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THE PEST CONTROL PRODUCTS ACT

CHAPTER 346

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CHAPTER 346

PEST CONTROL PRODUCTS ACT

ARRANGEMENT OF SECTIONS

Section

1. Short title
 2. Interpretation
 3. Control of manufacture *etc.*, of pest control products
 4. Import, export, *etc.*, of pest control products
 - 4A. Control of counterfeit products
 5. Establishment and constitution of the Board
 6. Functions of the Board
 7. Procedure of the Board
 8. Appointment of inspectors and analysts
 9. Powers of inspectors
 10. Forfeiture of pest control products
 11. Secrecy of information
 12. Offences and penalties
 - 12A. General penalty
 13. Trial of offences
 14. Certificate of analyst
 15. Regulations
 16. Cessation of the application of Community law and saving
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CHAPTER 346

PEST CONTROL PRODUCTS ACT

[Date of assent: 25th May, 1982.]

[Date of commencement: 17th June, 1983.]

An Act of Parliament to regulate the importation, exportation, manufacture, distribution and use of products used for the control of pests and of the organic function of plants and animals and for connected purposes

[Act No. 4 of 1982, Legal Notice 89 of 1983, Act No. 6 of 2009, Act No. 25 of 2022.]

1. Short title

This Act may be cited as the Pest Control Products Act.

2. Interpretation

In this Act, unless the context otherwise requires—

"adulteration" means addition of any substance or thing to a pest control product so as to change or alter its character, value, quality, composition, merit, efficacy and safety;

"advertise" includes any representation by any means whatever for the purpose of promoting directly or indirectly the sale or disposal of any pest control product;

"Board" means the Pest Control Products Board established under section 5;

"counterfeiting" means manufacturing, formulating, producing or making of any pest control products, labels or packages that are identical or substantially indistinguishable from those legally authorized under this Act and are likely to cause confusion, mistake or to deceive or pass off as being genuine pest control products, labels or packages of the registrant of that particular product and "counterfeit goods" shall be construed accordingly;

"inspector" means a person appointed as an inspector under section 8;

"label" includes a legend, word, mark, symbol, pictogram or design applied or attached to, included in, belonging to or accompanying any pest control product;

"package" includes any container, wrapping, covering or holder in which any pest control product or material is wholly or partly contained, placed or packed;

"pest" means any injurious, noxious or troublesome insect, fungus, bacterial organism, virus, weed, rodent or other plant or animal pest; and includes any injurious, noxious or troublesome organic function of a plant or animal;

"pest control product" means a product, device, organism, substance or thing that is manufactured, represented, sold or used as a means for directly or indirectly controlling, preventing, destroying, attracting or repelling any pest and includes—

- (a) any compound or substance that enhances or modifies or is intended to enhance or modify the physical or chemical characteristics of a pest control product to which it is added; and
- (b) any active ingredient used for the manufacture of a pest control product;

"place" includes any vehicle, vessel, railway carriage or aircraft;

"sell" includes offer, advertise, keep, expose, transmit, convey, deliver and prepare for sale or exchange, and dispose of for any consideration whatsoever.

[Act No. 6 of 2009, Sch.]

3. Control of manufacture etc., of pest control products

(1) No person shall manufacture, package, store, display, distribute, use or advertise any pest control product except in accordance with conditions prescribed by regulations made under this Act.

(2) No person shall package, label or advertise any pest control product in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character, value, quality, composition, merit or safety.

4. Import, export, etc., of pest control products

(1) No person shall import into, or sell in, Kenya any pest control product unless that product has been registered, packaged and labelled in accordance with regulations made under this Act and conforms to the standards specified in those regulations.

(2) No person shall export or re-export out of Kenya any pest control products unless he has complied with the requirement specified in regulations made under this Act.

4A. Control of counterfeit products

Any person who adulterates or counterfeits, or is found in possession of adulterated or counterfeit pest control products, labels or packages, shall be guilty of an offence and shall, on conviction, be liable to a fine of not less than two hundred and fifty thousand shillings, and not exceeding one million shillings, or to imprisonment for a term not exceeding two years, or to both.

[Act No. 6 of 2009, Sch.]

5. Establishment and constitution of the Board

(1) There is hereby established a board to be known as the Pest Control Products Board.

(2) The Board shall consist of the following members—

- (a) a Chairperson appointed by the President;
- (b) two public officers appointed by the Cabinet Secretary, being persons with knowledge and experience of pest control;
- (c) two public officers appointed by the Cabinet Secretary for the time being responsible for livestock development, being persons with knowledge and experience of pest control;
- (d) one public officer appointed by the Cabinet Secretary for the time being responsible for matters relating to commerce;
- (e) one public officer appointed by the Cabinet Secretary for the time being responsible for matters relating to the environment;
- (f) one public officer appointed by the Cabinet Secretary for the time being responsible for matters relating to health;
- (g) one public officer appointed by the Cabinet Secretary for the time being responsible for matters relating to water development;
- (h) the Government Chemist;
- (i) the Director of the Kenya Bureau of Standards;

- (j) the Director of the Coffee Research Foundation;
- (k) one person appointed by the Cabinet Secretary, being a person engaged in farming, to represent the interests of farmers;
- (l) one person appointed by the Cabinet Secretary for the time being responsible for livestock development, being a person engaged in farming, to represent the interests of farmers;
- (m) the Director of Agriculture.

(3) The Board may co-opt to serve it for such period as it may think fit not more than five persons whose assistance or advice it may require, but a person so co-opted shall not be entitled to vote at a meeting of the Board or be counted as a member for the purpose of forming a quorum.

(4) The members of the Board, other than *ex officio* members, shall hold office for a period of three years but shall be eligible for reappointment.

(5) The Cabinet Secretary shall appoint a public officer who is not a member of the Board to be the secretary to the Board who shall exercise and perform such functions as the Board may from time to time determine.

6. Functions of the Board

The functions of the Board shall be—

- (a) to assess and evaluate pest control products in accordance with the provisions of the regulations made under this Act;
- (b) to consider applications for registration of pest control products and to make recommendations thereon to the Cabinet Secretary;
- (c) to advise the Cabinet Secretary on all matters relating to the enforcement of the provisions of this Act and regulations made thereunder;
- (d) to facilitate collaboration with other Government agencies in matters relating to this Act to promote trade under the National Electronic Single Window System established under section 3 of the National Electronic Single Window System Act (Cap. 485D).

[Act No. 25 of 2022, Sch.]

7. Procedure of the Board

(1) The Board shall meet at least four times in each year.

(2) The Chairperson shall preside at all meetings of the Board, and in his absence the Board shall elect one of its members to act as Chairperson at that particular meeting.

(3) The person presiding at any meeting of the Board shall have a casting vote in addition to his deliberative vote.

(4) A quorum of the Board shall be ten.

(5) A member of the Board other than an *ex officio* member shall cease to be a member of the Board and the office of that member shall become vacant—

- (a) if he resigns his office by writing under his hand addressed to the Chairperson;
- (b) if he is certified to be insane or otherwise adjudged to be of unsound mind under any written law;

- (c) if, in the opinion of the Board, he becomes physically or otherwise incapable of discharging his duties as a member, and remains so for a period of ninety consecutive days;
- (d) if he is absent, without the permission of the Board, from three consecutive meetings of the Board;
- (e) if he is adjudged or otherwise declared bankrupt under any written law;
- (f) if he is sentenced to imprisonment for a term of six months or more.

8. Appointment of inspectors and analysts

(1) The Cabinet Secretary shall, by notice in the *Gazette*, appoint suitably qualified persons as inspectors and analysts for the purposes of this Act.

(2) No person appointed under subsection (1) shall, while being so appointed, engage in any business connected with the manufacture, sale or distribution of pest control products.

9. Powers of inspectors

(1) An inspector may, at all reasonable times—

- (a) enter any place or premises—
 - (i) for the purposes of carrying into effect any of the provisions of this Act;
 - (ii) in which he reasonably believes a pest control product to which this Act applies is or has been manufactured, stored, sold or used;
 - (iii) in which he reasonably believes there is material that is contaminated by a pest control product; or
 - (iv) which is or are used or capable of being used in the manufacture of a pest control product;
- (b) examine any pest control product or material found in any place or premises or open any package found therein that he has reason to believe contains any pest control product or material and take samples thereof;
- (c) require any person to produce for inspection or for the purpose of obtaining copies thereof or extracts therefrom, any books, shipping bills, bills of lading, documents containing instructions, or other documents or papers concerning any matter relevant to the administration of this Act or any regulations made thereunder.

(2) An inspector shall be furnished with a certificate of his appointment as an inspector and on entering any place or premises referred to in subsection (1) shall, if so required, produce the certificate to the person in charge thereof.

(3) The owner or the person in charge of any place or premises referred to in subsection (1) and every person found therein shall give an inspector all reasonable assistance to enable the inspector to carry out his duties and functions under this Act and any regulations made thereunder and shall furnish him with such information with respect to the enforcement of the provisions of this Act and regulations made thereunder as he may reasonably require.

(4) Any person who refuses entry to an inspector acting under this section or obstructs him in making an entry or making an inspection or who, without

reasonable excuse, fails to produce any pest control product or material for examination or any document the production of which is required of him under this section shall be guilty of an offence.

10. Forfeiture of pest control products

(1) Whenever an inspector believes, on reasonable grounds, that this Act or any regulations made thereunder has or have been contravened, he may seize and detain the pest control product by means of or in relation to which he reasonably believes the contravention was committed.

(2) Any pest control product seized and detained pursuant to subsection (1) shall not be detained after—

- (a) such time not exceeding fourteen days as, in the opinion of the inspector, the provisions of this Act and the regulations made thereunder have been complied with; or
- (b) the expiration of six months from the date of seizure, or such longer period as may be prescribed with respect to any pest control product,

unless before that time proceedings have been instituted in respect of the contravention, in which case the pest control product may be detained until the proceedings are finally concluded.

(3) A court convicting any person for an offence under this Act or any regulation made thereunder—

- (a) may order that any pest control product in relation to which the offence was committed shall be forfeited to the state; and
- (b) may make such order as it may deem proper as to the payment by the defendant of all or any fees and other expenses incidental to the analysis and disposal of a pest control product in respect of which the conviction is obtained.

(4) Where an inspector has seized a pest control product and the owner thereof or the person in whose possession the pest control product was at the time of the seizure consents in writing to the disposal thereof, the pest control product shall thereupon be forfeited to the Government and shall be disposed of in such manner as the Cabinet Secretary may direct and at the expense of the person consenting to the disposal.

(5) Any person who hinders or obstructs an inspector acting in exercise of his powers under this section shall be guilty of an offence.

[Act No. 6 of 2009, Sch.]

11. Secrecy of information

(1) Any person who is or has been engaged in the enforcement of the provisions of this Act who discloses, except for the purpose of the exercise of his functions or when required to do so by a court or under any written law, any information acquired by him in the exercise or purported exercise of his functions under this Act to any other person shall be guilty of an offence.

(2) No matter or thing done by a member of the Board or any officer, employee or agent of the Board shall, if it was done *bona fide* for executing the functions, powers or duties of the Board, render the member, officer, employee or agent personally liable to any action, claim or demand whatsoever:

Provided that in the conduct of the affairs of the Board, members of the Board shall exercise due prudence and diligence.

[Act No. 6 of 2009, Sch.]

12. Offences and penalties

(1) Any person who contravenes provisions of section 3 or 4 shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding two years or to a fine not less than two hundred and fifty thousand shillings, or to both.

(2) A person guilty of an offence under this Act other than an offence referred to in subsection (1) shall be liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding six months, or to both.

(3) In any prosecution for an offence under this Act, it shall be sufficient proof of the offence to establish that it was committed by an employee or agent of the accused, whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without his knowledge or consent and that he exercised all due diligence to prevent its commission.

[Act No. 6 of 2009, Sch.]

12A. General penalty

Any person who is guilty of an offence under this Act for which no special penalty is provided by this Act shall be liable to a fine not exceeding fifty thousand shillings or to imprisonment for a period not exceeding six months, or to both.

[Act No. 6 of 2009, Sch.]

13. Trial of offences

An offence under this Act may be tried by the court within whose jurisdiction the accused is resident or is carrying on business notwithstanding the fact that the matters giving rise to the offence did not take place within the jurisdiction of that court.

14. Certificate of analyst

(1) Subject to this section, a certificate of an analyst stating that he has analysed or examined an article or a sample submitted to him by an inspector and stating the result of his examination shall be admissible in evidence in a prosecution for the contravention of this Act or any regulations made thereunder and shall be *prima facie* evidence of the statements contained therein.

(2) The party against whom a certificate of an analyst is produced under subsection (1) may, with leave of the court, require the attendance of the analyst for the purposes of cross-examination.

(3) No certificate shall be received in evidence under subsection (1) unless the party intending to produce it has, before the trial, given to the party against whom it is intended to be produced reasonable notice of that intention together with a copy of the certificate.

15. Regulations

The Cabinet Secretary may, after consultation with the Board, make regulations

- (a) prescribing for the purposes of this Act the nomenclature of pests, pest control products and classes and kinds of pests and pest control products;
- (b) prescribing the form in which applications for registration shall be made and the information to be furnished therewith;
- (c) respecting the registration of pest control products and establishments in which any pest control products are handed by manufacturers or dealers and prescribing the fees therefor, and respecting the procedures to be followed for the review of cases involving the refusal, suspension or cancellation of the registration of any such product or establishment;
- (d) prescribing the form, composition, and all other standards relating to the safe use of pest control products, including toxic residue effects;
- (e) respecting the manufacture or treatment of any pest control product to facilitate its recognition by change in colouration or other means;
- (f) respecting the standards for efficacy and safety of any pest control product;
- (g) respecting the manufacture, storage, distribution, display and use of any pest control product;
- (h) respecting the packaging, labelling and advertising of pest control products;
- (i) respecting the taking of samples and the making of analyses for the purposes and provisions of this Act;
- (j) prescribing the information to be supplied and the form of such information in respect of any pest control product that is to be imported into Kenya;
- (k) prescribing the circumstances and conditions under which pest control products that have met the requirements of the Cattle Cleansing Act (Cap. 358) may be deemed to be registered as prescribed under this Act;
- (l) generally for the better carrying out of the purposes and provisions of this Act.

16. Cessation of the application of Community law and saving

(1) Notwithstanding the Treaty for East African Co-operation Act (Cap. 4C), as from the date of commencement of this Act the Control of Pesticides Act (E.A. Cap. 3) of the Community shall cease to have the force of law in Kenya.

(2) Notwithstanding subsection (1), any proceedings under the Control of Pesticides Act (E.A. [Cap. 3] Repealed) of the Community which had been commenced before the commencement of this Act may be continued and concluded in accordance with that Act as though it still had the force of law in Kenya.