

without substantive change from former Article 43, § 187E(b), (c), and the first sentence of (a).

Throughout this section, the former references to an "embargoed" article are deleted as unnecessary in light of the references to the detainment of and the restriction on the removal of an article.

The last sentence of former Article 43, § 187E(a), which expressly stated that it is unlawful to remove or dispose of a detained article, now appears among the enumerated prohibited acts under § 4-256 of this subtitle.

#### 4-254. ACTION AGAINST FOOD THAT POSES IMMEDIATE THREAT.

##### (A) IMMEDIATE THREAT.

(1) FOR PURPOSES OF THIS SECTION, AN "IMMEDIATE THREAT" EXISTS IF ANY MEAT, SEAFOOD, POULTRY, VEGETABLE, FRUIT, OR ANY OTHER PERISHABLE SUBSTANCE THAT IS INTENDED FOR CONSUMPTION AS FOOD:

(I) CONTAINS ANY FILTHY, DECOMPOSED, OR PUTRID SUBSTANCE;

(II) IS POISONOUS OR OTHERWISE WOULD BE INJURIOUS TO HEALTH IF CONSUMED; OR

(III) IS OTHERWISE UNSAFE.

(2) IF A FOOD POSES AN IMMEDIATE THREAT, IT SHALL BE CONSIDERED A PUBLIC NUISANCE.

##### (B) DUTY OF SECRETARY.

IF THE SECRETARY FINDS THAT A FOOD POSES AN IMMEDIATE THREAT, THE SECRETARY IMMEDIATELY SHALL DESTROY THE FOOD OR OTHERWISE MAKE THE FOOD UNUSABLE FOR CONSUMPTION BY HUMAN BEINGS.

##### (C) RIGHT OF ACTION.

THE OWNER OF A SUBSTANCE THAT IS DESTROYED OR OTHERWISE MADE UNUSABLE UNDER THIS SECTION MAY BRING A SUIT FOR DAMAGES AGAINST THE SECRETARY.

##### (D) BURDEN OF PROOF; DAMAGES.

(1) THE SECRETARY SHALL BE LIABLE UNDER THIS SUBSECTION ONLY IF THE OWNER CAN PROVE BY A PREPONDERANCE OF EVIDENCE THAT, AT THE TIME OF THE ACTION TAKEN AGAINST THE SUBSTANCE, THE SUBSTANCE DID NOT POSE AN IMMEDIATE THREAT.