


FOURTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

7 10 17 2011

SENATE
S. No. 1785


RECEIVED BY: 

Introduced by Senator Miriam Defensor Santiago

EXPLANATORY NOTE

Sometime in March 2007, a massive recall of pet food prompted lawmakers in the United States to examine their food safety inspection procedures. Some pet foods were later found to be toxic. On the other hand, sometime in August 2007, there was some controversy in the Philippines regarding food imports -- this time for human consumption -- which reportedly contained lethal amounts of lead.


This bill seeks to create a mechanism to ensure the utmost safety of food both for human and pet consumption


MIRIAM DEFENSOR SANTIAGO
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1 AN ACT
2 PROVIDING FOR A MECHANISM TO ENSURE THE UTMOST SAFETY
3 OF FOOD FOR HUMAN AND PET CONSUMPTION

4 *Be it enacted by the Senate and the House of Representatives of the Philippines in*
5 *Congress assembled:*

6 SECTION 1. *Short Title.* – This Act may be cited as the “Human and Pet Food Safety
7 Act of 2007.”

8 SECTION 2. *Declaration of Policy.* – It is the policy of the State to promote the general
9 welfare of the people. Pursuant to this policy, this Act seeks to provide a mechanism to ensure
10 the utmost safety of food for human and pet consumption.

11 SECTION 3. *Food Safety for Humans and Pets.* –

12 (A) *Notification and Recall.* –

13 (1) *In General.* – A person that has reason to believe that any food introduced into
14 or in interstate commerce, or held for sale, whether or not the first sale, after shipment in
15 interstate commerce, may be in violation of this Act shall immediately notify the
16 Secretary of Health, hereafter the Secretary, of the identity and location of the food.

17 (2) *Manner of Notification.* – Notification under paragraph (1) shall be made in
18 such manner and by such means as the Secretary may require by regulation.

19 (B) *Recall and Consumer Notification; Voluntary Actions.* – If the Secretary determines
20 that food is in violation of this Act when introduced into or while in interstate commerce or
21 while held for sale, whether or not the first sale, after shipment in interstate commerce and that
22 there is a reasonable probability that the food, if consumed, would present a threat to public

1 health, as determined by the Secretary, the Secretary shall give the appropriate persons, including
2 the manufacturers, importers, distributors, or retailers of the food, an opportunity to--

3 (1) Cease distribution of the food;

4 (2) Notify all persons--

5 (a) Processing, distributing, or otherwise handling the food to immediately
6 cease such activities with respect to the food; or

7 (b) To which the food has been distributed, transported, or sold, to
8 immediately cease distribution of the food;

9 (3) Recall the food;

10 (4) In conjunction with the Secretary, provide notice of the finding of the
11 Secretary--

12 (a) To consumers to whom the food was, or may have been, distributed;
13 and

14 (b) To State and local public health officials; or

15 (5) Take any combination of the measures described in this paragraph, as
16 determined by the Secretary to be appropriate in the circumstances.

17 (C) *Civil and Criminal Penalties.* –

18 (1) *Civil Sanctions.* –

19 (a) *Civil Penalty.* – Any person that commits an act that violates the
20 notification and recall standards under subsection (B), including a regulation
21 promulgated or order issued under this Act, may be assessed a civil penalty by the
22 Secretary of not more than One Hundred Thousand Pesos (P100,000.00) for each
23 such act.

24 (b) *Separate Offense.* – Each act described in subparagraph (a) and each
25 day during which that act continues shall be considered a separate offense.

26 (2) *Other Requirements.* –

27 (a) *Written Order.* – The civil penalty described in paragraph (1) shall be
28 assessed by the Secretary by a written order, which shall specify the amount of

1 the penalty and the basis for the penalty under subparagraph (b) considered by the
2 Secretary.

3 (b) *Amount of Penalty.* – Subject to paragraph (A)(1), the amount of the
4 civil penalty shall be determined by the Secretary, after considering--

5 (i) The gravity of the violation;

6 (ii) The degree of culpability of the person;

7 (iii) The size and type of the business of the person; and

8 (iv) Any history of prior offenses by the person under this Act.

9 (c) *Review of Order-* The order may be reviewed only in accordance with
10 subsection (D).

11 (3) *Exception.* – No person shall be subject to the penalties of this subsection--

12 (a) For having received, proffered, or delivered in interstate commerce any
13 food, if the receipt, proffer, or delivery was made in good faith, unless that person
14 refuses to furnish, on request of an officer or employee designated by the
15 Secretary, --

16 (i) The name, address and contact information of the person from
17 whom that person purchased or received the food;

18 (ii) Copies of all documents relating to the person from whom that
19 person purchased or received the food; and

20 (iii) Copies of all documents pertaining to the delivery of the food
21 to that person; or

22 (b) If that person establishes a guaranty signed by, and containing the
23 name and address of, the person from whom that person received in good faith the
24 food, stating that the food is not adulterated or misbranded within the meaning of
25 this Act.

26 (D) *Judicial Review.* –

27 (1) *In General.* – An order assessing a civil penalty under subsection (C) shall be
28 a final order unless the person--

1 (a) Not later than 30 days after the effective date of the order, files a
2 petition for judicial review of the order in the Regional Trial Court in which that
3 person resides or has its principal place of business; and

4 (b) Simultaneously serves a copy of the petition by certified mail to the
5 Secretary.

6 (2) *Filing of Record.* – Not later than forty five (45) days after the service of a
7 copy of the petition under paragraph (A)(2), the Secretary shall file in the court a certified
8 copy of the administrative record upon which the order was issued.

9 (3) *Standard of Review.* – The findings of the Secretary relating to the order shall
10 be set aside only if found to be unsupported by substantial evidence on the record as a
11 whole.

12 (E) *Collection Actions for Failure to Pay.* –

13 (1) *In General.* – If any person fails to pay a civil penalty assessed under
14 subsection (C) after the order assessing the penalty has become a final order, or after the
15 court of appeals described in subsection (D) has entered final judgment in favor of the
16 Secretary, the Secretary shall refer the matter to the Solicitor General, who shall institute
17 in a trial court of competent jurisdiction a Civil Action To Recover The Amount
18 Assessed.

19 (2) *Limitation on Review.* – In a civil action under paragraph (1), the validity and
20 appropriateness of the order of the Secretary assessing the civil penalty shall not be
21 subject to judicial review.

22 (F) *Penalties Paid Into Account.* – The Secretary--

23 (1) Shall deposit penalties collected under this section in an account in the
24 Treasury; and

25 (2) May use the funds in the account, without further appropriation or fiscal year
26 limitation--

27 (a) To carry out enforcement activities under food safety law; or

28 (b) To provide assistance to States to inspect retail commercial food
29 establishments, such as an establishment that holds, stores, or transports food or

1 food ingredients, or other food or firms under the jurisdiction of State food safety
2 programs.

3 (G) *Discretion of the Secretary to Prosecute.* – Nothing in this Section, Section 5, or
4 Section 6 requires the Secretary to report for prosecution, or for the commencement of an action,
5 the violation of this Act in a case in which the Secretary finds that the public interest will be
6 adequately served by the assessment of a civil penalty under this section.

7 (H) *Remedies Not Exclusive.* – The remedies provided in this section may be in addition
8 to, and not exclusive of, other remedies that may be available.

9 SECTION 4. *Mandatory Recall Action.* –

10 (A) *Mandatory Actions.* – If a person referred to in Section 3(B) refuses to or does not
11 adequately carry out the actions described in that section within the time period and in the
12 manner prescribed by the Secretary, the Secretary shall--

13 (1) Have authority to control and possess the food, including ordering the
14 shipment of the food from a food establishment, such as an establishment that holds,
15 stores, or transports food or food ingredients, to the Secretary--

16 (a) At the expense of such food establishment; or

17 (b) In an emergency, as determined by the Secretary, at the expense of the
18 Secretary; and

19 (2) By order, require, as the Secretary determines to be necessary, the person to
20 immediately--

21 (a) Cease distribution of the food; and

22 (b) Notify all persons--

23 (i) Processing, distributing, or otherwise handling the food to
24 immediately cease such activities with respect to the food; or

25 (ii) If the food has been distributed, transported, or sold, to
26 immediately cease distribution of the food.

27 (B) *Notification to Consumers by Secretary.* – The Secretary shall, as the Secretary
28 determines to be necessary, provide notice of the finding of the Secretary under paragraph (1)--

1 (1) To consumers to whom the food was, or may have been, distributed; and

2 (2) To national and local public health officials.

3 (C) *Nondistribution by Notified Persons.* – A person that processes, distributes, or
4 otherwise handles the food, or to which the food has been distributed, transported, or sold, and
5 that is notified under Section 3(B)(2) or subsection (A)(2)(b) of this Section shall immediately
6 cease distribution of the food.

7 (D) *Availability of Records to Secretary.* – Each person referred to in Section 3 that
8 processed, distributed, or otherwise handled food shall make available to the Secretary
9 information necessary to carry out this subsection, as determined by the Secretary, regarding--

10 (1) Persons that processed, distributed, or otherwise handled the food; and

11 (2) Persons to which the food has been transported, sold, distributed, or otherwise
12 handled.

13 (E) *Informal Hearings on Orders.* –

14 (1) *In General.* – The Secretary shall provide any person subject to an order under
15 subsection (A) with an opportunity for an informal hearing, to be held as soon as
16 practicable but not later than 2 business days after the issuance of the order.

17 (2) *Scope of the Hearing.* – In a hearing under paragraph (1), the Secretary shall
18 consider the actions required by the order and any reasons why the food that is the subject
19 of the order should not be recalled.

20 (F) *Post-Hearing Recall Orders.* –

21 (1) *Amendment of Order.* – If, after providing an opportunity for an informal
22 hearing under subsection (E), the Secretary determines that there is a reasonable
23 probability that the food that is the subject of an order under subsection (a), if consumed,
24 would present a threat to the public health, the Secretary, as the Secretary determines to
25 be necessary, may--

26 (a) Amend the order to require recall of the food or other appropriate
27 action;

28 (b) Specify a timetable in which the recall shall occur;

1 (c) Require periodic reports to the Secretary describing the progress of the
2 recall; and

3 (d) Provide notice of the recall to consumers to whom the food was, or
4 may have been, distributed.

5 (2) *Vacation of Orders.* – If, after providing an opportunity for an informal
6 hearing under subsection (E), the Secretary determines that adequate grounds do not exist
7 to continue the actions required by the order, the Secretary shall vacate the order.

8 (G) *Remedies Not Exclusive.* – The remedies provided in this section shall be in addition
9 to, and not exclusive of, other remedies that may be available.

10 SECTION 5. *Foreign Inspections; Imports.*

11 (A) *Authority to Inspect.* – The Secretary shall have the authority to visit any foreign
12 country that imports to the Philippines human or pet food. Such a visit shall be for the purpose of
13 auditing the food safety or pet food programs of such foreign country or to conduct
14 investigations in the event that a food or ingredient of a food is found to violate this Act.

15 (B) *Imports.* –

16 (1) *In General.* – Not later than 2 years after the date of enactment of this Act, the
17 Secretary shall establish a system under which a foreign government or foreign
18 manufacturer, importer, distributor, or retailer that seeks to import food to the Philippines
19 shall submit a request for certification to the Secretary.

20 (2) *Certification Standard.* – A foreign government or foreign manufacturer,
21 importer, distributor, or retailer requesting a certification to import food to the Philippines
22 shall demonstrate, in a manner determined appropriate by the Secretary, that food
23 produced under the supervision of a foreign government or by the foreign manufacturer,
24 importer, distributor, or retailer has met standards for food safety, inspection, labeling,
25 and consumer protection that are at least equivalent to standards applicable to food
26 produced in the Philippines.

27 (3) *Certification Approval.* –

1 (a) *Request By Foreign Government.* – Prior to granting the certification
2 request of a foreign government, the Secretary shall review, audit, and certify the
3 food safety program of a requesting foreign government, including all statutes,
4 regulations, and inspection authority, as at least equivalent to the food safety
5 program in the Philippines, as demonstrated by the foreign government.

6 (b) *Request By Foreign Establishment.* – Prior to granting the certification
7 request of a foreign manufacturer, importer, distributor, or retailer that seeks to
8 import food to the Philippines, the Secretary shall certify, based on an onsite
9 inspection, the food safety programs and procedures of a requesting foreign firm
10 as at least equivalent to the food safety programs and procedures of the
11 Philippines.

12 (4) *Limitation.* – A foreign government or foreign manufacturer, importer,
13 distributor, or retailer approved by the Secretary to import food to the Philippines
14 under this Section shall be certified to export only the approved food products to
15 the Philippines for a period not to exceed five (5) years.

16 (5) *Withdrawal of Certification.* – The Secretary may withdraw
17 certification of any food from a foreign government or foreign manufacturer,
18 importer, distributor, or retailer that seeks to import food to the Philippines --

19 (a) If such food is linked to an outbreak of human illness;

20 (b) Following an investigation by the Secretary that finds that the
21 food safety programs and procedures of the foreign government or foreign
22 manufacturer, importer, distributor, or retailer are no longer equivalent to
23 the food safety programs and procedures in the Philippines ; or

24 (c) Following a refusal to allow Philippines officials to conduct
25 such audits and investigations as may be necessary to fulfill the
26 requirements under this section.

27 (6) *Renewal of Certification.* – The Secretary shall audit a foreign
28 government and a foreign manufacturer, importer, distributor, or retailer that

1 seeks to import food to the Philippines at least every five (5) years to ensure the
2 continued compliance with the standards set forth in this section.

3 (7) *Required Routine Inspection.* – The Secretary shall routinely inspect
4 food and food animals, via a physical examination, before it enters the Philippines
5 to ensure that it is--

6 (a) Safe;

7 (b) Labeled as required for food produced in the Philippines; and

8 (c) Otherwise meets requirements under this Act.

9 (8) *Records Inspection-* The responsible party or importer shall permit an
10 authorized person to have access to records required to be maintained under this
11 section during an inspection pursuant to this Act

12 (9) *Enforcement.* – The Secretary is authorized to--

13 (a) Deny importation of food from any foreign government that
14 does not permit Philippine officials to enter the foreign country to conduct
15 such audits and inspections as may be necessary to fulfill the requirements
16 under this Section;

17 (b) Deny importation of food from any foreign government or
18 foreign manufacturer, importer, distributor, or retailer that does not
19 consent to an investigation by the Administration when food from that
20 foreign country or foreign firm is linked to a food-borne illness outbreak
21 or is otherwise found to be adulterated or mislabeled; and

22 (c) Promulgate rules and regulations to carry out the purposes of
23 this section, including setting terms and conditions for the destruction of
24 products that fail to meet the standards of this Act.

25 (10) *Detention and Seizure.* – Any food imported for consumption in the
26 Philippines may be detained, seized, or condemned pursuant to this Act.

27 SECTION 6. *Ensuring Efficient and Effective Communications During A Recall.* – The
28 Secretary shall, during an ongoing recall of human or pet food shall--

1 (A) Work with companies, relevant professional associations, and other organizations to
2 collect and aggregate information pertaining to the recall;

3 (B) Use existing networks of communication including electronic forms of information
4 dissemination to enhance the quality and speed of communication with the public; and

5 (C) Post information regarding recalled products on the Internet website of the Food and
6 Drug Administration, hereafter the Administration, in a consolidated, searchable form that is
7 easily accessed and understood by the public.

8 SECTION 7. *Ensuring the Safety of Pet Food.*

9 (A) *Processing and Ingredient Standards-* Not later than eighteen (18) months after the
10 date of enactment of this Act, the Secretary of Health, in consultation with the other relevant
11 stakeholder groups, including veterinary medical associations, animal health organizations, and
12 pet food manufacturers, shall by regulation establish--

13 (1) Processing and ingredient standards with respect to feed, pet food, animal
14 waste, and ingredient definitions; and

15 (2) Updated standards for the labeling of pet food that includes nutritional
16 information and ingredient information.

17 (B) *Early Warning Surveillance Systems and Notification During Pet Food Recalls-*

18 (1) *In General-* Not later than one hundred and eighty (180) days after the date of
19 enactment of this Act, the Secretary shall by regulation establish an early warning and
20 surveillance system to identify contaminations of the pet food supply and outbreaks of
21 illness from pet food. In establishing such system, the Secretary shall--

22 (a) Use surveillance and monitoring mechanisms similar to, or in
23 coordination with, those mechanisms used by the United States Center for Disease
24 Control and Prevention to monitor human health;

25 (b) Consult with relevant professional associations and private sector
26 veterinary hospitals; and

27 (c) Work with Health Alert Networks and other notification networks to
28 inform veterinarians and relevant stakeholders during any recall of pet food.

1 (2) *Authorization of Appropriations.* – There are authorized to be appropriated to
2 carry out paragraph (1) such sums as may be necessary.

3 SECTION 8. *Annual Report to Congress.* – The Secretary of Health shall, on an annual
4 basis, submit to the appropriate Committees of the Senate and the House of Representatives a
5 report that includes, with respect to the preceding one (1) year period--

6 (A) The number and amount of food products imported into the Philippines, aggregated
7 by country, and type of food, if any;

8 (B) A listing of the number of inspectors of imported food products and the number of
9 inspections performed on such products; and

10 (C) Aggregated data on the findings of such inspections, including data related to
11 violations of the Food, Drug, and Cosmetic Act, and enforcement mechanisms used to follow-up
12 on such findings and violations.

13 SECTION 9. *Separability Clause.* – If any provision or part hereof, is held invalid or
14 unconstitutional, the remainder of the law or the provision not otherwise affected shall remain
15 valid and subsisting.

16 SECTION 10. *Repealing Clause.* – Any law, presidential decree or issuance, executive
17 order, letter of instruction, administrative order, rule or regulation contrary to, or inconsistent
18 with, the provisions of this Act is hereby repealed, modified or amended accordingly.

19 SECTION 11. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after its
20 publication in at least two (2) newspapers of general circulation.

21 Approved,

/rgs