

ACT 368
SALE OF DRUGS ACT 1952 (REVISED - 1989)
Incorporating latest amendment - Act A1084/2000

First enacted :	1952 (Ord No. 28 of 1952)
Date of coming into operation :	1 November 1952.[L.N. 536/1962.] Sabah and Sarawak- 1 September 1999, [P.U.(A) 380/1992]; Federal Territory of Labuan- 1 September 1989 [P.U.(A) 381/1992.]
Revised up to :	1989 (Act 368 w.e.f. 1st July 1989)

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Long Title

An Act relating to the sale of drugs.

[1 November 1952, L.N. 536/1952;
Sabah and Sarawak—1 September 1999, P.U. (A) 380/1992;
Federal Territory of Labuan—1 September 1989, P.U. (A) 381/1992]

Section 2. Interpretation.

In this Act, unless the context otherwise requires—

“analyst” means an analyst appointed under this Act;

“appliance” includes the whole or any part of any utensil, machinery, instrument, apparatus, or article used, or intended for use, in or for the making, keeping, preparing, or supplying of any drug;

“drug” includes any substance, product or article intended to be used or capable, or purported or claimed to be capable, of being used on humans or any animal, whether internally or externally, for a medicinal purpose;

“importer” includes any person who, whether as owner, consignee, agent or broker, is in possession of, or in anywise entitled to the custody, or control, of the imported article;

“inspector” means any person appointed to be an inspector under section 3 of this Act;

“medicinal purpose” means any of the following purposes:

(a) alleviating, treating, curing or preventing a disease or a pathological condition or symptoms of a disease;

(b) diagnosing a disease or ascertaining the existence, degree or extent of a physiological or pathological condition;

(c) contraception;

(d) inducing anaesthesia;

(e) maintaining, modifying, preventing, restoring, or interfering with, the normal operation of a physiological function;

(f) controlling body weight;

(g) general maintenance or promotion of health or wellbeing;

“Minister” means the Minister charged with responsibility for medical and health services;

“officer” means any Medical Officer of Health of the Medical Department of the Federal Government or of any State Government or of the Health Department of any Municipality, and includes the Director General of Chemistry, Malaysia, all Senior Chemists and Chemists of the Department of Chemistry and any person appointed to be an officer under section 3 of this Act;

“package” includes every means by which goods for carriage or for sale are cased, covered, enclosed, contained, or packed;

“sale” or “sell” includes barter and exchange and also includes offering or attempting to sell or causing or allowing to be sold or exposing for sale or receiving or sending or delivering for sale or having in possession for sale or having in possession any drug knowing that the same is likely to be sold or offered or exposed for sale.

Section 3. Appointment of analysts, officers and inspectors.

(1) The Yang di-Pertuan Agong may appoint such number of analysts as he may consider necessary for the purpose of this Act.

(2) The Chief Minister may appoint such number of officers and inspectors within a State as may be necessary for the purposes of this Act.

(3) The Minister may make regulations for the conduct of the duties of analysts, officers and inspectors under this Act.

(4) The analysts, officers and inspectors appointed under this section shall be deemed to be public servants within the meaning of the Penal Code [Act 574].

Section 4. Power of officers and inspectors enter, etc.

(1) Any officer or inspector may—

(a) at all reasonable times enter into and inspect any place where he has reason to believe that there is any drug intended for sale;

(b) mark, seal, or otherwise secure, weigh, count or measure any drug, the sale, preparation, or manufacture of which is or appears to be contrary to this Act;

(c) inspect any drug, wherever found, which he has reasonable ground for believing to be intended for sale.

(2) Any officer may—

(a) seize any drug, wherever found, which is, or appears to be, unwholesome or deleterious to health;

(b) destroy any drug, wherever found, which is decayed or putrefied.

(3) Any person claiming anything seized under this section may within forty-eight hours after such seizure complain thereof to the Court of a Magistrate and such complaint may be heard and determined by such court which may either confirm or disallow such seizure wholly or in part and may order the article seized to be restored.

(4) If within forty-eight hours after such seizure no complaint has been made or if such seizure is confirmed, the article seized shall become the property of the Government and shall be destroyed or otherwise disposed of so as to prevent its being used for human consumption.

(5) The period of forty-eight hours prescribed by subsections (3) and (4) may be enlarged by the Minister by regulation applicable to such districts or places as may be specified in the regulation.

(6) Where the seizure of any drug is made in any place which is not in the occupation of the owner of the thing seized, the officer making the seizure shall forthwith give notice in writing of the seizure to the owner or to the consignor or consignee or to the agent of the owner of the thing seized, if his name and address are attached thereto or are otherwise known to the officer and such address is within Malaysia.

Section 5. Power to demand, select, and take samples.

(1) On payment or tender to any person selling or making any drug, or to his agent or servant, of the current market value of the samples in this section referred to, any officer or inspector may at any place demand and select and take or obtain samples of the said drug for the purpose of analysis.

(2) Any such officer or inspector may require the said person or his agent or servant to show and permit the inspection of the package in which such drug is at the time kept and to take therefrom the samples demanded.

(3) Where any drug is kept for retail sale in an unopened package, no person shall be required by any officer or inspector to sell less than the whole of the contents of such package.

(4) Any person who refuses or neglects to comply with any demand or requisition made by an officer or inspector in pursuance of this section commits an offence.

Section 6. Any person may have sample analysed.

Any person, other than the seller, may, on payment of the prescribed fee together with the cost of the sample, require any officer or inspector to purchase a sample of any drug and submit the same for analysis.

Section 7. Samples how taken.

(1) Where it is intended to submit any sample for analysis, the officer or inspector purchasing or otherwise procuring it shall, before or forthwith after procuring it, inform the seller or his agent selling the article that he intends to have the same analyzed by an analyst.

(2) Such officer or inspector shall thereupon divide the sample into three parts and shall mark and seal or fasten up, in such manner as its nature will permit, each such part and shall offer one of such parts to the seller or his agent or the person having charge of the article.

(3) Such officer or inspector shall subsequently deliver, either personally or by registered letter, another of such parts to an analyst, and shall retain the third of such parts.

Section 8. Certificate of analyst.

(1) The certificate of the analyst shall be in the form prescribed.

(2) Where any method of analysis (chemical or physical) has been prescribed by regulations made under this Act for the analysis of any drug, any analyst either for the prosecution or defence shall follow, and

shall in his certificate of analysis declare that he has followed, the prescribed method in his analysis.

(3) A copy of the result of any analysis of any drug procured by an officer or inspector may be obtained from the analyst by the person from whom the article so analyzed was purchased or obtained on payment of such fee as may be prescribed.

(4) No such copy of any analysis nor any reproduction thereof shall be displayed or used as an advertisement and if any person so displays or uses it he commits an offence against this Act.

Section 9. Power to call for information.

(1) If in the opinion of any officer appointed under section 3 there is reasonable ground for suspecting that any person is in possession of any drug or other substance for the purpose of sale or of manufacturing or preparing the same for sale in breach of this Act he may require such person to produce for his inspection any books or documents dealing with reception, possession, purchase, sale or delivery of any such drug or other substance.

(2) Any officer mentioned in subsection (1) may make or cause to be made copies of or extracts from any such books or documents, and such copies or extracts certified as such by such officer shall, unless the contrary is proved be deemed to be true and correct copies or extracts.

(3) Any person who refuses or neglects to comply with any requisition made in pursuance of this section commits an offence.

(4) Any officer who does not maintain the secrecy of all matters which come to his knowledge in the performance of his official duties under this section or who communicates any such matter to any person whomsoever except for the purpose of carrying into effect the provisions of this Act commits an offence and shall be liable on conviction to a fine of one thousand ringgit

Section 10. Offences and penalty.

(1) Any person commits an offence who sells—

(a) any adulterated drug without fully informing the purchaser at the time of the sale of the nature of the adulteration;

(b) any drug in any package which bears or has attached thereto any false or misleading statement, word, brand, label or mark purporting to indicate the nature, quality, strength, purity, composition, weight, origin, age or proportion of the article contained in the package or of any ingredient thereof;

(c) any drug containing any substance the addition of which is prohibited;

(d) any drug containing a greater proportion of any substance than is permitted;

(e) any drug for internal use which contains methyl alcohol, isopropyl alcohol or denatured alcohol; or

(f) to the prejudice of the purchaser any drug which is not of the nature or not of the substance or not of the quality of the drug demanded by the purchaser.

(2) Where regulations made under this Act contain provisions prescribing the composition of, or

prohibiting or restricting the addition of any substance to, any drug, a purchaser of the drug shall, unless the contrary be proved, be deemed for the purposes of this section to have demanded a drug complying with the provisions of such regulations.

(3) In proceedings under this section it shall not be a defence to allege that the purchaser bought for analysis or examination and therefore was not prejudiced.

(4) *(Deleted by Act A1084).*

Section 11. Interference with official marks.

Any person who without authority opens, alters, breaks, removes, or erases any mark, fastening, or seal placed by any officer or inspector in pursuance of this Act upon any drug or upon any package, place, door or opening containing or affording access to any drug commits an offence and shall be liable on conviction to a fine of five hundred ringgit.

Section 12. General penalty.

(1) Subject to subsection (2), any person who commits an offence against this Act or any regulation made under this Act for which no penalty is expressly provided shall be liable on conviction to a fine not exceeding twenty-five thousand ringgit or to imprisonment for a term not exceeding three years or to both, and for a second or subsequent offence he shall be liable on conviction to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both.

(2) Any body corporate who commits an offence against this Act or any regulation made under this Act for which no penalty is expressly provided shall be liable on conviction to a fine not exceeding fifty thousand ringgit, and for a second or subsequent offence it shall be liable on conviction to a fine not exceeding one hundred thousand ringgit.

Section 13. Forfeiture of drugs upon conviction.

In the case of any conviction under this Act the court shall order that any drug to which the conviction relates and any similar drug found on the defendant's premises or in his possession at the time of the commission of the offence, together with all packages vessels containing the same, shall be forfeited and shall be disposed of in such manner as the Chief Minister may direct.

Section 14. Notification of conviction in newspapers.

A notification of the name and occupation of any person who has been convicted of any offence against this Act together with his place or places of business, the nature of the offence and the fine, forfeiture, or other penalty inflicted shall, if the court so orders, be published in any newspaper circulating in Malaysia or in any part thereof, and the cost of such publication may be recovered from such person as a civil debt.

Section 15. Adulteration.

For the purposes of this Act any drug shall be deemed to be adulterated if—

(a) it contains or is mixed or diluted with any substance which diminishes in any manner its beneficial properties as compared with such article in a pure and normal state and in an undeteriorated and sound condition or which in any other manner operates or may operate to the prejudice or disadvantage of the

purchaser or consumer;

(b) any substance or ingredient has been extracted or omitted therefrom and by reason of such extraction or omission the beneficial properties of the article as sold are less than those of the article in its pure and normal state or the purchaser or consumer is or may be in any manner prejudiced;

(c) it contains or is mixed or diluted with any substance of lower commercial value than such article in a pure and normal state and in an undeteriorated and sound condition;

(d) if it contains any substance which renders the drug injurious to health; or

(e) it does not comply with the standard therefor prescribed by any regulations made under this Act.

Section 16. Sale by agent or servant.

(1) For the purposes of this Act every person shall be deemed to sell any drug who sells the same either on his own account or as the agent or servant of any other person.

(2) In the case of any sale by an agent or servant his principal or employer shall be under the same liability as if he had effected the sale personally.

Section 17. Presumptions as to sale for human or animal consumption or use.

(1) When any drug is sold or exposed or offered for sale, it shall, unless the contrary is proved, be deemed to be sold or exposed or offered for sale for human or animal consumption or use.

(2) The purchase and sale of a sample of any drug under this Act for the purpose of analysis shall be deemed to be a purchase and sale of such drug for human or animal consumption or use unless the seller proves that the bulk from which such sample was taken was not offered, exposed, or intended for sale for human or animal consumption or use.

(3) For the purposes of this Act every person shall be deemed to sell or to intend to sell any drug if he sells or intends to sell for human or animal consumption or use any article of which such drug is constituent.

Section 18. Proceedings for offences.

(1) All proceedings in respect of an offence against this Act shall be taken in a summary manner before a Sessions Court or the Court of a First Class Magistrate.

(2) The summons in any such proceedings shall not be made returnable in less than fourteen days from the day on which it is served.

(3) There shall be served with the summons a copy of the analyst's certificate, if any, on which the prosecution is based.

(4) When any article of drug has been purchased or procured from any person for test purposes, no proceedings in respect of the sale thereof or of any offence against this Act shall be instituted after the expiration of sixty days from the time of purchasing or procuring the same.

Section 19. No defence that offence not wilfully committed.

In a prosecution for selling any drug contrary to this Act or of any regulations made thereunder it shall be no defence that the defendant did not act wilfully unless he also proves that he took all reasonable steps to ascertain that the sale of the article would not constitute an offence against this Act or against any regulations made thereunder.

Section 20. Reliance on written warranty a good defence.

(1) Subject to this section it shall be a good defence in any prosecution for an offence under section 10 if the defendant proves that—

(a) he purchased the article sold by him in reliance on a written warranty or other written statement as to the nature of the articles purchased signed by or on behalf of the person from whom the defendant purchased the same; and

(b) he had no reason to believe that the article sold did not conform to such warranty or statement; and

(c) if the article had truly conformed to such warranty or statement, the sale of the article by the defendant would not have constituted the offence charged against him.

(2) No warranty or other written statement given or made by a person resident outside Malaysia shall be any defence under this section unless the defendant proves that he had taken reasonable steps to ascertain and did in fact believe in the truth of the matters set forth in such warranty or statement.

(3) No warranty or other written statement shall be any defence in any prosecution unless the defendant has within seven days after service of the summons delivered to the prosecutor a copy of such warranty or statement with a written notice stating that he intends to rely thereon and specifying the name and address of the person from whom he received it and also within the same time sent by registered post a like notice of his intention to such person.

(4) When the defendant is a servant or agent of the person who purchased the article under such a warranty or written statement he shall be entitled to the benefit of this section in the same manner and to the same extent as his employer or principal would have been, if he had been the defendant; provided that the servant or agent further proves that he had no reason to believe that the article did not conform to the warranty or statement.

Penalty for false warranty

(5) Any person who in respect of an article of drug sold by him as principal or agent gives to the purchaser a false warranty in writing shall be liable on conviction to a fine not exceeding five hundred ringgit or for any subsequent offence to a fine not exceeding two thousand ringgit, unless he proves to the satisfaction of the court that when he gave the warranty he had reason to believe that the statements or descriptions contained therein were true

Section 21. Analyst's certificate to be prima facie evidence.

(1) A certificate of analysis purporting to be under the hand of an analyst shall, on production thereof by the prosecutor, be sufficient evidence of the facts stated therein unless the defendant requires that the analyst be called as a witness, in which case he shall give notice thereof to the prosecutor not less than

three clear days before the day fixed for the hearing of the summons.

(2) In like manner a certificate purporting to be under the hand of an analyst shall, on production thereof by the defendant be sufficient evidence of the facts stated therein unless the prosecutor requires that the analyst be called as a witness.

(3) A copy of such last-mentioned certificate shall be sent to the prosecutor at least three clear days before the day fixed for the hearing of the summons, and if it is not so sent the court may adjourn the hearing on such terms as it may think proper.

Section 22. Court may order independent analysis.

When a sample has been dealt with in accordance with section 7, the court before which any proceedings for an offence against this Act are heard shall on the request of either party to such proceedings, and may if it thinks fit without such request, order that the part of the sample retained by the officer be submitted to another analyst for analysis.

Section 23. Non-disclosure.

(1) No prosecutor or witness in any prosecution under this Act shall be compelled to disclose the fact that he received any information or the nature of such information or the name of any person who gave such information.

(2) No officer appearing as a prosecutor or witness shall be compelled to produce any confidential reports or documents made or received by him in his official capacity or to make any statement in relation thereto.

Section 24. Recovery of fees and other expenses incidental to prosecution.

(1) Where any person is convicted of an offence under this Act, the court may order that all fees and other expenses incident to the analysis of any drug in respect of which the conviction is obtained (including any analysis made under section 22 of this Act) shall be paid by the person convicted.

(2) All such fees and expenses shall be recoverable in the same manner as a fine is recoverable.

Section 25. Appeal.

Any person aggrieved by any sentence or order under this Act passed or made by a Sessions Court or a Magistrate's Court may appeal therefrom to the High Court:

Provided that where an accused person has pleaded guilty and has been convicted on such plea there shall be no appeal except as to the extent or legality of the sentence.

Section 26. Power to make Regulations.

(1) The Minister may make regulations for any of the following purposes:

(a) to prescribe the standard of strength, weight, quality, or quantity of any drug or of any ingredient or component part thereof;

(b) to prohibit the addition of any specified thing or of more than the specified quantity or proportion thereof to any drug;

(c) to prohibit any modes of manufacture, preparation, or preservation of any drug;

(d) to secure the cleanliness and freedom from contamination of any drug in the course of its manufacture, preparation, storage, packing, carriage delivery or exposure for sale or sale and the cleanliness of places, receptacles, appliances, and vehicles used in such manufacture, preparation, storage, packing, carriage or delivery exposure for sale or sale and to secure the proper conduct of places in which the preparation or sale of drugs is carried on and for these purposes to require any person to submit to a medical examination;

(e) to provide for the licensing or registration of premises used for, or persons engaged or occupied in the manufacture, preparation, storage, packing, carriage, delivery, exposure for sale or sale of any drug and for these purposes to require photographs of persons registered or licensed;

(f) to prescribe the mode of labelling drugs sold in packages or otherwise and the matter to be contained or not to be contained in such labels;

(g) to prescribe the method of analysis of any drug and the form of certificate of analysis;

(h) to fix the fees to be paid in respect of the analysis of any drug by an analyst and for any copy of the result of any analysis and for any licence or registration issued or effected under this Act or under any regulation made thereunder;

(i) to prohibit or regulate the manufacture, sale, advertisement for sale, supply, importation or exportation of any articles of drugs and for this purpose to establish any body or authority;

(j) to require all ingredients contained in any medicine, proprietary, secret or otherwise, to be disclosed in the prescribed manner and form and with the prescribed particulars at or prior to the sale thereof;

(k) to prescribe a fine not exceeding fifty thousand ringgit or imprisonment for a term not exceeding five years or both for the breach of any regulation; and

(l) generally for carrying out the purposes of this Act.

(2) Any such regulation may be made applicable either to drugs generally or to specified drugs only.

(3) Notwithstanding anything contained in any regulation made under this section it shall be lawful for any person at any time within twelve months after the date of the publication in the *Gazette* of such regulation to sell any drug the sale of which is otherwise lawful if he proves that at the said date such drug was part of the existing stock-in-trade in Malaysia of any person carrying on business there and that since the said date no act has been done whereby the said drug fails to conform to the requirements of the said regulation; and for the purpose of this subsection any goods purchased before the said date for importation into Malaysia shall be deemed to be part of the purchaser's stock-in-trade in Malaysia.

Section 27. Extended application of Act.

The provisions of this Act so far as they are applicable may be extended by regulations made under this

Act to apply to tobacco, cigars, cigarettes, snuff, soap, cosmetics and toilet preparations in like manner as the said provisions apply to drugs.

Section 28. Analysts' fees.

All fees received under this Act by any Government analyst shall be paid to the credit of the general revenue, or by any Municipal Analyst to the revenue of the Municipality concerned.