

Twelfth Kerala Legislative Assembly
Bill No. 313

THE ABKARI (AMENDMENT) BILL, 2010

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Kerala Legislature Secretariat
2010

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BILL

further to amend the Abkari Act 1 of 1077.

Preamble.—WHEREAS, it is expedient further to amend the Abkari Act 1 of 1077, for the purposes hereinafter appearing ;

BE it enacted in the Sixty-first Year of the Republic of India as follows:—

1. *Short title and commencement.*— (1) This Act may be called the Abkari (Amendment) Act, 2010.

(2) Section 2 shall be deemed to have come into force on the 30th day of March, 1996 and the remaining provisions shall be deemed to have come into force on the 7th day of December, 2009.

2. *Amendment of section 6.*—In section 6 of the Abkari Act 1 of 1077 (hereinafter referred to as the principal Act), after sub-section (1), the following proviso shall be inserted, namely:—

“Provided that notwithstanding anything contained in this Act, no import fee shall be levied on rectified spirit or Extra Neutral Alcohol including absolute alcohol intended to be used for the manufacture of liquor meant for human consumption.”.

3. *Insertion of new section 12C.*—In the principal Act, after section 12B, the following section shall be inserted, namely:—

“12C. *Prohibition of counterfeiting, selling, buying, receiving, possessing, etc. of any forged or counterfeit label or security sticker.*—(1) No person shall counterfeit or knowingly perform any part of the process of counterfeiting, any label or security sticker which is used for the sale of liquor.

(2) No person shall sell, or buy or receive from any other person, or otherwise traffic in, or use any forged or counterfeit label or security sticker which is used for the sale of liquor knowing or having reason to believe that the same is forged or counterfeit.

(3) No person shall have in his possession any forged or counterfeit label or security sticker knowing or having reason to believe that the same is

forged or counterfeit and intending to use the same as genuine for the sale of liquor.

(4) No person shall make or buy or sell or dispose of any machinery, instrument, printing press, computer, printer or scanner or any similar material for the purpose of being used or knowing or having reason to believe that it is intended to be used for forging or counterfeiting any label or security sticker for the sale of liquor.

Explanation.—For the purpose of this section the expression “counterfeit” shall have the same meaning as in section 28 of the Indian Penal Code, 1860 (Central Act 45 of 1860).”.

4. *Amendment of section 15C.*—In section 15C of the principal Act,—

(a) in *Explanation I*, for the words “public passenger vehicle”, the words “public passenger or goods vehicle” shall be substituted;

(b) for *Explanation II*, the following *Explanation* shall be substituted, namely:—

“*Explanation II.*—For the purpose of *Explanation I*, “public passenger or goods vehicle” means a vehicle used for carrying passengers or goods for hire or reward, with or without a contract, express or implied, for the use of the vehicle as a whole at or for a fixed or agreed rate or sum and includes a private vehicle in any public place.”.

5. *Insertion of new section 30A.*—After section 30 of the principal Act, the following section shall be inserted, namely:—

“30A. *Abkari officers to have similar powers of police officers for the purpose of investigation of offences.*—For the purpose of investigation of offences under this Act, the abkari officers shall have the same powers of investigation which the police officers have under the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).”.

6. *Insertion of new section 53B.*—After section 53A of the principal Act, the following section shall be inserted, namely:—

“53B. *Jurisdiction of courts on articles seized.*—Whenever any vehicle or other conveyance used for committing any offence is seized or detained under this Act, and if any court finds that it shall be released temporarily, it shall do so with direction to execute sufficient bond by way of cash security equivalent to the market value of such vehicle or conveyance, to be fixed by the

Mechanical Engineer of the Excise Department or any Mechanical Engineer of or above the rank of an Assistant Executive Engineer of the State Public Works Department, for production of such vehicle or conveyance on demand before the court or the authorised officer and such order shall not prevent the authorised officer from taking or continuing action under section 67B of this Act.”.

7. *Insertion of new sections 55C to 55H.*—In the principal Act, after section 55B, the following sections shall be inserted, namely:—

“55C. *Penalty for counterfeiting, selling, etc. of label or security sticker.*—Whoever contravenes the provisions of section 12C of this Act shall, on conviction before a competent court, be punished with imprisonment for a term which may extend to five years or with a fine which may extend to rupees one lakh or with both.

55D. *Penalty for criminal conspiracy.*—When two or more persons agree to do or cause to be done an act which is illegal under this Act and does such an illegal act in pursuance of such agreement by anyone or more of the parties to that agreement, such an agreement is designated a criminal conspiracy under this Act and each person who is a party to the criminal conspiracy shall, on conviction, be punished with the same punishment provided for the offence committed.

55E. *Penalty for false marking of property or use of false property mark.*—Whoever,—

(a) marks any case, package or other receptacle or any vehicle or goods or other movable property containing liquor or intoxicating drug or uses such case, package, receptacle or vehicle or goods or such other property in a manner calculated to cause it to be reasonably believed that the property or goods so marked belongs to a person to whom they do not belong or marks them in the name of a fictitious person; or

(b) removes or alters or destroys the original or genuine mark of such vehicle or other things described in clause (a) of this section so as not to recognize the real owner of such vehicle or things or to escape from the legal responsibilities and other consequences thereof; shall, on conviction, be punished with imprisonment for a term which may extend to three years or with fine which may extend to one lakh rupees or with both.

Explanation:—For the purpose of this section, the engine number and chassis number inscribed on any part of a vehicle shall be deemed to be a property mark.

55F. *Penalty for possession of things described in section 55E.*—Any person who, knowing that it is unlawful, is in possession and control of such property, goods, vehicle or other article described in section 55E used or intended to be used for traffic in liquor or intoxicating drug, shall, on conviction, be punished with the same punishment as provided for the offence under the said section.

55G. *Penalty for making or using of false document.*—Whoever dishonestly or fraudulently or without lawful authority makes any document or alters the content of any document causing it to be believed that such document or part of it was made by a lawful authority, intending to manufacture, store, sell or to transport any liquor or intoxicating drug or to do any act which is prohibited under this Act or the Rules made or notification issued thereunder or to do anything contrary to such laws and escape from the legal responsibilities and other consequences or uses such document or part of it made by himself or by any other person for such purposes, knowing that it is a false document or is not genuine, shall, on conviction, be punished with imprisonment for a term which may extend to three years or with fine which may extend to one lakh rupees or with both.

Explanation I:—Under this section, until the contrary is proved, it shall be presumed that the person has used such document knowing that it is false or is not genuine.

Explanation II:—In this section, the word “document”, unless anything contrary is specified in any other section in this Act, shall have the same meaning as in section 3 of the Indian Evidence Act, 1872 (Central Act 1 of 1872).

55H. *Penalty for unlawful advertisement.*—Whoever prints, publishes or gives any advertisement soliciting use of or offering any liquor or intoxicating drug shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to twenty-five thousand rupees or with both:

Provided that, this section shall not apply to price list for display at the points of sale for consumer information.”.

8. *Amendment of section 56.*—In section 56 of the principal Act, for the words, “two thousand rupees”, the words “twenty five thousand rupees” shall be substituted.

9. *Amendment of section 57.*—In section 57 of the principal Act, in clause (a), the word “foreign” shall be omitted.

10. *Insertion of new section 62.*—After section 61 of the principal Act, the following section shall be inserted, namely:—

“62. *Offence committed by several persons in furtherance of common intention.*—When an offence under this Act is committed by several persons in furtherance of the common intention of all, each of such persons shall be guilty of that offence as if it was committed by him alone.”.

11. *Amendment of section 67.*— In section 67 of the principal Act,—

(a) for the existing title, the following title shall be substituted, namely:—

“*Power to impose fine.*—”

(b) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) The Commissioner shall be competent to impose such fine as may be prescribed in the rules, on any person holding a licence or permit issued under this Act, for contravention of any rule made under this Act :

Provided that no order imposing any fine under this section shall be made without giving the person an opportunity of being heard.”.

12. *Insertion of new section 67 A.*—After section 67 of the principal Act, the following section shall be inserted, namely:—

“67A. *Power to compound offences.*—(1) The Commissioner of Excise or the Deputy Commissioner of Excise of the District concerned or any Abkari Officer specially empowered by the Government in this behalf by notification in the Gazette, may accept, from any person reasonably suspected of having committed any of the offences specified in column (1), a sum of money as specified in column (3) of the Table below by way of composition for the offence which may have been committed and where any property has been seized as liable to confiscation may release the same on payment of the value thereof as estimated by such officer.

TABLE

<i>Offence</i>	<i>Corresponding section in the Act</i>	<i>Compounding fee in rupees</i>
(1)	(2)	(3)
Transporting of liquor or intoxicating drug in excess of the quantity prescribed by the Government by notification	10	5,000
Possession of liquor or intoxicating drug in excess of the quantity prescribed.	13	5,000
Consumption or use of liquor by persons under the age of 18 years	15A	5,000
Sale of liquor to person under the age of 18 years	15B	5,000
Consumption of liquor in public places	15C	5,000
Taps or causes to be tapped any toddy producing tree in contravention of the Act, Rules or any order made under the Act	55(d)	10,000
Draws or causes to be drawn toddy from any tree in contravention of the Act, Rules or any order made under the Act	55(e)	10,000
Misconduct by licensee etc.	56	25,000
Consumption of preparations containing liquor or intoxicating drug other than <i>bona fide</i> medicinal preparations in the business, manufacturing or stocking premises	56A(2)	5,000

(2) Where any case involving an offence specified under sub-section (1) is pending before a court of law, such offence may be compounded with the permission of such court and a report of the action taken thereon shall be filed before the court.

(3) On payment of such sum of money or such value or both, as the case may be, to such officer empowered for the purpose under sub-section (1), the accused person, if in custody, shall be discharged, the property seized shall be released and no further proceedings shall be taken against such person or property.

Explanation:—For the purpose of this section, the word “compound” means compounding of offences.”.

13. *Repeal and Saving.*—(1) The Abkari (Amendment) Ordinance, 2010 (6 of 2010) is hereby repealed.

(2) Notwithstanding such repeal, anything done or deemed to have been done or any action taken or deemed to have been taken under the principal Act as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

Government have constituted an Expert Committee to study and report on the changes required in the Abkari Act, 1 of 1977 to solve various problems faced by the Excise Department and to control the manufacture and sale of illicit liquor/toddy in the State vide G.O.(Ms.) No. 234/07/TD dated 26th November, 2007. Government have considered the report of the said Committee and decided to make the following amendments in the Abkari Act 1 of 1977 along with the amendments proposed in Bill Nos. 37 and 47 published in the 12th Kerala Legislative Assembly, namely:—

- (i) amendment of section 6 for exempting rectified spirit/Extra Neutral Alcohol from the levy and collection of import fee with effect from 30th day of March, 1996;
- (ii) insertion of section 12C so as to include a provision in the Abkari Act for prohibiting, counterfeiting, selling, buying, receiving, possessing etc. of any forged labels and security stickers and for imposing punishment for such offences ;
- (iii) amendment of section 15C to widen the ambit of the term ‘public place’ under this section, so as to include goods vehicle also within its purview;

- (iv) insertion of section 30A for providing Abkari officers similar powers of police officers for the purpose of investigation of offences as provided in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) ;
- (v) insertion of new section 53B for providing jurisdiction to courts for the temporary release of vehicles or other conveyance involved in any offence seized or detained under the Act on execution of sufficient bond by way of cash security ;
- (vi) incorporation of new sections 55C to 55H to impose penalty for counterfeiting, selling etc. of label or security sticker, for criminal conspiracy, for false marking of property, for unlawful possession of goods, vehicles etc. intended to be used for traffic in liquor, for making or using of false documents and for unlawful advertisement ;
- (vii) insertion of a new section 62 to make each of the offender guilty for offences committed by several persons in furtherance of common intention ;
- (viii) amendment of section 67 so as to empower the Commissioner to impose such fine as may be prescribed on any person holding a licence or permit for contravention to any rules made under the Act ;
- (ix) insertion of section 67 A for empowering the Abkari officers to compound offences on payment of fee specified therein.

As the Legislative Assembly was not in session and the above proposal had to be given effect to immediately, the Governor of Kerala had promulgated the Abkari (Amendment) Ordinance, 2009 (26 of 2009) on the 6th day of December, 2009 and the same was published in the Kerala Gazette Extraordinary No. 2274 dated 7th December, 2009.

A Bill to replace the Ordinance No. 26 of 2009 by an Act of the State Legislature, could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session held on the 29th day of December, 2009. Therefore the Abkari (Amendment) Ordinance, 2010 (6 of 2010) was promulgated by the Governor on the 22nd day of January, 2010 and the same was published in the Kerala Gazette Extraordinary No. 166 dated 23rd January, 2010.

The Bill seeks to replace Ordinance No. 6 of 2010 by an Act of the State Legislature.

FINANCIAL MEMORANDUM

The Bill, if enacted and brought into operation, would not involve any additional expenditure from the Consolidated Fund of the State.

MEMORANDUM REGARDING DELIGATED LEGISLATION

Section 67 proposed to be amended by clause 11 of the Bill seeks to empower the Government to prescribe in the rules the rate of fine to be imposed by the Commissioner on any person holding a licence or permit in contravention to any rules made under the Act ;

2. Section 67 A proposed to be inserted by clause 12 of the Bill seeks to empower the Government to notify the Abkari officers so as to specially empower them to accept a sum of money from the accused persons by way of composition for the offences committed under the Act ;

3. The matter in respect of which rules may be made or notification may be issued are matters of procedure and are of routine or administrative nature. The delegation of the legislative power is, therefore, of a normal character.

P. K. GURUDASAN

Explanation I:—For the purpose of this section, “public place” means any street, Court, Police Station or other public office or any club or any place of public amusement or resort or on board any passenger boat or vessel or any public passenger vehicle, or a dining or refreshment room in a restaurant, hotel, rest-house, travelers bungalow or tourists’ bungalow where different individuals or groups of persons consume food, but shall not include any private residential room.

Explanation II:—For the purposes of explanation I, “public passenger vehicle” means a vehicle used for carrying passengers for hire or reward other than a vehicle which carries passengers for hire or reward under a contract, express or implied for the use of the vehicle as a whole at or for a fixed or agreed rate or sum.

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VIII—POWERS AND DUTIES OF OFFICERS, ETC.

30. *Magistrate may issue a search warrant on application.*—If the Commissioner of Excise or any Magistrate, upon information obtained and after such enquiry as he thinks necessary, has reason to believe that an offence under this Act has been committed, he may issue a warrant for the search for any liquor, intoxicating drug, materials, stills, utensil implement or apparatus in respect of which the alleged offence has been committed.

Before issuing such warrant, the Commissioner of Excise, or Magistrate shall examine the informant on oath or affirmation, and the examination shall be reduced into writing in a summary manner and be signed by the informant and also by the Commissioner of Excise or Magistrate.

31. *Power to certain Abkari and Police Officers to search houses, etc., without warrant.*—Whenever the Commissioner of Excise or any Abkari Officer not below such rank as may be specified by the Government in this behalf or any Police Officer not below the rank of Sub Inspector or a Police Station Officer, has reason to believe that an offence under this act has been committed and that the delay occasioned by obtaining a search warrant under the preceding section will prevent the execution thereof, he may, after according his reasons and the grounds of his belief at any time by day or night, enter and search any place and may seize anything found therein which he has reason to believe to be liable to confiscation under this Act, and may detain and search and, if he thinks proper, arrest any person found in such place whom he has reason to believe to be guilty of any offence under this Act :

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(2) The Commissioner may impose a fine of Rs. 25,000 (Rupees Twenty five Thousand only) each on any person or persons holding a licence or permit under this Act for the violation by way of reconstitution, alteration or modification without the permission of the Commissioner of any deed on the strength of which any licence is granted.

67 A ***
