - imprisonment for a term not exceeding 14 years; and
 - (d) in any other case - to a fine not exceeding 500 penalty units or to imprisonment for a term not exceeding 7 years or both.”.
- (b) by omitting subsection (2); and
(c) by omitting from the proviso “a fine not exceeding \$200 or to imprisonment for a term not exceeding 3 months or to both such fine and imprisonment” and substituting “a fine not exceeding 100 penalty units or to imprisonment for a term not exceeding 2 years or both.”.

- 9. Insertion of new sections** - After section 18 of the Principal Act the following sections are inserted:

“18A Unlawful manufacture of a narcotic-(1) A person who manufactures a narcotic commits an offence and is liable to a fine not exceeding 1000 penalty units or to imprisonment for a term not exceeding 14 years or both.

(2) In this section ‘manufacture’ means any process by which a narcotic is produced (other than the cultivation of a plant), and includes the following:

- (a) the process of extracting or refining a narcotic;
- (b) the process of transforming a substance into a narcotic.

(3) For the purposes of this section, a person manufactures a narcotic if the person:

- (a) engages in its manufacture; or
- (b) exercises control or direction over its manufacture; or
- (c) provides finance for its manufacture.

18B. Unlawful sale of a controlled precursor-(1) A person who:

- (a) sells a controlled quantity of a controlled precursor believing that the person to whom it is sold, or another person, intends to use any of the substance to manufacture a narcotic; or
- (b) manufactures a controlled quantity of a controlled precursor with the intention of using any of it to manufacture a narcotic; or
- (c) manufactures a controlled quantity of a controlled precursor:
 - (i) with the intention of selling any of it to another person; and
 - (ii) believing that the other person intends to use any of the substance to manufacture a narcotic; or
- (d) possesses a controlled quantity of a controlled precursor with the intention of using any of it to manufacture a narcotic,

commits an offence and is liable to a fine not exceeding 1000 penalty units or to imprisonment for a term not exceeding 14 years or both.

(2) For the purposes of this section, if a person sells, manufactures or possesses a controlled quantity of a controlled precursor, the person is taken to have sold or manufactured or to possess the controlled quantity of the controlled precursor with the intention that the controlled precursor be used for the manufacture of a narcotic and the

onus is on the person to prove that the person did not have that intention.”.

10. Failure to comply with conditions of licence - Section 20 of the Principal Act is amended by adding at the end:

“(2) A person who imports into Samoa a controlled quantity of a controlled precursor under a licence granted by the CEO under section 10 must keep accurate records of the sale, use or other disposal of the precursor and shall upon request by a police officer or an officer authorised by the CEO, make those records available for inspection.

(3) A person who fails to keep records required under subsection (2) or fails to make those records available for inspection when requested under subsection (2), commits an offence and is liable to a fine not exceeding 100 penalty units or to imprisonment for a term not exceeding 2 years or both.”.

11. Insertion of new sections -After section 25 of the Principal Act the following sections are inserted:

“25A. Confiscation and forfeiture of tainted property-(1) Police may seize and detain tainted property and, upon conviction for the offence, such property is forfeited to the Government of Samoa and may be disposed in such way as the Minister acting on the advice of Cabinet directs.

(2) In this section:

‘property’ includes currency, investments, holdings, possessions, assets and all other property real or personal, heritable or moveable including things in action and other intangible or incorporeal property wherever situate, whether in Samoa or elsewhere, and includes any interest in such property;

‘tainted property’, in relation to an offence involving a narcotic, means –

- (a) property that was used, or was intended by an offender to be used, in relation to the commission of the offence; or
- (b) property that was derived either wholly or in part by anyone from the commission of the offence; or
- (c) property that was derived by anyone from property mentioned in paragraph (a) or (b);

and includes an amount of money held in an account with a financial institution that represents the value of property mentioned in paragraph (a), (b) or (c) that has been directly or indirectly credited to the account.

(3) For paragraph (2)(a), any property found in the possession of an offender at the time of, or immediately after, the commission of the offence is taken to be property that was used, or was intended by the offender to be used, in relation to the commission of the offence, unless the contrary is established by the offender.

(4) Examples of tainted property for paragraph (2)(c) are:

- (a) a house in relation to which a mortgage is partly or completely discharged using money obtained during the commission of the offence, or a mixture of that money and money unconnected with the offence;
- (b) other property purchased using the money mentioned in paragraph (a);
- (c) shares or negotiable instruments bought using money obtained during the commission of the offence, or a mixture of that money and money unconnected with the offence;
- (d) loans, gifts or other transfers or dispositions to any person using money obtained during the commission of the offence, or a mixture of that money and money unconnected with the offence.

25B. Mandatory reporting of suspicion of illegal use of a narcotic-(1) If a doctor or nurse reasonably suspects that a person they are treating has illegally used a narcotic, the doctor or nurse must as soon as practicable report to a police officer the name of the person they are treating and the grounds of their suspicion.

(2) A doctor or nurse who fails to report to a police officer as required under subsection (1), commits an offence and is liable to a fine not exceeding 100 penalty units or to imprisonment for a term not exceeding 2 years or both.”.

**The Narcotics Amendment Act 2006 is administered in the
Ministry of Police, Prison and Fire Services**