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AIDS HELPLINE: 0800-0123-22 Prevention is the cure

GOVERNMENT NOTICES
GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF HEALTH
DEPARTEMENT VAN GESONDHEID

No. 1327

26 September 2003

FOODSTUFFS, COSMETICS AND DISINFECTANTS AMENDMENT BILL,
2004

The Minister of Health intends to table the Foodstuffs, Cosmetics and Disinfectants Amendment Bill, 2004 in Parliament next year.

Interested persons are invited to submit any substantiated comments or representations on the Foodstuffs, Cosmetics and Disinfectants Amendment Bill, 2004 to the Director-General of Health: Private Bag X828, Pretoria, 0001 [for the attention of the Director: Food Control] within three months of the date of publication of this notice.

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

DRAFT BILL

To amend the Foodstuffs, Cosmetics and Disinfectants Act, 1972, so as to provide for the authorization of medical practitioners, environmental health officers, veterinarians and other persons deemed fit to administer the provisions of this Act; to increase the sum to be deposited by an accused requesting further analysis or examination of a sample; to regulate food premises and the handling of foodstuffs, the importation and exportation and foodstuffs, the removal, detention and destruction of food-producing animals or foodstuffs, the inspection of food-producing animals, the medical examination of food handlers, water used for food processing and the charging of fees; to regulate mollusc farming and fish farming; to remove the requirement in respect of secrecy; to simplify the penalties in terms of the Act; to provide for delegations to officers of provincial departments; and to provide for matters incidental thereto.

BE IT ENACTED by the Parliament of the Republic of South Africa as follows:

Amendment of the long title of Act 54 of 1972

1. The long title of the Foodstuffs, Cosmetics and Disinfectants Act, 1972, (hereafter referred to as "the principal Act"), is hereby amended by the substitution for the long title of the following:

"To control the sale, manufacture, [and] importation and exportation of foodstuffs, cosmetics and disinfectants; and to provide for incidental matters."

Amendment of section 1 of Act 54 of 1972 as amended by section 1 of Act 32 of 1981

2. Section 1 of the Foodstuffs, Cosmetics and Disinfectants Act, 1972, is hereby amended-

- (a) by the substitution for the definition of "appliance" of the following definition:

"appliance" means the whole or any part of any implement, machine, instrument, apparatus, equipment, automaton or other object used or capable of being used for, in or in connection with the manufacture, treatment, packing, labelling, storage, conveyance, preparation, display, sale, serving or administering of any foodstuff, cosmetic or disinfectant";

- (b) by the substitution for the definition of "cosmetic" of the following definition:

"cosmetic" means any article, preparation or substance (except a [drug] medicine as defined in the [Drugs] Medicines and Related Substances Act, 1965 (Act 101 of 1965)) intended to be rubbed, poured, sprinkled or sprayed on or otherwise applied to the human body, including the epidermis, hair, teeth, mucous membranes of the oral cavity, lips and external genital organs, for purposes of cleansing, perfuming, correcting body odours, conditioning, beautifying, protecting, promoting

attractiveness or improving or altering the appearance and includes any part or ingredient of any such article or substance.”;

- (c) by the substitution for the definition of “Director-General” of the following definition:

“**Director-General**” means the [Director-General: Health, Welfare and Pensions] head of the national department of health”;

- (d) by the insertion after the definition of “disinfectant” of the following definitions:

“**environmental health officer**” means a person registered as such in terms of the Health Professions Act, 1974 (Act 56 of 1974)”;

“**export**” means to export from the Republic by any means:

- (e) by the substitution for the definition of “foodstuff” of the following definition:

“**foodstuff**” means any article or substance (except a [drug] medicine as defined in the [Drugs] Medicines and Related Substances Act, 1965 (Act 101 of 1965)) ordinarily eaten or drunk by man or purporting to be suitable, or manufactured or sold, for human consumption and includes any part or ingredient of such article or substance, or any substance used or intended or destined to be used as a part or ingredient of any such article or substance”;

- (f) by the substitution for the definition of “local authority” of the following definition:

“**local authority**” means [an institution or body contemplated in section 84 (1) (f) of the Republic of South Africa Constitution Act, 1961 (Act No. 32 of 1961)] a municipality as defined in the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000);

- (g) by the substitution for the definition of "Minister" of the following definition:
"Minister" means the [Minister for Health, Welfare and Pensions] member of cabinet responsible for health";
- (h) by the insertion after the definition of "Minister" of the following definitions:
"mollusc" means any member of the *phylum Mollusca*";
"national department" means the national department responsible for health";
- (i) by the insertion after the definition of "package" of the following definition;
"medical practitioner" means a person registered as such in terms of the Health Professions Act, 1974 (Act 56 of 1974)";
- (j) by the insertion after the definition of "prohibited article" of the following definition:
"provincial department" means the provincial department responsible for health";
- (k) by the insertion after the definition of "treated" of the following definition:
"veterinarian" means a person registered as such in terms of the Veterinary and Para-Veterinary Professions Act, 1982 (Act 19 of 1982)."

Amendment of section 10 of Act 54 of 1972 as amended by section 2 of Act 32 of 1981

3. Section 10 of the principal Act is hereby amended-

- (a) by the insertion of the following subsection after subsection (1), the existing subsections (2) and (3) becoming subsections (3) and (4) respectively:

“(2) The Director-General may generally or specially authorize any other person as he or she may deem fit as an inspector who shall be vested with the powers, duties and functions conferred or imposed on inspectors by this Act.”

- (b) by the substitution for paragraph (b) of subsection (3) of the following paragraph:

“(b) for the purposes of the administration of any provision of this Act by a local authority under section 23, by any medical practitioner, environmental health officer, veterinarian or any other person [employed by such local authority as a health inspector] deemed fit and generally or specially authorized thereto in writing by such local authority.”

- (c) by the substitution for paragraph (c) of subsection (3) of the following paragraph:

“(c) by any member of the South African Police Service of or above the rank of sergeant;”

- (d) by the substitution for paragraph (d) of subsection (3) of the following paragraph:

“(d) by any member of the South African Police Service below the rank of sergeant authorized thereto in writing by a member referred to in paragraph (c);”

- (e) by the substitution for paragraph (e) of subsection (3) of the following paragraph:

“(d) in respect of any foodstuff, by any person appointed under section 28 [18] of the Standards Act, 1993 (Act No 29 of 1993), [1962 (Act No. 33 of 1962] as an inspector for the purposes of that Act.”

Amendment of section 13 of Act 54 of 1972

4. Section 13 of the principal Act is hereby amended in subsection (3) by the substitution for paragraph (a) of the following paragraph:

“(a) A request by the accused for such a further analysis or examination shall be granted only on condition that he or she deposits the sum of [twenty five] five hundred rand.”

Amendment of section 15 of Act 54 of 1972 as amended by section 4 of Act 32 of 1981

5. Section 15 of the principal Act is hereby amended-

(a) in subsection (1) by the insertion after paragraph (n) of the following paragraphs, the existing paragraph (o) becoming paragraph (cc):

“(o) the control, restriction or prohibition of the use of any premises for purposes connected with the handling, processing, production, manufacturing, packing, storing, preparing, conveyance, displaying, sale or serving of any foodstuff, and to the provision of a sewerage and drainage system for, and water, washing and sanitary conveniences, lighting and ventilation at such premises;

(p) the structural requirements to which any building on such premises shall conform and the material which shall be used in the construction thereof;

(q) the standards and requirements to which appliances, storing spaces and working surfaces and places employed in connection with the handling of any foodstuff, and the cleansing of aforementioned facilities, the manner of transport of various foodstuffs, the container in which any foodstuff is stored, processed, displayed or transported and the clothing worn by persons handling any foodstuff, shall conform;

(r) the examination of, and the control and supervision of the manufacture, preparation, storage, keeping, and dispatch of, any foodstuff intended for sale in or export from the Republic, and the prohibition of the manufacture, preparation, storage, keeping, dispatch or sale in or export

- from the Republic of any foodstuff which is, or contains an ingredient which is, diseased or unsound or unfit for human consumption, or which has been exposed to any infection or contamination;
- (s) the removal or detention, pending examination or analysis, of animals or foodstuffs which are suspected of being diseased or unsound or unwholesome or unfit for human consumption, and the seizure or destruction or treatment or disposal, so as to prevent danger to health, of any such foodstuff which is found to be unwholesome, unsound, infected or contaminated, and of diseased animals sold or intended to be sold for human consumption;
- (t) the warning to be given to any person that any foodstuff sold, kept, dispatched or exposed for sale by him has been found to be below any standard of composition, strength, purity or quality prescribed in terms of this Act, and the issue of orders prohibiting the sale or the keeping or exposure for sale of such foodstuff, or requiring the closing of any food premises the foodstuff from which is found, after analysis and official warning, to be below any such standard;
- (u) the inspection of dairy cattle, animals intended for human consumption, and of premises where any foodstuff is handled, processed, manufactured, prepared, kept, packed, conveyed, displayed, sold or served;
- (v) the medical examination of persons who handle any foodstuff in order to identify such persons who are carriers of diseases or are suffering from any communicable disease specified in such regulations, and the restriction or prohibition on the handling of any foodstuff by persons so identified as carriers of disease or as suffering from such a communicable disease;
- (w) the regulation, control, restriction or prohibition of the provision of water intended for food processing originating from any source specified in such regulations or the blending of such water originating from different sources specified in such regulations;

- (x) the requirements relating to purity, chemical composition and quality with which such water shall comply and the regulation and control of such water;
- (y) the taking of samples of such water and the analysing of samples so taken;
- (z) the reporting of the pollution or suspected pollution of such water;
- (aa) the keeping of records in connection with water provision;
- (bb) the fees which may be paid in respect of the taking of any sample, the examination or analysis of any sample so taken, or any inspection or medical examination performed in terms of the provision of any regulation made under this subsection; and”

(b) by the substitution for subsection (4) of the following subsection:

“(4) Any regulation may be expressed to apply only in such area as may be specified in it and different regulations may be made under subsection (1) in respect of different classes of premises, appliances and vehicles used in conveying any foodstuff and in respect of different categories of persons handling any foodstuff.”

(c) by the addition of the following subsections:

“(8) Regulations made under paragraph (s) of subsection (1) may empower any medical practitioner, environmental health officer or veterinarian to seize, detain or destroy any diseased, unsound or unwholesome foodstuff or diseased animal, but shall not confer on any other person any power beyond that of detention of such foodstuff or animal for the purposes of examination by a medical practitioner, environmental health officer or veterinarian.

(9) Regulations made under subsection (1) shall also apply, in so far as they can be applied, in respect of the quality, ingredients, preparation, manufacture, packing, conveying and storing of any article of food

prepared or manufactured in a private dwelling for the purposes of sale to the public.”

Insertion of a new section 15A in Act 54 of 1972

6. The following section is hereby inserted in the principal Act after section 15:

“Regulations relating to mollusc farming and fish farming

15A The Minister may, after consultation with the Minister of Agriculture and Land Affairs and the Minister of Water Affairs and Forestry, make regulations relating to-

- (a) the regulation, control, restriction or prohibition of the supply for human consumption of molluscs or fish originating from mollusc nurseries, fish breeding stations or fish farms;
- (b) the purity, chemical composition and source of, and the addition of substances to, water used in the cultivation or breeding of molluscs or fish intended for human consumption, and the location of mollusc nurseries or fish breeding stations or fish farms; and
- (c) the regulation, control, restriction or prohibition of the cultivation, breeding, storage or transport of molluscs or fish cultivated or bred for the purposes of human consumption.”

Repeal of section 16 of Act 54 of 1972

7. Section 16 of the principal Act is hereby repealed.

Amendment of section 18 of Act 54 of 1972

8. Section 18 of the principal Act is hereby amended by the substitution for paragraphs (a), (b) and (c) of subsection (1) of the following paragraphs:

- “(a) on a first conviction, to a fine ~~[not exceeding four hundred rand]~~ or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment;
- (b) on a second conviction, to a fine **[not exceeding eight hundred rand]** or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment;
- (c) on a third or subsequent conviction, to a fine **[not exceeding two thousand rand]** or to imprisonment for a period not exceeding twenty-four months or to both such fine and such imprisonment.”

Amendment of section 25 of Act 54 of 1972 as amended by section 5 of Act 32 of 1981

9. The following section is hereby substituted for section 25 of the principal Act:

“Delegation of powers

25. The Director-General may in writing authorize any officer of the **[Department of Health, Welfare and Pensions]** national department or of a provincial department or of another government department to exercise or perform in general or in a particular case or in cases of a particular nature, any power, duty or functions conferred or imposed on the Director-General in terms of this Act.”

Short title and commencement

10. This Act is called the Foodstuffs, Cosmetics and Disinfectants Amendment Act, 2004 and shall come into operation on a date to be determined by the President by proclamation in the *Gazette*.