

POISONS AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill makes a number of amendments to the Poisons Act 1960.

Clause 1 relates to the Short Title.

Clause 2: Subclause (1) substitutes a new definition of the term "toxic substance". The term is defined with greater precision and, except for the purposes of section 27 and section 28 of the Act, poisons and poisonous substances are excluded from its scope.

Subclause (2) makes it clear that any reference to a poison or a poisonous substance or a toxic substance in the Act or in any regulation made under the 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.

Clause 3 prescribes a specific penalty for the offence of selling a prescription poison in contravention of section 8 (1) of the Act. Offenders will be liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$1,000, or to both.

Clause 4 amends subsection (2) of section 12 of the Act (which deals with sales of poison by wholesale or for extended purposes) to improve the wording and to allow regulations made under the Act to provide for exemptions from the provisions of the subsection.

Clause 5 amends section 22 of the Act by adding a new subsection (3) which provides that where a requirement in respect of the packing and labelling of a toxic substance is prescribed by a regulation made under the 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. Paragraphs (c) and (d) of subsection (1) of section 22 are to the same effect in respect of poisons and poisonous substances.

Clause 6 adds a new subsection (3) to section 25 of the principal Act. The new subsection provides that except as otherwise provided in any regulations made under this Act, no person in possession 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.

Clause 7 substitutes a new section 26 in the principal Act. The new section restates and extends the present section which restricts the possession of prescription poisons and restricted poisons. It is made clear that not only the possession of prescription poisons and restricted poisons but also the procuring, receiving, storing, and using of those poisons without reasonable excuse is an offence.

A patient under the care of a medical practitioner is one of those who has a reasonable excuse for the possession of a prescription poison supplied to him as such a patient. *Subsection (3)* of the new section is designed to make it clear that such a patient does not have a reasonable excuse if, being already supplied with a prescription poison as a patient of one medical practitioner, the patient goes to another medical practitioner for the purpose of obtaining further supplies of that poison without disclosing to that medical practitioner that he is already being supplied with that poison as a patient of a medical practitioner.

Subsection (5) of the section is new. It declares 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.

Clauses 8 and 9 amend section 27 and section 28 of the Act to make it clear that, for the purposes of those sections, every poison and every poisonous substance is a toxic substance. These amendments correspond with the new definition of the term "toxic substance" substituted by *clause 2 (1)* of this Bill.

Clause 10 amends section 47 of the Act (which relates to the offence of making a false statement) by increasing the maximum penalty for that offence from imprisonment for a term not exceeding 3 months or a fine not exceeding \$400 to imprisonment for a term not exceeding 6 months or a fine not exceeding \$1,000.

Clause 11 substitutes a new section 49 in the Act. This section prescribes the general penalty for offences against the Act and the new section now provides for imprisonment for a term not exceeding 3 months. The maximum fine of \$400, with a further fine not exceeding \$10 a day in the case of a continuing offence, remains unchanged.

Clause 12 inserts a new section 50A in the principal Act. The new section provides that in any prosecution for an offence against the Act or any regulation made under the 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. This provision is designed to do away with the need to have an analysis in every case.

Clause 13: Subclause (1) amends paragraph (p) of subsection (2) of section 53 of the Act. The purpose of the amendment is to clarify the power of exemption contained in that paragraph.

Subclause (2) amends subsection (4) of section 53 of the Act. The subsection protects the existing stock-in-trade of any person lawfully carrying on business in New Zealand by providing that, notwithstanding anything in any regulation made under the Act, it shall be lawful for any such person, at any time within 12 months after the date of the gazetting of the regulation to sell any poison or poisonous substance or toxic substance, the sale of which by him is otherwise lawful, if at the said date the poison or poisonous substance was part of his existing stock-in-trade in New Zealand.

The purposes of the amendment are:

- (a) To make the period of 12 months run from the date of the commencement of the regulation instead of from the date of its gazetting.
 - (b) To exclude prescription poisons from the scope of the provision so that regulations affecting prescription poisons can take effect immediately.
 - (c) To clarify the general scope of the subsection.
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Hon. Mr McKay

POISONS AMENDMENT

ANALYSIS

Title	7. Restriction on possession and use of prescription poisons and restricted poisons
1. Short Title	8. Information to be furnished concerning toxic substances
2. Interpretation	9. Power of Minister to prohibit importation, sale, or use of toxic substances
3. Penalty for unlawful sale of prescription poisons	10. Penalty for false statement
4. Sales by wholesale	11. General penalty
5. Containers of toxic substances	12. Presumption that contents conform with label
6. Storage of poisons and poisonous substances	13. Regulations

A BILL INTITULED

An Act to amend the Poisons Act 1960

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,
5 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).

*1960, No. 97

Amendments: 1962, No. 93; 1964, No. 31; 1967, No. 108

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, 5
 subject to subsection (6) of section 27 and to sub-
section (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 radio- 10
 active substance within the meaning of the Radio-
 active 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 15
 acaricide, insecticide, fungicide, larvicide, nemati-
 cide, pesticide, and herbicide.”

(2) Section 2 of the principal Act is hereby further amended by inserting, after subsection (1), the following 20
 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 com- 25
 prising, otherwise than in an insignificant quantity, the
 poison, poisonous substance, or toxic substance.”

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

“(4) Without prejudice to any other liability under this 30
 Act, any person who sells a prescription poison in contraven-
 tion of subsection (1) of this section is liable to imprisonment
 for a term not exceeding six months or to a fine not exceed-
 ing one thousand dollars, or to both.”

4. Sales by wholesale—(1) Section 12 of the principal Act 35
 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” 40
 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:

5 “(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 trans-
ported that toxic substance unless it is in a container of the
prescribed character or type and is labelled in the prescribed
10 manner.”

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

15 “(3) Except as otherwise provided in any regulations made
under this Act, no person in possession 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
20 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:

25 “26. (1) No person shall, without reasonable excuse,
procure, receive, store, use or otherwise have in his possession
any prescription poison or restricted poison.

30 “(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—

35 “(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 5
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 is necessary or incidental to such use; or
- “(d) A person to whom the poison, being a prescription 10
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 15
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 20
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 25
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) Without prejudice to any liability under section 47 of this Act, if a person for whose benefit a prescription poison 30
is supplied or prescribed by a medical practitioner is in the course of being supplied with the same poison for the same purpose by another medical practitioner, or pursuant to a prescription given by another medical practitioner, paragraph (c) of subsection (2) of this section shall not apply: 35
- “(a) To the person to whom or for whose benefit the poison is supplied or prescribed if, intending to procure, and knowing that the poison supplied or prescribed is, the same poison as the poison supplied or prescribed by that other medical practitioner, and 40
knowing the purpose for which that poison has been supplied or prescribed in each case, he fails to disclose to the first-mentioned medical practitioner the fact of such other supply or prescription; or

“(b) To the person to whom the poison or prescription is supplied, if he otherwise deceives the first-mentioned medical practitioner for the purpose of inducing that practitioner to supply or prescribe the poison.

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“(4) 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.

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“(5) 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.”

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

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“(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:

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“(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—

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(a) By omitting from subsection (2) the word “three”, and substituting the word “six”:

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(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”.