

ACT 290
MEDICINES (ADVERTISEMENT AND SALE) ACT 1956 (REVISED - 1983)
Incorporating latest amendment - Act A778/1990

First enacted : 1956 (Ordinance No. 10 of 1956)
Date of coming into operation : West Malaysia : 1 October 1956 [LN. 172/56];
Sabah and Sarawak : 1 January 1976 [P.U.(A) 400/1975]

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SCHEDULE

Long Title

An Act to prohibit certain advertisements relating to medical matters and to regulate the sale of substances recommended as a medicine.

Section 1. Short title.

This Act may be cited as the Medicines (Advertisement and Sale) Act 1956.

Section 2. Interpretation.

In this Act, unless the context otherwise requires—

“advertisement” includes any notice, circular, report, commentary, pamphlet, label, wrapper or other document, and any announcement made orally or by any means of producing or transmitting light or sound;

“authorized officer” means a pharmacist in the public service who is authorized in writing by the Minister under section 6A to exercise the powers of an authorized officer under this Act;

“Poisons List” means the Poisons List in the First Schedule to the Poisons Act 1952 [Act 366], or the corresponding provision of law in force in Sabah or Sarawak, as the case may be;

“private hospital” means a hospital registered under the Private Hospitals Act 1971 [Act 43];

“proprietary designation”, in relation to the sale of an article consisting of or comprising a substance recommended as a medicine, means a word or words used or proposed to be used in connection with the sale of articles consisting of or comprising the substance for the purpose of indicating that they are goods of a particular person by virtue of manufacture, selection, certification, dealing with or offering for sale; and the expression “proprietor”, in relation to such a designation, means the person whose goods are indicated or intended to be indicated as aforesaid by the designation;

“public hospital” includes any public clinic, public dispensary or other public institution for the reception of the sick whether as in-patients or out-patients;

“registered” used with reference to a person practicing a profession means registered under the provisions of the law for the time being applicable to the registration of persons practising such profession;

“substance” includes a preparation;

“substance recommended as a medicine”, in relation to the sale of an article consisting or comprising a substance so recommended means a substance which is referred to—

(a) on the article, or on any wrapper or container in which the article is sold, or on any label affixed to, or in any document enclosed in, the article or such a wrapper or container; or

(b) in any placard or other document exhibited at the place where the article is sold; or

(c) in any advertisement published after the passing of this Act by or on behalf of the manufacturer of the article, or the person carrying on the business in the course of which the article was sold, or, in a case

where the article was under a proprietary designation, the proprietor of the designation,

in terms which are calculated to lead to the use of the substance for the prevention or treatment of any ailment, infirmity or injury affecting the human body, not being terms which give a definite indication that the substance is intended to be used as, or as part of, a food or drink, and not as, or as part of, a medicine;

“word” includes a letter and a numeral.

Section 3. Prohibition of advertisements relating to certain diseases.

(1) Subject to this Act, no person shall take any part in the publication of any advertisement referring to any article, or articles of any description, in terms which are calculated to lead to the use of that article or articles of that description as a medicine, an appliance or a remedy for the purpose of—

(a) prevention or treatment of the diseases and conditions of human beings as specified in the Schedule;

(b) practising contraception among human beings;

(c) improving the condition or functioning of the human kidney or heart, or improving the sexual function or sexual performance of human beings;

(d) diagnosis of a disease as specified in the Schedule:

Provided that this subsection shall not apply to any advertisement published by the Federal Government or any State Government or any local or public authority, or by the governing body of a public hospital or by any person authorized to publish such advertisement by the Minister.

(1A) The Minister may add to, delete from or amend the Schedule from time to time by order.

(2) In any proceedings for a contravention of the foregoing provisions of this section, it shall be a defence for the person charged to prove that the advertisement to which the proceedings relate was published only so far as was reasonably necessary to bring it to the notice of persons of the following classes or of one or some of them, that is to say—

(a) members of a local or public authority;

(b) members of the governing body of a public hospital;

(c) registered medical practitioners;

(d) registered dentists;

(e) registered nurses and midwives;

(f) registered pharmacists, chemists and wholesalers and retailers of poisons licensed under the Poisons Act 1952, or the corresponding law in force in Sabah or Sarawak, as the case may be, to sell poisons listed in Part I of the Poisons List;

(g) persons undergoing training with a view to becoming registered medical practitioners, registered dentists, registered nurses or registered pharmacists or chemists.

Section 4. Prohibition of advertisements relating to abortion.

Subject to this Act, no person shall take any part in the publication of any advertisement referring to any article, or articles of any description, in terms which calculated to lead to the use of that article or articles of that description for procuring the miscarriage of women.

Section 4A. Prohibition of advertisements relating to skill or service.

Subject to this Act, no person shall take part in the publication of any advertisement—

(a) which refers to any skill or service relating to the treatment, prevention or diagnosis of any ailment, disease, injury, infirmity or condition affecting the human body; and

(b) which is capable of including, or which contains an invitation, whether express or implied, to, any person to seek advice of the advertiser or any person referred to in the advertisement in connection with such skill or service:

Provided that this section shall not apply to any advertisement published—

(aa) with the approval of the Minister, by any professional body related to the medical profession or to any other allied profession which is established by or registered under any written law; or

(bb) with the approval of the Medicine Advertisements Board established by the Minister, by any private hospital or by any—

(i) private clinic;

(ii) private radiological clinic;

(iii) private medical laboratory,

operated by a registered medical practitioner having a valid annual practising certificate under the Medical Act 1971 [Act 50].

Section 4B. Advertisements of medicines to be approved.

(1) No person shall take any part in the publication of any advertisement referring to any article, or articles of any description, in terms which are calculated to lead to the use of that article of that description as a medicine, an appliance or a remedy for the purpose of treatment or prevention of diseases or conditions of human beings other than the diseases and conditions specified in subsection 3(1), unless such advertisement has been approved by the Medicine Advertisements Board.

(2) Any advertisement proposed to be published may be submitted to the Medicine Advertisements Board for approval in the manner provided for by regulations made under section 7.

Section 5. Provisions as to offences under sections 3, 4, 4A and 4B.

(1) If any person contravenes any of the provisions of sections 3, 4, 4A and 4B, he shall, subject to the provisions of this Act, be liable on summary conviction—

(a) in the case of a first conviction, to a fine not exceeding three thousand ringgit or to imprisonment for any term not exceeding one year or to both; and

(b) in the case of a subsequent conviction, to a fine not exceeding five thousand ringgit, or to imprisonment for a term not exceeding two years, or to both.

(2) Where, in any proceedings for a contravention of any of the provisions of sections 3, 4 and 4B it is proved—

(a) that an advertisement was published referring to any article, or articles of any description, in terms calculated to lead to the use of that article of that description—

(i) in the case of a contravention of section 3, for the treatment of human beings for such diseases as is mentioned in subsection (1) of that section;

(ii) in the case of a contravention of section 4, for procuring the miscarriage of women; or

(iii) in the case of contravention of section 4B, for treatment or prevention of diseases or conditions of human beings other than the diseases and conditions specified in subsection 3(1);

(b) that the advertisement also referred to the article in terms calculated to indicate that it or they were manufactured, produced, imported, sold or offered for sale by the person charged,

then, unless the contrary is proved, it shall be presumed for the purpose of those proceedings that that person took part in the publication of the advertisement, but without prejudice to the liability of any other person.

(2A) Where in any proceedings for a contravention of section 4A, it is proved that an advertisement was published referring to any skill or service in terms calculated to indicate that such skill or service was provided by the person charged, then, unless the contrary is proved, it shall be presumed for the purpose of these proceedings that the person charged took part in the publication of the advertisement, but without prejudice to the liability of any other person.

(3) In any proceedings for a contravention of any the provision of sections 3, 4 and 4B, it shall be a defence for the person charged to prove—

(a) that the advertisement to which the proceedings relate was published in such circumstances that he did not know and had no reason to believe that he was taking part in the publication thereof; or

(b) that the said advertisement was published only in a publication of a technical character intended for circulation mainly amongst persons of the following classes, or one or some of them, that is to say—

(i) registered medical practitioners;

(ii) registered dentists;

(iii) registered nurses and midwives;

(iv) registered pharmacists, chemists and wholesalers and retailers of poisons licensed under the Poisons Act 1952, or the corresponding law in force in Sabah or Sarawak, as the case may be, to sell poisons listed in Part I of the Poisons List;

(v) persons undergoing training with a view to becoming registered medical practitioners, registered dentists, registered nurses or registered pharmacists or chemists.

(4) In any proceedings for a contravention of section 4A, it shall be a defence for the person charged to prove that the advertisement to which the proceedings relate was published in such circumstances that he did not know and had no reason to believe that he was taking part in the publication thereof.

Section 6. Disclosure of composition of medicines.

(1) Subject to the provisions of this Act, no person shall—

(a) sell by retail any article consisting of or comprising a substance recommended as a medicine; or

(b) supply any such article as a sample for the purpose of inducing persons to buy by retail the substances of which it consists or which it comprises,

unless there is written in the English or National language so as to be clearly legible on the article or a label affixed thereto, or, if the article is sold or supplied as aforesaid in a container, on the container or a label affixed thereto, or, if the article is sold or supplied as aforesaid in more than one container, on the inner container or a label affixed thereto—

(i) the appropriate designation of the substance so recommended, or of each of the active constituents thereof, or of each of the ingredients of which it has been compounded; and

(ii) in a case where the appropriate designation of each of the active constituents or the ingredients is written as aforesaid, the appropriate quantitative particulars of the constituents or ingredients:

Provided that this subsection shall not apply to any article made up and supplied for the use of a particular person, being an article prescribed by reference to the needs of that person.

(2) In the preceding subsection—

(a) the expression “appropriate designation”, in relation to a substance, constituent or ingredient, means—

(i) in a case where the substance, constituent or ingredient is a poison included in the Poisons List, the name with which the container of the poison is for the time being required to be labelled or marked in pursuance of subregulation 10(1) and Regulation 11 of the Poisons Regulations 1952 [*L.N. 440/1952*], or the corresponding law in force in Sabah or Sarawak, as the case may be;

(ii) in a case where the substance, constituent or ingredient is not such a poison and is described in any of the monographs contained in the edition of the British Pharmacopoeia or the British Pharmaceutical Codex which was last published before the date on which the article was sold or supplied, the description set out at the head of that monograph;

(iii) in a case where the substance, constituent or ingredient is not such a poison and is not described as

in subparagraph (ii) of this paragraph, the accepted scientific name, or other name descriptive of the true nature, of the substance, constituent or ingredient;

(b) the expression “appropriate quantitative particulars”, in relation to the active constituents or the ingredients of a substance, means—

(i) the approximate percentage of each of those constituents or ingredients contained in the substance or the approximate quantity of each of those constituents or ingredients contained in the article sold or supplied; or

(ii) in a case where the said article consists of or comprises a number of separate portions of the substance, either the approximate percentage or quantity aforesaid, or the approximate quantity of each of the constituents or ingredients contained in each portion; and

(c) the expression “container” includes a wrapper.

(3) If any person sells or supplies an article in contravention of the preceding provisions of this section, he shall, subject to this Act, be liable on summary conviction—

(a) in the case of a first conviction, to a fine not exceeding one thousand ringgit; and

(b) in the case of a subsequent conviction, to a fine not exceeding two thousand ringgit, or to imprisonment for a term not exceeding six months, or to both.

Section 6A. Authorized officers.

The Minister may authorize in writing any pharmacist in the public service to exercise the powers of an authorized officer under this Act.

Section 6B. Power of investigation.

(1) An authorized officer may investigate the commission of any offence under this Act or any regulation made thereunder.

(2) An authorized officer making an investigation under this Act may by order in writing require the attendance before himself of any person who from information given or otherwise appears to be acquainted with the circumstances of the case, and such person shall attend as so required:

Provided that no person shall be required under this section to perform a journey of more than twelve kilometers from his usual place of abode exclusive of such portion of the journey as may be performed by train or motorcar or other vehicle.

(3) If any person refuses to attend as so required by an order issued under subsection (2), the authorized officer who issued such order may report such refusal to a Magistrate who may thereupon in his discretion issue a warrant to secure the attendance of such person as required by such order.

Section 6C. Examination of witnesses.

(1) An authorized officer making an investigation under section 6B may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound to answer all questions relating to the case put to him by such officer:

Provided that such person may refuse to answer any question if such officer fails or refuses on demand to produce to him the authorization in writing given by the Minister to the officer under section 6A and that such person may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture.

(3) A person making a statement under this section shall be legally bound to state the truth, whether or not such statement is made wholly or partly in answer to questions.

(4) An authorized officer examining a person under subsection (1) shall first inform that person of the provisions of subsections (2) and (3).

(5) A statement made by any person under this section shall, whenever possible, be reduced into writing and, after it has been read to the person in the language in which he made it and he had been given an opportunity to make any corrections he may wish, shall be signed by him or affixed with his thumb print.

Section 6D. Power to enter premises.

When an authorized officer has reasonable cause to believe that an offence under this Act or any regulation made thereunder has been or is being committed in any premises or in connection with any business carried on in premises, he may at all reasonable times enter, search and examine such premises and may inspect, remove and any advertisement, book, equipment or other article which in the opinion of such officer may furnish evidence of the commission of an offence under this Act or any regulation made thereunder.

Section 6E. Penalty for obstructing or impeding an authorized officer.

Any person who obstructs or impedes an authorized officer in the performance of his duties under this Act shall be liable on conviction to a fine not exceeding three thousand ringgit or to imprisonment for any term not exceeding one year or to both.

Section 6F. Sanction to prosecute and conduct of prosecutions.

(1) No prosecution shall be instituted under this Act or any regulation made thereunder without the sanction in writing of the Public Prosecutor.

(2) Prosecutions in respect of offences under this Act or any regulation made thereunder may be conducted by any authorized officer.

Section 7. Regulations

The Minister may make regulations for carrying out the purpose of this Act but without prejudice to the generality of the foregoing words such regulations may—

(a) for the purpose of section 4A and section 4B, establish the Medicine Advertisements Board;

(b) provide the manner of submitting advertisements for approval under section 4A and section 4B and impose fees for submission and approval of such advertisements;

(c) provide the procedure to be followed by the Medicine Advertisements Board; and

(d) provide the manner of appeal against the decision of the Medicine Advertisements Board and that such appeal shall lie to the Minister.

SCHEDULE [Section 3]

1. Diseases or defects of the kidney.
2. Diseases or defects of the heart.
3. Diabetes
4. Epilepsy or fits.
5. Paralysis.
6. Tuberculosis.
7. Asthma.
8. Leprosy.
9. Cancer.
10. Deafness.
11. Drug addiction.
12. Hernia or rupture.
13. Diseases of the eye.
14. Hypertension.
15. Mental disorder.
16. Infertility.
17. Frigidity
18. Impairment of sexual function or impotency.
19. Venereal disease.
20. Nervous debility, or other complaint or infirmity, arising from or relating to sexual intercourse.