

OFFICIAL GAZETTE

GOVERNMENT OF GOA

EXTRAORDINARY

GOVERNMENT OF GOA

Department of Law & Judiciary

Legal Affairs Division

Notification

7/9/2005-LA

The Goa Public Health (Amendment) Act, 2005 (Goa Act 8 of 2005), which has been passed by the Legislative Assembly of Goa on 13-1-2005 and assented to by the Governor of Goa on 15-3-2005, is hereby published for general information of the public.

S. G. Marathe, Under Secretary (Drafting).

Panaji, 16th March, 2005.

The Goa Public Health (Amendment) Act, 2005

(Goa Act 8 of 2005)

[15-3-2005]

AN

ACT

further to amend the Goa, Daman and Diu Public Health Act, 1985.

BE it enacted by the Legislative Assembly of Goa in the Fifty-fifth Year of the Republic of India as follows:—

1. *Short title and commencement.*— (1) This Act may be called the Goa Public Health (Amendment) Act, 2005.

(2) It shall be deemed to have come into force on 8th day of November, 2004.

2. *Amendment of section 2.*— In section 2 of the Goa, Daman and Diu Public Health Act, 1985 (Act 25 of 1985) (hereinafter referred to as the "principal Act"),—

(i) for clause (10), the following clause shall be substituted, namely:—

(10) "food" means any article used as food or drink for human consumption other than drugs, and includes:—

(a) any article which ordinarily enters into, or is used in the composition or preparation of, human food,

(b) any flavouring matter or condiments; and

(c) any other article, which the Government may, having regard to its use, nature, substance or quality, declare, by notification in the Official Gazette, as food.

(ii) after clause (15), the following clause shall be inserted, namely:—

"(15A) injurious food" means that food which upon consumption may cause or is likely to cause injury or is likely to be injurious or has the capacity or tendency to be injurious and cause any harm, damage, injury to the human body or its cells or tissues or any part thereof, and includes all that injurious food which the Government may, having regard to the circumstances, as

also its effect use, nature, substance or quality, declare, by notification in the Official Gazette, as injurious food for the purposes of Chapter IXA of this Act,";

(iii) after clause (30), the following clause shall be inserted, namely:—

"(30A) "sale" with its grammatical variation and cognate expression, means the sale of any article of injurious food, whether for cash or on credit or by way of exchange and whether by wholesale or retail, including free samples for human consumption or use, and includes an agreement for sale, an offer for sale, the exhibition for sale or having in possession for sale of any such article, and includes also an attempt to sell any such injurious article;"

3. *Insertion of new Chapter IXA.*— In the principal Act, after Chapter IX, the following new Chapter IXA shall be inserted, namely:—

CHAPTER IX-A

Articles injurious to Public Health

87A. *Prohibition of dealing in food articles injurious to Public Health.*— (1) No person himself or by any other person on his behalf shall manufacture for sale, or store, exhibit, sell or distribute or in any way deal with any injurious food article used for human consumption.

(2) If the Government is satisfied that the use or consumption of any injurious article of food which contains any ingredient and in such quantity which is or is likely to be injurious to public health and that in the public interest, it is necessary or expedient so to do, then, the Government may, by notification in the Official Gazette, prohibit the consumption, manufacture, sale, distribution, storing or stocking of such injurious articles of food, either in the entire State of Goa, or at such places, areas, or part thereof as the Government notifies in this regard.

87B. *Prohibition in dealing with certain articles of food in designated area.*— No substance or article of food containing tobacco or any other ingredients of tobacco, including cigarettes, pan masala, gutkha, beedies, cigars, chewing tobacco shall be manufactured for sale, sold, stored, stocked or distributed or exhibited for sale or consumed by any person within a distance of 50 meters from the following Institutions/places:

(1) All educational institution's campus including schools, colleges, university, educational boards, technical educational institutes, training centers, academic workshops, etc;

(2) All religious places or places of worship;

(3) All hospitals, nursing homes, dispensaries;

(4) Goa State Legislative Assembly Complex, Goa State Secretariat Complex, All Government buildings, all Court buildings;

(5) Sports complexes, sports stadia, all playgrounds.

87C. *Public Analyst.*— The Government may, by notification in the Official Gazette, appoint Public Analysts, attached to the Goa State Combined Food and Drugs Laboratory under the Directorate of Food and Drugs Administration, for such local areas as may be assigned to them by the Government:

Provided that no person who has any financial interest or relatives or any other direct or indirect interest in the manufacture or sale of any article of food shall be appointed to be a Public Analyst under this section.

87D. *Power to entry, search, etc.*— (1) Every District Magistrate, Additional District Magistrate, Sub-Divisional Magistrate, Executive Magistrate, Mamlatdar or any officer of the Directorate of Health Services not below the rank of Health/Medical Officer or any officer of the Directorate of Food and Drugs Administration not below the rank of Food Inspector, within the local limits of the area for which he/she is so authorized, or any Police Officer not below the rank of Police Sub-Inspector or any other Officer empowered by the Government by general or special order, within the local limits of the area for which he is so authorized, may,—

(a) enter and search at all reasonable times, with such assistants, if any, as he may consider necessary, any place, building or conveyance, in which he has reason to believe that an offence of dealing in injurious food articles prohibited under this Chapter, has been or is being committed;

(b) seize the prohibited injurious food articles along with the conveyance or any other mode employed for carrying out the offence;

(c) examine any record, register, document or any other material or object found in any place mentioned in clause (a), and seize the same if he has reason to believe that it may furnish evidence of the commission of offence punishable under this Act.

(2) The power of entry specified in sub-section (1) includes the power to break open the door, whenever required, provided that before exercising this power a reasonable notice shall be given to the occupier of the premises.

(3) The provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), shall, so far as may be, apply to any search or seizure under this Act, as they apply to any search or seizure made under the authority of a warrant issued under section 94 of the said Code.

(4) Where any person seizes anything, under clause (b) or clause (c) of sub-section (1), he shall, as soon as may be, inform a Magistrate and take his orders as to the custody thereof.

(5) (a) it shall be the duty of every officer of the Police Department, whatsoever rank he may hold, to help, assist and cooperate, with every or any officer discharging duties under preceding sub-section of this section.

(b) It shall be duty of every Government servant, of every rank and post, to render all assistance including acting as witnesses or panchas, when called upon to do so, during any search, seizure or other operations undertaken pursuant to this Act, by any officer mentioned in sub-section (1) of this section.

87E. *Procedure to be followed after seizure.*— When any officer takes a sample of any injurious article of food, which has been prohibited under this Chapter, he shall,—

(a) give a notice in writing then and there of his intention to have it so analysed to the person from whom he has taken the sample;

(b) divide the sample then and there into two parts and mark and seal or fasten up each part in such a manner as its nature permits and take signature or thumb impression of the person from whom the sample has been taken in such place and in such manner as may be prescribed:

Provided that where such person refuses to sign or put his thumb impression, the officer, shall call upon one or more witnesses and take his or their signatures or thumb impressions, as the case may be, in lieu of the signature or thumb impression of such person;

(c) send one part for analysis to the public analyst;

(d) retain the second sample for production, in any event before the Court of law, before whom, if any, proceedings are in process, under this Chapter.

(e) where the officer, takes any action under clause (a) of this section, he shall call one or more persons to be present at the time when such action is taken and take his or their signatures.

87F. *Penalty.*— Whoever contravenes the provisions of this Chapter shall, on conviction, be punishable with imprisonment for a term which shall not be less than six months, but which may extend to three years and with a fine which shall not be less than ten thousand rupees.

87G. *Punishment for illegal possession in small quantity for personal consumption of any article of food injurious to health or consumption of such article of food.*— (1) Whoever, in contravention of provisions of this Chapter, possesses in a small quantity, any article of food injurious to health which is proved to have been intended for his personal consumption and not for sale or distribution, or consumes any such food, shall, notwithstanding anything contained in this Chapter, be punishable with fine not exceeding rupees one thousand.

(2) An offence committed under sub-section (1) may, before the institution of the prosecution, be compounded by such officer as may be authorized by the Government, on payment, for credit to the Government, for first such offence an amount not less than rupees five hundred and for any second and subsequent offences with an amount not less than one thousand rupees.

Explanation.— For the purposes of this section, "small quantity" means a packet, or a sachet, or a pouch, containing not more than ten grams of the injurious food articles.

(3) Where an offence has been compounded under sub-section (1), no further proceedings

shall be taken against any such offender in respect of such offence, except keeping a record of the same with the concerned Department.

87H. Cognizance and trial of offences.—

(1) No prosecution for an offence under this Chapter shall be instituted except by or with the written consent of the officer appointed by the Government or by a person authorized in this behalf, by general or special order, by the Government.

(2) No Court inferior to that of the Judicial Magistrate of the First Class shall try offences under this Chapter.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), an offence punishable under this Chapter shall be cognizable and non-bailable.

87I. Forfeiture of property.— Where any person has been convicted under this Chapter, for the contravention of the provisions of this Chapter, the article of food in respect of which the contravention has been committed may be forfeited to the Government, and disposed off or destroyed, as directed by the Government.

87J. Offences by companies.— (1) If the person contravening any of the provisions of this Act is company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company including its Directors, as well as the company shall be deemed to be guilty of the contravention, and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1) where an offence under this Act has been committed by a company and it is proved

that the offence was committed with the consent or connivance of, or is attributable to any neglect on the part of, any Director or Manager, Secretary or other officer of the company, he shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purpose of this section.—

(a) "Company" means any body corporate and includes a firm or other association of individuals, and

(b) 'Director' in relation to a firm means a partner in the firm.

87K. Protection of action taken in good faith.— No suit, prosecution or other legal proceedings shall lie against the Government or any officer of the Government for anything which is in good faith done or purported to be done in pursuance of this Act.

87L. Provisions of this Chapter to be in addition to and not in derogation of other provisions or laws.— The provisions of this Chapter shall be in addition to and not in derogation of any other provisions of this Act or any other law for the time being in force.

4. Repeal and saving.— (1) The Goa Public Health (Second Amendment) Ordinance, 2004 (Ordinance No. 4 of 2004) is hereby repealed.

(2) Notwithstanding such repeal anything done or any action taken in exercise of any power conferred by or under the said Ordinance shall be deemed to have been done or taken in exercise of the powers conferred by or under this Act as if this Act was in force on the day on which such thing or action was done or taken.

Secretariat Annexe,
Panaji-Goa.

V. P. SHETYE,
Secretary to the Government
of Goa,

Dated: 16-3-2005. Law Department (Legal Affairs).