



ANALYSIS

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| <p>Title</p> <ol style="list-style-type: none"> 1. Short Title 2. Interpretation 3. Penalty for unlawful sale of prescription poisons 4. Sales by wholesale 5. Containers of toxic substances 6. Storage of poisons and poisonous substances | <ol style="list-style-type: none"> 7. Restriction on possession and use of prescription poisons and restricted poisons 8. Information to be furnished concerning toxic substances 9. Power of Minister to prohibit importation, sale, or use of toxic substances 10. Penalty for false statement 11. General penalty 12. Presumption that contents conform with label 13. Regulations |
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1969, No. 44

An Act to amend the Poisons Act 1960

[29 September 1969]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—This Act may be cited as the Poisons Amendment Act 1969, and shall be read together with and deemed part of the Poisons Act 1960 (hereinafter referred to as the principal Act).

2. Interpretation—(1) Section 2 of the principal Act is hereby amended by repealing the definition of the term “toxic substance” in subsection (1), and substituting the following definition:

“‘Toxic substance’ means any substance, not being, subject to subsection (6) of section 27 and to subsection (2) of section 28 of this Act, a poison or

poisonous substance, and not being a narcotic within the meaning of the Narcotics Act 1965 or a radioactive substance within the meaning of the Radioactive Substances Act 1949, which, when swallowed, inhaled, injected into, or otherwise absorbed by the human body, is likely, by reason of its toxic properties, to destroy life or to be injurious to health, and, except as aforesaid, includes any acaricide, insecticide, fungicide, larvicide, nematocide, pesticide, and herbicide.”

(2) Section 2 of the principal Act is hereby further amended by inserting, after subsection (1), the following subsection:

“(1A) Any reference to a poison or a poisonous substance or a toxic substance in this Act, or in any regulation made under this Act, shall be deemed to include a reference to any substance, preparation, mixture, compound, or article comprising, otherwise than in an insignificant quantity, the poison, poisonous substance, or toxic substance.”

3. Penalty for unlawful sale of prescription poisons—Section 8 of the principal Act is hereby amended by adding the following subsection:

“(4) Without prejudice to any other liability under this Act, any person who sells a prescription poison in contravention of subsection (1) of this section is liable to imprisonment for a term not exceeding six months or to a fine not exceeding one thousand dollars, or to both.”

4. Sales by wholesale—(1) Section 12 of the principal Act is hereby amended by inserting in subsection (2), before the words “No person”, the words “Except as otherwise provided in any regulations made under this Act,”.

(2) Section 12 of the principal Act is hereby further amended by inserting in subsection (2), after the word “Sell” in paragraph (a) and paragraph (b), and also in paragraph (c) where that word first occurs, the words “by wholesale or for extended purposes”.

5. Containers of toxic substances—Section 22 of the principal Act is hereby amended by adding the following subsection:

“(3) In any case where a requirement in respect of the packing or labelling of a toxic substance is prescribed by a regulation made under this Act, no person shall, in the

course of any business, pack, store, sell, or cause to be transported that toxic substance unless it is in a container of the prescribed character or type and is labelled in the prescribed manner.”

6. Storage of poisons and poisonous substances—Section 25 of the principal Act is hereby amended by adding the following subsection:

“(3) Except as otherwise provided in any regulations made under this Act, no person in possession, for the purposes of sale or of any profession, of a prescription poison, which is kept for the time being within any building, ship, aircraft, or vehicle, shall leave that building, ship, aircraft, or vehicle unattended, unless he has taken all reasonable steps to secure that building, ship, aircraft, or vehicle, and the part of it in which the prescription poison is kept, against unlawful entry.”

7. Restriction on possession and use of prescription poisons and restricted poisons—The principal Act is hereby further amended by repealing section 26, and substituting the following section:

“26. (1) No person shall, without reasonable excuse, procure, receive, store, use, or otherwise have in his possession any prescription poison or restricted poison.

“(2) Without limiting the meaning of the expression “reasonable excuse” it is hereby declared that a person has a reasonable excuse for the purposes of subsection (1) of this section if the possession or act which might otherwise be a contravention of that subsection is that of—

“(a) A person licensed or otherwise authorised under this Act or any regulations made under this Act to sell the poison or to be in possession of it, and is necessary or incidental to the business, calling, or purpose for which the person is so licensed or otherwise authorised; or

“(b) A carrier within the meaning of Part II of this Act or an employee of any such carrier, and is necessary or incidental to the business of that carrier; or

“(c) A person to whom the poison, being a prescription poison, has been lawfully supplied for his use, or for use by any other person, as a patient under the care of a medical practitioner or dentist and

who does not have in his possession any other supplies of a prescription poison prescribed or supplied for the same purpose by another medical practitioner or dentist, and is necessary or incidental to such use; or

“(d) A person to whom the poison, being a prescription poison, has been lawfully supplied for administration to any animal under the care of a veterinary surgeon, and is necessary or incidental to such administration; or

“(e) A person who has possession of the poison, being a prescription poison, only for the purpose of administering it to the person or animal for whom it has been prescribed, and is necessary or incidental to that purpose; or

“(f) A person who has lawfully purchased or procured the poison, being a restricted poison, from a person licensed or otherwise authorised under this Act to sell it, and is necessary or incidental to the purpose for which the poison was purchased or procured or is normally used; or

“(g) A person in the service of the Crown, and is necessary or incidental to the performance of that person’s official duties.

“(3) In any proceedings under this section against any person in which it is proved that he procured, received, stored, used, or otherwise had in his possession any prescription poison or any restricted poison, the onus of proving that he had a reasonable excuse (whether by reason of the fact that one or more of the provisions of paragraphs (a) to (g) of subsection (2) of this section apply in his case or otherwise) shall lie on the defendant.

“(4) For the avoidance of doubt it is hereby declared that the fact that the defendant did not know that the article which is the subject of the prosecution was a prescription poison or a restricted poison, as the case may require, shall not by itself be a reasonable excuse.”

8. Information to be furnished concerning toxic substances—Section 27 of the principal Act is hereby amended by adding the following subsection:

“(6) For the purposes of this section, every poison and every poisonous substance is a toxic substance.”

9. Power of Minister to prohibit importation, sale, or use of toxic substances—Section 28 of the principal Act is hereby amended by adding, as subsection (2), the following subsection:

“(2) For the purposes of this section, every poison and every poisonous substance is a toxic substance.”

10. Penalty for false statement—Section 47 of the principal Act (as amended by section 7 (1) of the Decimal Currency Act 1964) is hereby amended—

- (a) By omitting from subsection (2) the word “three”, and substituting the word “six”;
- (b) By omitting from subsection (2) the words “four hundred dollars”, and substituting the words “one thousand dollars”.

11. General penalty—The principal Act is hereby further amended by repealing section 49, and substituting the following section:

“49. Every person who commits any offence against this Act for which no penalty is provided elsewhere than in this section is liable to imprisonment for a term not exceeding three months or to a fine not exceeding four hundred dollars, or to both, and, if the offence is a continuing one, to a further fine not exceeding ten dollars for every day or part of a day on which the offence has continued.”

12. Presumption that contents conform with label—The principal Act is hereby further amended by inserting, after section 50, the following section:

“50A. In any prosecution for an offence against this Act or against any regulation made under this Act it shall be presumed until the contrary is proved that the contents of a container conform with any purported description of the contents shown on any written or other descriptive matter appearing on or attached to the container.”

13. Regulations—(1) Section 53 of the principal Act is hereby amended by omitting from paragraph (p) of subsection (2) the words “preparations or classes of preparations”, and substituting the words “poisons, poisonous substances, or toxic substances, or any class of poisons, poisonous substances, or toxic substances.”

(2) Section 53 of the principal Act is hereby further amended by omitting from subsection (4) the words "gazetting of the regulation, to sell any poison or poisonous substance or toxic substance the sale of which by him is otherwise lawful", and substituting the words "commencement of the regulation, to sell any poison or poisonous substance or toxic substance, which is not a prescription poison, as if the regulation had not been enacted".

(3) This section shall come into force on the 1st day of July 1970.

This Act is administered in the Department of Health.
