

# Food, Drug, and Cosmetic Act

## 20-56-201. Title.

This subchapter may be cited as the “Food, Drug, and Cosmetic Act”.

## 20-56-202. Definitions.

As used in this subchapter, unless the context otherwise requires:

- (1) “Abandoned drug” means a drug which:
  - (A) Is in the possession or control of a person who is without authority under law to possess, purchase, or sell;
  - (B) In its present circumstances presents a danger to the public health or safety;
  - (C) Is not properly controlled by the person who by law has authority to possess, purchase, or sell the drug;
  - (D) Is the subject of a recall order by the United States Food and Drug Administration but has not been returned within a reasonable time after the publication of that order;
  - (E) Is adulterated, misbranded, or a new drug as defined in this subchapter or a drug intended solely for investigational use and approved by the United States Food and Drug Administration as such for which there is no approval in effect; or
  - (F) Is otherwise rendered unsafe for use as a result of fire, flood, or other natural disaster;
- (2) “Advertisement” means all representations disseminated in any manner, or by any means other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics;
- (3) The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or other use which involves prolonged contact with the body;
- (4) “Board” means the State Board of Health;
- (5) “Contaminated with filth” applies to any food, drug, device, or cosmetic not securely protected from dust, dirt, and, as far as may be necessary and by all reasonable means, from all foreign or injurious contaminations;
- (6) “Cosmetic” means:
  - (A) Articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance; and
  - (B) Articles intended for use as a component of any such articles, except that the term shall not include soap;

- (7) “Counterfeit substance” means a drug which, or the container or labeling of which, without authorization bears the trademark, trade name, or other identifying mark, imprint, or device, or any likeness thereof, of a drug manufacturer, processor, packer, or distributor other than the person or persons who, in fact, manufactured, processed, packed, or distributed the drug and which thereby falsely purports or is represented to be the product of or to have been packed or distributed by another drug manufacturer, processor, packer, or distributor;
- (8) “Device”, except when used in subdivision (16)(B) of this section, and in § 20-56-209(6), § 20-56-211(3), § 20-56-213(3), and § 20-56-215, means instruments, apparatus, and contrivances, including their components, parts, and accessories which are intended:
  - (A) For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; or
  - (B) To affect the structure or any function of the bodies of humans or other animals;
- (9) “Drug” means:
  - (A) Articles recognized in the official *United States Pharmacopoeia*, the official *Homeopathic Pharmacopoeia of the United States*, the official *National Formulary*, or in any supplement to any of them;
  - (B) Articles intended for use in diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals;
  - (C) Articles other than food intended to affect the structure or any function of the bodies of humans or other animals; and
  - (D) Articles intended for use as a component of any article specified in subdivisions (9)(A)-(C) of this section, but does not include devices or their components, parts, or accessories;
- (10) “Federal act” means the Federal Food, Drug, and Cosmetic Act;
- (11) “Food” means:
  - (A) Articles used for food or drink for humans or other animals;
  - (B) Chewing gum; and
  - (C) Articles used for components of any such article;
- (12) “Human growth hormone” means somatrem, somatropin, or an analogue of either of them;
- (13) “Human growth hormone” includes both cadaver source and biosynthetic human growth hormones;
- (14) “Immediate container” does not include package liners;

- (15) “Label” means a display of written, printed, or graphic matter upon the immediate container of any article. A requirement made by or under authority of this subchapter that any word, statement, or other information appear on the label shall not be considered to be complied with unless the word, statement, or other information also appears on the outside container or wrapper, if there is any, of the retail package of the article, or is easily legible through the outside container or wrapper;
- (16)
- (A) “Labeling” means all labels and other written, printed, or graphic matter upon an article or any of its containers or wrappers, or accompanying the article.
- (B) If any article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then, in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of the representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual;
- (17) “New drug” means:
- (A) Any drug the composition of which is such that the drug is not generally recognized among experts who are qualified by scientific training and experience to evaluate the safety of drugs as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or
- (B) Any drug the composition of which is such that the drug, as a result of investigations to determine its safety for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions;
- (18) “Official compendium” means the official *United States Pharmacopoeia*, the official *Homeopathic Pharmacopoeia of the United States*, the official *National Formulary*, or any supplement to any of them; and
- (19) “Person” includes an individual, partnership, corporation, or association.

### **20-56-203. Applicability.**

The provisions of this subchapter regarding the selling of food, drugs, devices, or cosmetics shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale and includes the sale, dispensing, and giving of any such article and the supplying or applying of the articles in the conduct of any food, drug, or cosmetic establishment.

### **20-56-204. Notice of minor violations.**

Nothing in this subchapter shall be construed as requiring the State Board of Health to report for the institution of proceedings under this subchapter any minor violations of this subchapter whenever the board believes that the public interest will be adequately served under the circumstances by a suitable written notice or warning to the violators.

### **20-56-205. Penalties – Exceptions.**

- (a) Any person who violates any of the provisions of this subchapter shall be guilty of a misdemeanor and for such offense shall, upon conviction, be fined an amount not to exceed five hundred dollars (\$500), or shall be sentenced to not more than one (1) year's imprisonment, or both fine and imprisonment, in the discretion of the court. For each subsequent offense and conviction thereof, the person shall be fined not less than one thousand dollars (\$1,000) or sentenced to one (1) year's imprisonment, or both fine and imprisonment, in the discretion of the court.
- (b) No person shall be subject to the penalties of subsection (a) of this section for having violated § 20-56-215(1) or § 20-56-215(3) if he or she establishes a guaranty or undertaking, signed by and containing the name and address of the person residing in the State of Arkansas from whom he or she received in good faith the article, to the effect that the article is not adulterated or misbranded within the meaning of this subchapter and designating this subchapter.
- (c) No publisher, radio broadcast licensee, or agency or medium for the dissemination of an advertisement, but not including the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this section by reason of the dissemination by him, her, or it of the false advertisement unless he, she, or it has refused, on the request of the State Board of Health, to furnish the board the name and post office address of the manufacturer, packer, distributor, seller, or advertising agency residing in the State of Arkansas who caused him, her, or it to disseminate the advertisement.
- (d)
  - (1) Except as provided in subdivision (d)(2) of this section, any person who distributes or possesses with intent to distribute any human growth hormone or counterfeit substance purporting to be a human growth hormone for any use in humans other than the treatment of disease pursuant to the order of a physician shall be deemed guilty of a Class D felony.
  - (2) Any person who distributes or possesses with the intent to distribute to an individual under eighteen (18) years of age, any human growth hormone or counterfeit substance purporting to be a human growth hormone for any use in humans other than the treatment of disease pursuant to the order of a physician shall be deemed guilty of a Class C felony.
  - (3) Possession by any person of more than two hundred (200) capsules or tablets or more than sixteen cubic centimeters (16 cm<sup>3</sup>) of human growth hormone or counterfeit substance purporting to be a human growth hormone shall create a rebuttable presumption that the person possesses such substances with the intent to deliver in violation of this subsection. However, this presumption may be overcome by the submission of evidence sufficient to create a reasonable doubt that the person charged possessed the substance with intent to deliver.

### **20-56-206. Duty of prosecuting attorney.**

It shall be the duty of each prosecuting attorney to whom the State Board of Health reports any violation of this subchapter to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law.

### **20-56-207. Injunctions authorized.**

In addition to the remedies provided in § 20-56-205, the State Board of Health is authorized to apply to the proper circuit court for, and the court shall have jurisdiction, upon hearing and for cause shown, to grant, a temporary or permanent injunction restraining any person from violating any provision of § 20-56-215, whether or not there exists an adequate remedy at law.

**20-56-208. Adulterated food.**

A food shall be deemed to be adulterated:

- (1)
  - (A) If the food bears or contains any poisonous or deleterious substance which may render the food injurious to health.
  - (B) However, if the substance is not an added substance, the food shall not be considered adulterated under subdivision (1)(A) of this section if the quantity of the substance in the food does not ordinarily render the food injurious to health;
- (2) If the food bears or contains any added poisonous or added deleterious substance which is unsafe within the meaning of § 20-56-218;
- (3) If the food consists, in whole or in part, of a diseased, contaminated, filthy, putrid, or decomposed substance, or if the food is otherwise unfit for human consumption;
- (4) If the food has been produced, prepared, packed, or held under insanitary conditions where the food may have become contaminated with filth, or where the food may have been rendered diseased, unwholesome, or injurious to health;
- (5) If the food is the product of a diseased animal or an animal that has died otherwise than by slaughter or that has been fed, or has otherwise fed upon, the uncooked offal of other animals;
- (6) If the food's container is composed, in whole or in part, of any poisonous or deleterious substance which may render the food injurious to health;
- (7) If any valuable constituent has been, in whole or in part, omitted or abstracted from the food;
- (8) If any substance has been substituted wholly or in part for the food;
- (9) If damage or inferiority has been concealed in any manner;
- (10) If any substance has been added, mixed, or packed with the food to increase the food's bulk or weight, to reduce the food's quality or strength, or to make the food appear better or of greater value than the food is;
- (11)
  - (A) If the food is confectionery and the food bears or contains any alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of one percent (4/10 of 1%), harmless natural wax not in excess of four-tenths of one percent (4/10 of 1%), harmless natural gum, and pectin.
  - (B) However, this subdivision (11) shall not apply to:
    - (i) Confectionery containing less than five percent (5%) by volume of alcohol, if the alcohol is in a nonliquid form as a result of being mixed with other substances; or
    - (ii) Chewing gum containing harmless nonnutritive masticatory substances; or
- (12) If the food bears or contains a coal tar color other than one from a batch which has been certified under authority of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301.

## **20-56-209. Misbranded food.**

A food shall be deemed to be misbranded:

- (1) If its labeling is false or misleading in any particular;
- (2) If it is offered for sale under the name of another food;
- (3) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated;
- (4) If its container is so made, formed, or filled as to be misleading;
- (5) If in package form, unless it bears a label containing:
  - (A) The name and place of business of the manufacturer, packer, or distributor; and
  - (B) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, provided that reasonable variations shall be permitted, and exemptions as to small packages shall be established by rules prescribed by the State Board of Health;
- (6) If any word, statement, or other information required by or under authority of this subchapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as considered as compared with other words, statements, designs, or devices in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- (7) If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by rules or regulations as provided by § 20-56-219 or by the Federal Food, Drug, and Cosmetic Act, unless:
  - (A) It conforms to the definition and standard; and
  - (B) Its label bears the name of the food specified in the definition and standard, and, insofar as may be required by rules or regulations, the common names of optional ingredients other than spices, flavoring, and coloring present in the food;
- (8) If it purports to be or is represented as:
  - (A) A food for which a standard of quality has been prescribed by rules or regulations as provided in § 20-56-219 or by the Federal Food, Drug, and Cosmetic Act and its quality falls below the standard, unless its label bears, in such manner and form as the rules or regulations specify, a statement that it falls below the standard; or
  - (B) A food for which a standard of fill of container has been prescribed by rules or regulations as provided by § 20-56-219, and it falls below the standard of fill of container applicable thereto unless its label bears, in such manner and form as the rules or regulations specify, a statement that it falls below the standard;

- (9) If it is not subject to the provisions of subdivision (7) of this section, unless it bears labeling clearly giving:
  - (A) The common or usual name of the food, if there is any; and
  - (B)
    - (i) In case it is fabricated from two (2) or more ingredients, the common or usual name of each ingredient, except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each.
    - (ii) However, to the extent that compliance with the requirements of subdivision (9)(B)(i) of this section is impractical or results in deception or unfair competition, exemptions shall be established by rules promulgated by the board;
- (10) If it purports to be or is represented for special dietary uses unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the board determines to be, and by rules prescribed as necessary in order to fully inform purchasers as to its value for such uses;
- (11) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative unless it bears labeling stating that fact, provided that to the extent that compliance with the requirements of this subdivision (11) is impracticable, exemptions shall be established by rules promulgated by the board; and
- (12) If it is a product intended as an ingredient of another food and, when used according to the directions of the purveyor, will result in the final food product's being adulterated or misbranded.

**20-56-210. Adulterated drug or device.**

A drug or device shall be deemed to be adulterated:

- (1)
  - (A) If it consists in whole or in part of any filthy, putrid, or decomposed substance;
  - (B) If it has been produced, prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth or whereby it may have been rendered injurious to health;
  - (C) If it is a drug and its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or
  - (D) If it is a drug and it bears or contains, for purposes of coloring only, a coal tar color other than one from a batch certified under the authority of the Federal Food, Drug, and Cosmetic Act;
- (2) If it purports to be or is represented as a drug, the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in the compendium. The determination as to strength, quality, or purity of the drug or device shall be made in accordance with the tests or methods of assay set forth in the compendium, or in the absence of or inadequacy of the tests or methods of assay, those prescribed under authority of the Federal Food, Drug, and Cosmetic Act. No drug defined in an official compendium shall be deemed to be adulterated under this subdivision (2) because it differs from the standard of strength, quality, or purity set forth in the compendium if its difference in strength, quality, or purity from the standard is plainly stated on its label. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia;

- (3) If it is not subject to the provisions of subdivision (2) of this section and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess; or
- (4) If it is a drug and any substance has been:
  - (A) Mixed or packed therewith so as to reduce its quality or strength; or
  - (B) Substituted wholly or in part therefor.

### **20-56-211. Misbranded drug or device.**

A drug or device shall be deemed to be misbranded:

- (1) If its labeling is false or misleading in any particular;
- (2) If in package form unless it bears a label containing:
  - (A) The name and place of business of the manufacturer, packer, or distributor. However, in the case of any drug subject to subdivision (11) of this section, the label shall contain the name and place of business of the manufacturer of the final dosage form of the drug and, if different, the name and place of business of the packer or distributor thereof; and
  - (B) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count. Reasonable variations shall be permitted, and exemptions as to small packages shall be established, by rules prescribed by the State Board of Health;
- (3) If any word, statement, or other information required by or under authority of this subchapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or devices in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- (4) If it is for use by humans and contains any quantity of narcotic or hypnotic substance, alpha-sucaine, barbituric acid, beta-sucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, or sulphonmethane, or any chemical derivative of such substances, which derivative has been designated as habit-forming by regulations promulgated under § 502(d) [repealed] of the Federal Food, Drug, and Cosmetic Act unless its label bears the name and quantity or proportion of the substance or derivative and in juxtaposition therewith the statement “Warning — May be habit-forming”;
- (5) If it is a drug and is not designated solely by a name recognized in an official compendium unless its label bears:
  - (A) The common or usual name of the drug, if there is any; and
  - (B) In case it is fabricated from two (2) or more ingredients, the common or usual name of each active ingredient, including the kind and quantity or proportion of any alcohol, and also including, whether active or not, the name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetophenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, glucosides, mercury, ouabain, stophanthin, strychnine, thyroid, or any derivative or preparation of any such substances contained therein. However, to the extent that compliance with the requirements of this subdivision (5)(B) is impracticable, exemptions shall be established by rules promulgated by the board;



- (6) Unless its labeling bears:
  - (A) Adequate directions for use; and
  - (B) Such adequate warning against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form as are necessary for the protection of users. However, where any requirement of subdivision (6)(A) of this section as applied to any drug or device is not necessary for the protection of the public health, the board shall promulgate rules exempting the drug or device from the requirements;
- (7) If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein. However, the method of packing may be modified with the consent of the board. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia;
- (8) If it has been found by the board to be a drug liable to deterioration, unless it is packaged in such form and manner and its label bears a statement of such precautions as the board shall by rule require as necessary for the protection of public health. No such rules shall be established for any drug recognized in an official compendium until the board shall have informed the appropriate body charged with the revision of the compendium of the need for the packaging or labeling requirements and the body shall have failed within a reasonable time to prescribe the requirements;
- (9)
  - (A) If it is a drug and its container is so made, formed, or filled as to be misleading.
  - (B) If it is an imitation of another drug.
  - (C) If it is offered for sale under the name of another drug;
- (10) If it is dangerous to health when used in the dosage or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof; or
- (11) If it is a drug other than those covered by Acts 1951, No. 184 [repealed], and intended for use by humans which:
  - (A) Is a habit-forming drug to which subdivision (4) of this section applies;
  - (B) Because of its toxicity or other potentiality for harmful effect, or the method of use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a physician, dentist, or veterinarian; or
  - (C) Is limited by an effective application under § 505 [repealed] of the Federal Food, Drug, and Cosmetic Act to use under professional supervision by a physician, dentist, or veterinarian unless it is dispensed only:
    - (i) Upon a written prescription of a physician, dentist, or veterinarian; or

- (ii)
  - (a) By refilling a written or oral prescription if the refilling is authorized by the prescriber.
  - (b) However, a drug dispensed by filling or refilling a written prescription of a physician, dentist, or veterinarian is exempt from the requirements of this section except subdivisions (1) and (9) of this section if the drug bears a label containing:
    - (1) The name and address of the dispenser;
    - (2) The serial number and date of the prescription or its filling;
    - (3) The name of the prescriber;
    - (4) If stated in the prescription, the name of the patient; and
    - (5) The directions for use and cautionary statements, if any, contained in the prescription.
  - (c) This exemption does not apply to a drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail.

**20-56-212. Adulterated cosmetic.**

A cosmetic shall be deemed to be adulterated:

- (1) If it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling or advertisement thereof, or under such conditions of use as are customary or usual. However, this provision shall not apply to coal tar hair dye, the label of which bears the following legend conspicuously displayed thereon: "Caution — This product contains ingredients which may cause skin irritation on certain individuals, and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness", and the labeling of which bears adequate direction for such preliminary testing. For the purposes of this subdivision (1) and subdivision (5) of this section, the term "hair dye" shall not include eyelash dyes or eyebrow dyes;
- (2) If it consists in whole or part of any filthy, putrid, or decomposed substance;
- (3) If it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth or whereby it may have been rendered injurious to health;
- (4) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or
- (5) If it is not a hair dye and it bears or contains a coal tar color other than one from a batch which has been certified under authority of the Federal Food, Drug, and Cosmetic Act.

**20-56-213. Misbranded cosmetic.**

A cosmetic shall be deemed to be misbranded:

- (1) If its labeling is false or misleading in any particular;
- (2) If in package form unless it bears a label containing:
  - (A) The name and place of business of the manufacturer, packer, or distributor; and
  - (B) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, provided that reasonable variations shall be permitted and exemptions as to small packages shall be established by rules prescribed by the State Board of Health;
- (3) If any word, statement, or other information required by or under authority of this subchapter to appear on the label is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or devices, in the labeling and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or
- (4) If its container is so made, formed, or filled as to be misleading.

**20-56-214. False or misleading advertisement.**

- (a) An advertisement of a food, drug, device, or cosmetic shall be deemed to be false if it is false or misleading in any particular.
  - (1)
    - (A) For the purpose of this subchapter, the advertisement of a drug or device shall also be deemed to be false if the advertisement represents the drug or device to have any effect on any of the following diseases or conditions:
      - (i) Albuminuria;
      - (ii) Appendicitis;
      - (iii) Arteriosclerosis;
      - (iv) Blood poison;
      - (v) Bone disease;
      - (vi) Bright's disease;
      - (vii) Cancer;
      - (viii) Carbuncles;
      - (ix) Cholecystitis;
      - (x) Diabetes;
      - (xi) Diphtheria;
      - (xii) Dropsy;

- (xiii) Erysipelas;
- (xiv) Gallstones;
- (xv) Heart and vascular diseases;
- (xvi) High blood pressure;
- (xvii) Mastoiditis;
- (xviii) Measles;
- (xix) Meningitis;
- (xx) Mumps;
- (xxi) Nephritis;
- (xxii) Otitis media;
- (xxiii) Paralysis;
- (xxiv) Pneumonia;
- (xxv) Poliomyelitis or infantile paralysis;
- (xxvi) Prostate gland disorders;
- (xxvii) Pyelitis;
- (xxviii) Scarlet fever;
- (xxix) Sexual impotence;
- (xxx) Sexually transmitted disease;
- (xxxi) Sinus infection;
- (xxxii) Smallpox;
- (xxxiii) Tuberculosis;
- (xxxiv) Tumors;
- (xxxv) Typhoid; or
- (xxxvi) Uremia.

- (B) An advertisement of a drug or device shall not be deemed to be false under this subsection if the advertisement is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of the drug or device.

- (2) However, whenever the State Board of Health determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named in subdivision (b)(1)(A) of this section, the board shall by rule authorize the advertisement of drugs having curative or therapeutic effect for the disease, subject to such conditions and restrictions as the board may deem necessary in the interests of public health.
- (3) This subsection shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious.

#### **20-56-215. Prohibited acts.**

The following acts and the causing thereof within the State of Arkansas are prohibited:

- (1) The manufacture or sale, delivery, holding, or offering for sale of any food, drug, device, or cosmetic that is adulterated, misbranded, or abandoned;
- (2) The adulteration, misbranding, or abandoning of any food, drug, device, or cosmetic;
- (3) The receipt in commerce of any food, drug, device, or cosmetic knowing it to be adulterated, misbranded, or abandoned, and the delivery or proffered delivery thereof for pay or otherwise;
- (4) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of § 20-56-217;
- (5) The dissemination of any false advertisement;
- (6) The refusal to permit entry or inspection or to permit the taking of a sample, as authorized by § 20-56-220;
- (7) The giving of a guaranty or undertaking which is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of, the person residing in the State of Arkansas from whom he or she received in good faith the food, drug, device, or cosmetic;
- (8) The removal or disposal of a detained or embargoed article in violation of § 20-56-216;
- (9) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to, a food, drug, device, or cosmetic if the act is done while the article is held for sale and results in the article's being misbranded; and
- (10) Forging, counterfeiting, simulating, falsely representing or, without proper authority, using any mark, stamp, tag, label, or other identification device authorized or required by rules promulgated under the provisions of this subchapter.

#### **20-56-216. Adulterated, misbranded, or abandoned food, drug, device, or cosmetic – Procedures.**

- (a)
  - (1) Whenever an authorized agent of the State Board of Health finds or has probable cause to believe that any food, drug, device, or cosmetic is adulterated, so misbranded, or abandoned as to be dangerous or fraudulent within the meaning of this subchapter, he or she shall affix to the article a tag or other appropriate marking giving notice that the article is, or is suspected of being, adulterated, misbranded, or abandoned and has been detained or embargoed and warning all persons not to move, transfer from one (1) place to another, remove, or dispose of the article by sale or otherwise until written permission or order for movement, transfer, removal, or disposal is given by the agent or the court.
  - (2) It shall be unlawful for any person to move, transfer, remove, or dispose of the detained or embargoed article by sale or otherwise without permission.

- (b)
  - (1) When an article detained or embargoed under subsection (a) of this section has been found by an agent to be adulterated, misbranded, or abandoned, the agent shall petition the judge of the circuit court in whose jurisdiction the article is detained or embargoed for a libel for condemnation of the article.
  - (2) When the agent has found that an article so detained or embargoed is not adulterated, misbranded, or abandoned, then he or she shall remove the tag or other marking.
- (c)
  - (1) If the court finds that a detained or embargoed article is adulterated, misbranded, or abandoned, then the article, after entry of the decree, shall be destroyed at the expense of the claimant when under the supervision of the agent of the board. All court costs and fees and storage and other proper expenses shall be taxed against the claimant of the article or his or her agent.
  - (2) When the adulteration, misbranding, or abandoning can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that the article shall be so labeled or processed, has been executed, may direct that the article be delivered to the claimant thereof for labeling or processing under the supervision of an agent of the board.
  - (3) The expense of the supervision shall be paid by the claimant.
  - (4) The bond shall be returned to the claimant of the article upon representation to the court by the board that the article is no longer in violation of this subchapter and that the expenses of the supervision have been paid.
- (d) Whenever the board or any of its authorized agents shall find in any room, building, vehicle of transportation, or other structure any meat, seafood, poultry, vegetable, fruit, or other perishable articles which are unsound or contain any filthy, decomposed, or putrid substance or which may be poisonous or deleterious to health or otherwise unsafe, those articles being declared to be a nuisance, the board or its authorized agent shall immediately condemn or destroy those articles or in any other manner render those articles unsalable as human food.

**20-56-217. Contamination with microorganisms.**

- (a) Whenever the State Board of Health finds after investigation that the distribution in Arkansas of any class of food may, by reason of contamination with microorganisms during manufacture, processing, or packing thereof in any locality, be injurious to health and that the injurious nature cannot be adequately determined after the articles have entered commerce, it then, and in that case only, shall promulgate rules providing for the issuance of permits to manufacturers, processors, or packers of the class of food in the locality. To these permits shall be attached such conditions governing the manufacture, processing, or packing of the class of food for such temporary period of time as may be necessary to protect the public health. After the effective date of the rules and during the temporary period, no person shall introduce or deliver for introduction into commerce any food manufactured, processed, or packed by any manufacturer, processor, or packer unless the manufacturer, processor, or packer holds a permit issued by the board as provided by the rules.
- (b) The board is authorized to suspend immediately upon notice any permit issued under authority of this section if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of the permit. The board shall, immediately after prompt hearing and an inspection of the establishment, reinstate the permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued or as amended.
- (c) Any officer or employee designated by the board shall have access to any factory or establishment, the operator of which holds a permit from the board, for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for the inspection shall be grounds for suspension of the permit until access is freely given by the operator.

**20-56-218. Poisonous or deleterious substance – Rules for use.**

- (a) Any poisonous or deleterious substance added to any food, except where the substance is required in the production thereof or cannot be avoided by good manufacturing practice, shall be deemed to be unsafe for purposes of the application of § 20-56-208(2), but when the substance is so required or cannot be so avoided, the State Board of Health shall promulgate rules limiting the quantity therein or thereon to such extent as the board finds necessary for the protection of the public health. Any quantity exceeding the limits so fixed shall also be deemed to be unsafe for purposes of the application of § 20-56-208(2).
- (b) While such a rule is in effect limiting the quantity of any substance in the case of any food, the food shall not, by reason of bearing or containing any added amount of the substance not in excess of the limit established by rule, be considered to be adulterated within the meaning of § 20-56-208(1).
- (c) In determining the quantity of the added substance to be tolerated in or on different articles of food, the board shall take into account the extent to which the use of the substance is required or cannot be avoided in the production of each article and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances.

**20-56-219. State Board of Health – Authority to regulate.**

- (a)
  - (1) The authority to promulgate rules for the efficient enforcement of this subchapter is vested in the State Board of Health.
  - (2) The board is authorized to make the rules promulgated under this subchapter conform, insofar as practicable, with those promulgated under the Federal Food, Drug, and Cosmetic Act.
- (b)
  - (1) Before promulgating any rules contemplated by § 20-56-209(10), § 20-56-211(4), § 20-56-211(6)-(8), § 20-56-214(b), § 20-56-217, or subsection (c) of this section, the board shall give appropriate notice of the proposal and of the time and place for a hearing.
  - (2) The rule so promulgated shall become effective on a date fixed by the board which shall not be before thirty (30) days after its promulgation.
  - (3) The rule may be amended or repealed in the same manner as is provided for its adoption, except that, in the case of a rule amending or repealing a rule, the board, to such an extent as it deems necessary in order to prevent undue hardship, may disregard the foregoing provisions regarding notice, hearing, or effective date.
- (c)
  - (1) Whenever in the judgment of the board such action will promote honesty and fair dealing in the interest of consumers, the board shall promulgate rules fixing and establishing for any food or class of food a reasonable definition and standard of identity or reasonable standard of quality or fill of container.
  - (2) In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the board shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label.
  - (3) The definitions and standards so promulgated shall conform so far as practicable to the definitions and standards promulgated under authority of the Federal Food, Drug, and Cosmetic Act.

**20-56-220. State Board of Health – Inspectors.**

- (a) The State Board of Health or its authorized agent shall have free access at all reasonable hours to any factory, warehouse, or establishment in which foods, drugs, devices, or cosmetics are manufactured, processed, packed, or held for introduction into commerce or to enter any vehicle being used to transport or hold such foods, drugs, devices, or cosmetics in commerce, for the purpose of:
  - (1) Inspecting the factory, warehouse, establishment, or vehicle to determine if any of the provisions of this subchapter are being violated; and
  - (2) Securing samples or specimens of any food, drug, device, or cosmetic after paying or offering to pay for the samples.
- (b) It shall be the duty of the board to make or cause to be made examinations of samples secured under the provisions of this section to determine whether or not any provision of this subchapter is being violated.

**20-56-221. State Board of Health – Publication and dissemination of information.**

- (a) The State Board of Health may cause reports to be published summarizing all judgments, decrees, and court orders which have been rendered under this subchapter, including the nature of the charge and the disposition thereof.
- (b) The board may also cause to be disseminated such information regarding food, drugs, devices, and cosmetics as the board deems necessary in the interest of the public health and the protection of the consumer against fraud.
- (c) Nothing in this section shall be construed to prohibit the board from collecting, reporting, and illustrating the results of the investigations of the board.

**20-56-222. State Board of Health – Enforcement of subchapter.**

- (a) The enforcement of the provisions of this subchapter and all acts ancillary to it shall be the duty of the Division of Environmental Health Protection of the Department of Health.
- (b) The State Board of Health is authorized to appoint the necessary personnel to properly administer this subchapter.

**20-56-223. State Board of Health – Enforcement of federal law.**

The State Board of Health is authorized to confer and cooperate with the United States Food and Drug Administration in the enforcement of the Federal Food, Drug, and Cosmetic Act as it may apply to food, liquor, drugs, and cosmetic products received in this state from other states, territories, or foreign countries.