

TITLE 15**Chapter 15:05****PREVIOUS CHAPTER****HAZARDOUS SUBSTANCES AND ARTICLES ACT**

Acts 78/1971, 28/1973, 10/1977, 37/1977 (s. 23), 34/1978, 32/1979 (s. 13), 39/1979 (s. 16), 6/2000, 22/2001.

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AN ACT to establish a Hazardous Substances and Articles Control Board and to confer powers and functions on such Board in relation to the licensing of hazardous substances and articles, suppliers of hazardous substances and premises, vehicles, vessels or aircraft on which hazardous substances are sold and in relation to certain other matters; to provide for the regulation of hazardous substances and hazardous articles; and to provide for matters incidental to and connected with the foregoing.

[Date of commencement: 4th February, 1972.]

PART I

PRELIMINARY

1 Short title

This Act may be cited as the Hazardous Substances and Articles Act [Chapter 15:05].

2 Interpretation

(1) In this Act—

“advertisement”, in relation to any hazardous substance or hazardous article, means any written, pictorial, visual or other descriptive matter or verbal statement or reference—

- (a) appearing in any newspaper or other publication; or
- (b) appearing on any television or cinematograph film; or
- (c) distributed to members of the public; or
- (d) brought to the notice of members of the public in any manner

whatsoever; which is intended to promote the sale of the hazardous substance or hazardous article.

“analyst” means an analyst appointed in terms of paragraph (b) of subsection (1) of section twenty-nine;

“article” means any apparatus, equipment, machine, device or other thing;

“Board” means the Hazardous Substances and Articles Control Board established by section three;

“Chief Health Officer” bears the same meaning as in the Public Health Act [Chapter 15:10];

“electronic radiation” means—

- (a) any ionizing or non-ionizing electro-magnetic or particulate radiation;

or

- (b) any sonic, infrasonic or ultrasonic wave;

which is caused or produced by any article as the result of the operation of an electric circuit;

“Group I hazardous substance” means any substance declared to be a Group I hazardous substance in terms of paragraph (a) of section fifteen;

“Group II hazardous substance” means any substance declared to be a Group II hazardous substance in terms of paragraph (a) of section fifteen;

“Group III hazardous substance” means any substance declared to be a Group III

hazardous substance in terms of paragraph (a) of section fifteen;

“Group IV hazardous substance” means any substance declared to be a Group IV hazardous substance in terms of paragraph (b) of section fifteen;

“hazardous article” means any article declared to be a hazardous article in terms of paragraph (c) of section fifteen;

“hazardous substance” means any Group I hazardous substance, Group II hazardous substance, Group III hazardous substance or Group IV hazardous substance;

“inspector” means an inspector appointed in terms of paragraph (a) of subsection (1) of section twenty-nine;

“Licensing Officer” means the Licensing Officer for Hazardous Substance and Articles appointed in terms of section nineteen;

“member” means a member of the Board;

“Minister” means the Minister of Health and Child Welfare or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“radio-active substance” means any substance which produces ionizing radiation as a consequence of any spontaneous nuclear process;

“Secretary” means the Secretary of the Ministry for which the Minister is responsible;

“sell” means sell by wholesale or retail and includes—

(a) advertise, expose or offer for sale;

(b) supply, barter or dispose of to any person.

PART II

HAZARDOUS SUBSTANCES AND ARTICLES CONTROL BOARD

3 Establishment of Hazardous Substances and Articles Control Board

There is here established a board, to be known as the Hazardous Substances and Articles Control Board which shall have the powers and duties conferred and imposed upon it in terms of this Act.

4 Constitution of Board

(1) The Board shall consist of not less than nine and not more than eleven members as may from time to time be determined and appointed, subject to subsection (2), by the Minister.

(2) Of the members appointed in terms of subsection (1)—

(a) one shall be the Chief Health Officer or his deputy;

(b) one shall be an officer of the Ministry responsible for health other than the Chief Health Officer or his deputy;

(c) one shall be an officer of the Ministry responsible for Agriculture appointed after consultation with the Minister responsible for agriculture;

(d) one shall be an officer of the Department of Labour appointed after consultation with the Minister responsible for that Department;

(e) one shall be an officer of the Ministry responsible for mines appointed after consultation with the Minister responsible for mines;

(f) at least four, but not more than six, shall be persons not referred to in paragraphs (b) to (e).

(3) The member referred to in paragraph (a) of subsection (2) shall be the chairman of the Board.

(4) The Minister shall designate another member as vice-chairman of the Board and the vice-chairman shall exercise the functions and powers and perform the duties of the chairman during any period that the chairman is unable to act.

5 Conditions of office of members

(1) A member shall, subject to this Part, hold office for a period of five years:

Provided that of the members first appointed in terms of section four—

(a) two members, as determined by the Minister, shall hold office for a

period of two years;

(b) two members, as determined by the Minister, shall hold office for a period of three years;

(c) two members, as determined by the Minister, shall hold office for a period of four years.

(2) Subject to section twelve, a member shall hold office on such conditions as the Minister may in his case fix.

(3) A retiring member shall be eligible for reappointment as a member.

6 Disqualification for appointment as member

The Minister shall not appoint a person as a member and no person shall be qualified to hold office as a member who—

(a) is not permanently resident in Zimbabwe; or

(b) has, in terms of a law in force in any country—

(i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or

(ii) made an assignment to or arrangement or composition with his creditors which has not been rescinded or set aside; or

(c) has, within the period of five years immediately preceding the date of his proposed appointment, been convicted—

(i) within Zimbabwe of a criminal offence; or

(ii) outside Zimbabwe of an offence, by whatever name called, which, if committed within Zimbabwe, would have been a criminal offence;

and sentenced by a court to imprisonment for a term of six months or more without the option of a fine, whether or not such sentence has been suspended, and has not received a free pardon; or

(d) has a direct interest in the sale of any hazardous substance.

7 Vacation of office of member

A member shall vacate his office and his office shall become vacant—

(a) one month after the date he gives notice in writing to the Minister of his intention to resign his office or after the expiration of such shorter period as he and the Minister may agree; or

(b) thirty days after the date he is sentenced by a court to imprisonment referred to in paragraph (c) of section six after conviction of an offence referred to in that paragraph:

Provided that if, during the said period of thirty days, an application for a free pardon is made or an appeal is filed the question whether the member is to vacate his office shall not be determined until the final disposal of such application or appeal, whereupon the member shall forthwith vacate his office and his office shall become vacant unless he is granted a free pardon, his conviction is set aside, his sentence is reduced to a term of imprisonment of less than six months or a punishment other than imprisonment is substituted; or

(c) if he becomes disqualified in terms of paragraph (a), (b) or (d) of section six to hold office as a member, or

(d) if he is required in terms of section eight to vacate his office; or

(e) if, without the permission of the Board, he is absent from two consecutive meetings of the Board of which he has had notice; or

(f) if he ceases to hold a qualification which was necessary in terms of subsection (2) of section four for his appointment.

8 Minister may require member to vacate office or suspend him

(1) The Minister may require a member to vacate his office if the Minister is satisfied that the member—

- (a) has been guilty of improper conduct as a member; or
- (b) has failed to comply with the conditions of his office fixed by the Minister in terms of subsection (2) of section five; or
- (c) is mentally or physically incapable of efficiently performing his duties as a member.

(2) The Minister may suspend from office a member against whom criminal proceedings are instituted for an offence in respect of which a sentence of imprisonment of six months or more without the option of a fine may be imposed, and whilst that member is so suspended he shall not carry out any duties as a member.

9 Filling of vacancies on Board

On the death of, or the vacation of office by, a member the Minister may appoint a person to fill the vacancy until the expiration of the period during which the member would, but for his death or the vacation of his office, have continued in office.

10 Meetings and procedure of Board

(1) The Board shall hold its first meeting on such date and at such place as the Minister may fix and thereafter the Board shall meet for the dispatch of business and adjourn, close and otherwise regulate its meetings and procedures as it thinks fit.

(2) The chairman of the Board—

- (a) may himself at any time convene a meeting of the Board;
- (b) shall, at the request in writing of not less than four members, convene a special meeting of the Board, which meeting shall be convened for a date not less than seven days or more than thirty days after receipt of such request.

(3) If at a meeting of the Board the chairman and the vice-chairman are both absent, the members present may elect one of their number to preside at that meeting as chairman.

(4) A majority of members shall form a quorum at a meeting of the Board.

(5) All acts, matters or things authorized or required to be done by the Board shall be decided by a majority vote at a meeting of the Board at which a quorum is present.

(6) At all meetings of the Board each member present shall have one vote on a question before the Board and, in the event of an equality of votes, the chairman shall have, in addition to a deliberative vote, a casting vote.

11 Committees of Board

(1) For the better exercise of its functions and powers the Board—

(a) shall establish an executive committee, the function of which shall be to exercise any powers of the Board between meetings:

Provided that—

(i) the executive committee shall not, save in so far as the Board otherwise directs, have power to set aside or vary any decision of the Board;

(ii) any action taken by the executive committee shall be reviewed by the Board at its meeting next after such action is taken;

(b) may, with the consent of the Minister, establish any other committee in which may be vested, and on which may be imposed, such of the functions and powers of the Board as the Board, with the consent of the Minister, may direct:

Provided that—

(i) the vesting or imposition of any such functions and powers in a committee shall not thereby divest the Board of such functions and powers;

(ii) the Board may amend or withdraw any decision of any such committee in the exercise of its functions and powers.

(2) The chairman of the Board or of a committee may, at any time and at any place, convene a meeting of that committee.

(3) The procedure of a committee shall be fixed by the Board.

(4) On the establishment of—

- (a) the executive committee, the Board shall appoint to that committee such members of the Board as it thinks fit;
- (b) a committee other than the executive committee, the Board—
 - (i) shall appoint thereto at least one member of the Board who shall be the chairman of that committee;
 - (ii) may appoint thereto persons who are not members of the Board.

12 Remuneration and expenses of members of Board or committee

(1) A member of the Board or of a committee of the Board shall be paid from moneys appropriated for the purpose by Act of Parliament such allowances as the Minister, after consultation with the Minister responsible for finance, may fix.

13 Fees received by Board to be paid into Consolidated Revenue Fund

Any fees received by the Board in terms of this Act shall be paid into the Consolidated Revenue Fund.

14 Validity of decisions and acts of Board

No decision or act of the Board or act done under the authority of the Board shall be invalid by reason only of the fact that—

- (a) the Board consisted of less than the minimum number of persons for which provision is made in subsection (1) of section four; or
- (b) the various members did not satisfy the requirements of subsection (2) of section four; or
- (c) a disqualified person acted as a member at the time the decision was taken or the act was done or authorized;

if the decision was taken or the act was done or authorized by a majority vote of the persons who at the time were entitled to act as members.

PART III

DECLARATION AND REGULATION OF HAZARDOUS SUBSTANCES AND ARTICLES

15 Declaration of hazardous substances and articles

(1) The Minister may, on the recommendation of the Board, at any time by statutory instrument, declare—

- (a) any substance or mixture of substances, or any class thereof, which may endanger the health of human beings or domestic or wild animals, birds or fish by reason of its toxic, corrosive, irritant, sensitizing or inflammable nature, excluding any drug, to be—
 - (i) a Group I hazardous substance; or
 - (ii) a Group II hazardous substance; or
 - (iii) a Group III hazardous substance;
- (b) any radio-active substance or class thereof to be a Group IV hazardous substance;
- (c) any article which, or any component part or accessory which is intended for use in or in connection with an article which, when operated, causes or produces any electronic radiation, to be a hazardous article.

(2) In subsection (1)—

“drug” means a drug to which the Dangerous Drugs Act [Chapter 15:02] or the Drugs and Allied Substances Control Act [Chapter 15:03] apply, other than a drug specified by the Minister, by statutory instrument to be excluded from this definition.

16 Amendment or revocation of declaration made in terms of section 15

The Minister may, on the recommendation of the Board, at any time by statutory instrument amend or revoke any declaration made in terms of section fifteen.

17 Control of Group I hazardous substances

(1) No person shall import, manufacture, sell, possess, store, convey or use a Group I hazardous substance otherwise than in accordance with the conditions of a permit issued in terms of this section.

(1a) Subject to subsections (2) and (3), any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[inserted by Act 22 of 2001, with effect from the 10th September, 2002]

(2) The Licensing Officer, on the direction of the Board, may issue a permit in writing authorizing a person specified in that permit to import, manufacture, sell, possess, store, convey or use a Group I hazardous substance for or in connection with research purposes, subject to such conditions as may be specified in that permit.

(3) The Licensing Officer, on the direction of the Board, may at any time, after notice in writing has been given to the holder of a permit issued in terms of this section, withdraw such permit or amend the conditions subject to which such permit was issued.

18 Control of Group II and Group IV hazardous substances and hazardous articles

(1) Subject to subsection (4), no person shall sell a Group II hazardous substance—

(a) unless the sale takes place—

(i) on premises which are licensed in terms of Part VI of the Drugs and Allied Substances Control Act [Chapter 15:03]; or

(ii) on premises which are, or on a vehicle, vessel or aircraft which is, licensed in terms of subparagraph (ii) of paragraph (b) of subsection (2) of section twenty-two and under the personal control of—

A. a pharmaceutical chemist registered in terms of the Health Professions Act [Chapter 27:19];

[amended by Act 6/2000 with effect from the 2nd April, 2001.]

or

B. an individual licensed as a supplier in terms of subparagraph (i) of paragraph (b) of subsection (2) of section twenty-two;

(b) in contravention of any conditions fixed by the Board in terms of subparagraph (ii) of paragraph (c) of subsection (1) of section twenty-two.

(2) Subject to subsection (4), no person shall possess, store or use a Group IV hazardous substance—

(a) unless he is licensed to do so in terms of subparagraph (iii) of paragraph (b) of subsection (2) of section twenty-two;

(b) in contravention of any conditions fixed by the Board in terms of subparagraph (ii) of paragraph (c) of subsection (1) of section twenty-two.

(3) Subject to subsection (4), no person shall use, operate, apply, install or keep installed a hazardous article—

(a) unless it is licensed in terms of subparagraph (iv) of paragraph (b) of subsection (2) of section twenty-two;

(b) in contravention of any conditions fixed by the Board in terms of subparagraph (ii) of paragraph (c) of subsection (1) of section twenty-two.

(3a) Subject to subsection (4), any person contravenes subsection (1), (2) or (3) shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[inserted by Act 22 of 2001, with effect from the 10th September, 2002]

(4) Where a person had—

(a) a Group II hazardous substance available for sale in Zimbabwe; or
(b) a Group IV hazardous substance in his possession, in storage or in use in Zimbabwe; or

(c) a hazardous article which he was using, operating, applying, installing or keeping installed in Zimbabwe;

immediately before the date on which it is declared a Group II hazardous substance, a Group IV hazardous substance or a hazardous article in terms of section fifteen that person may, notwithstanding subsection (1), (2) or (3), as the case may be, continue to sell, possess, store, use, operate, apply, install or keep installed, as the case may be, that hazardous substance or hazardous article—

(i) for a period of ninety days from that date; and

(ii) where before the expiry of the period mentioned in subparagraph (i) an application has or applications have been duly submitted for such licence or licences as may be required by subsection (1), (2) or (3), as the case may be, until any such application has been finally refused in terms of this Act.

19 Licensing Officer for Hazardous Substances and Articles

(1) Subject to the law relating to the Public Service, the Minister, after consultation with the Board, shall appoint a person employed by the State to be the Licensing Officer for Hazardous Substances and Articles.

(2) The functions of the Licensing Officer shall be—

(a) to be the secretary to the Board, in which connection he shall, on the instructions of the chairman of the Board, convene meetings of the Board and any committee thereof and maintain the records of any such meeting; and

(b) to carry out any other duties imposed on him by or in terms of this Act.

20 Registers of licences

The Licensing Officer shall keep in a form approved by the Minister—

(a) a register of individuals licensed as suppliers in terms of subparagraph (i);

(b) a register of premises, vehicles, vessels or aircraft licensed in terms of subparagraph (ii);

(c) a register of persons licensed to possess, store or use a Group IV hazardous substance in terms of subparagraph (iii);

(d) a register of hazardous articles licensed in terms of subparagraph (iv); of paragraph (b) of subsection (2) of section twenty-two in which he shall record such particulars as may be prescribed, the conditions, if any, fixed by the Board in terms of subparagraph (ii) of paragraph (c) of subsection (1) of section twenty-two and any variation thereof made in terms of section twenty-three and the cancellation of a licence in terms of section twenty-three.

21 Application for licence

(1) An application by an individual who wishes to apply to be licensed as a supplier of Group II hazardous substances shall be made in writing to the Licensing Officer on the prescribed form and shall be accompanied by the prescribed fee.

(2) An application by a person who wishes to apply for any premises, vehicle, vessel or aircraft to be licensed for the purpose of the sale of Group II hazardous substances shall be made in writing to the Licensing Officer on the prescribed form and shall—

(a) be accompanied by the prescribed fee; and

(b) specify the individual who will be in personal control of the premises, vehicle, vessel or aircraft concerned and, where appropriate, the number of that person's licence as a supplier of Group II hazardous substances.

(3) An application by a person who wishes to apply for a licence to possess, store or

use a Group IV hazardous substance shall be made in writing to the Licensing Officer on the prescribed form and shall be accompanied by the prescribed fee.

(4) An application by a person who wishes to apply for a licence for a hazardous article shall be made in writing to the Licensing Officer on the prescribed form and shall be accompanied by the prescribed fee.

(5) An application referred to in subsection (2) shall not be accepted by the Licensing Officer or entertained by the Board unless the individual specified for the purposes of paragraph (b) of subsection (2) is licensed as a supplier of Group II hazardous substances or is a pharmaceutical chemist registered in terms of the Health Professions Act [Chapter 27:19];

[amended by Act 6/2000 with effect from the 2nd April, 2001.]

(6) As soon as possible after receiving an application in terms of subsection (1), (2), (3) or (4) the Licensing Officer shall refer the application to the Board for its decision.

22 Licensing

(1) After receiving an application in terms of section twenty-one the Board—

- (a) shall conduct such investigation or inquiry as it considers necessary or desirable, including hearing evidence from the applicant;
- (b) may require further information;
- (c) may—
 - (i) approve or refuse to approve the issue of a licence; or
 - (ii) if it considers that a licence should be issued subject to conditions, approve the issue of the licence subject to such conditions as it considers necessary or desirable to fix.

(2) If the Board approves the issue of a licence, it shall notify the Licensing Officer thereof, together with any conditions fixed by it in terms of subparagraph (ii) of paragraph (c) of subsection (1), and the Licensing Officer shall thereupon—

- (a) allocate a licence number for the licence; and
- (b) issue to the applicant on the prescribed form—
 - (i) a supplier of Group II hazardous substances licence; or
 - (ii) a Group II hazardous substances premises, vehicle, vessels or aircraft licence;
 - (iii) a Group IV hazardous substance licence; or
 - (iv) a hazardous article licence;as the case may be, showing the licence number and any conditions fixed by the Board in terms of subparagraph (ii) of paragraph (c) of subsection (1); and

(c) record the issue of the licence in the appropriate register referred to in section twenty-one.

(3) If the Board refuses to approve the issue of a licence it shall, subject to subsection (4), notify the Licensing Officer thereof, together with its reasons, and the Licensing Officer shall thereupon inform the applicant in writing—

- (a) of such refusal and the reasons therefor; and
- (b) that he may, if he wishes, appeal to the Administrative Court in terms of Part IV.

(4) Where the Board intends—

- (a) to refuse to approve the issue of a licence; or
 - (b) to approve the issue of a licence subject to conditions fixed in terms of subparagraph (ii) of paragraph (c) of subsection (1);
- the Board shall notify the Licensing Officer thereof, together with its reasons, and the Licensing Officer shall thereupon inform the applicant in writing of such intention

and the reasons therefor and that he may, if he so wishes, make, within such period being not less than fourteen days as the Board may specify, representations in relation to the intentions of the Board.

23 Cancellation or variation of conditions of licence or group listing

(1) If the Board is of the opinion that—

(a) the conditions subject to which a licence was issued have not been observed; or

(b) it would be in the public interest for a licence to be cancelled or for the conditions subject to which it was issued to be varied;

the Board shall direct the Licensing Officer to give notice thereof in writing to the person by whom or on whose behalf the application for the issue of the licence was made.

(2) A notice given in terms of subsection (1) shall—

(a) specify the grounds on which the opinion of the Board is based; and

(b) indicate that the person to whom it is directed may, within one month after the receipt thereof, submit to the Licensing Officer any comments he may wish to put forward in connection with the matter.

(3) If—

(a) no comments are submitted in terms of paragraph (b) of subsection (2), or

(b) after consideration of any comments submitted in terms of paragraph (b) of subsection (2), the Board is of the opinion for any reason specified in subsection (1) that the licence concerned should be cancelled or that the conditions subject to which the licence was issued should be varied;

the Board shall direct the Licensing Officer to cancel the licence or to vary the conditions subject to which it was issued.

24 Period of validity and renewal of licence

A licence shall be valid for such period as may be prescribed and may at the end of such period be renewed on payment of the prescribed fee.

25 Cancellation of licence on failure to renew licence

If a licence has not been renewed in terms of section twenty-four—

(a) on or before the date on which it expires in terms of section twenty-four; or

(b) within such period, if any, after the date on which it expires as may be prescribed;

whichever is the later, the Licensing Officer shall cancel the licence.

26 Notification in journals

(1) The Board may require the Licensing Officer to publish in such journals published in Zimbabwe as the Board may approve details of—

(a) any application for a licence in terms of section twenty-one;

(b) any licence issued in terms of section twenty-two;

(c) the cancellation of a licence or variation of the conditions subject to which a licence was issued in terms of section twenty-three.

(2) The cost of any publication in terms of subsection (1) shall be paid from the funds of the Board.

PART IV

APPEALS

27 Appeals

Any person who is aggrieved by a decision of the Board in terms of this Act in relation to—

(a) an application for a licence in terms of section twenty-one; or

(b) the cancellation of a licence or the variation of the conditions subject to which a licence was issued in terms of section twenty-three; may, within thirty days after the date of that decision, appeal by notice in writing to the Administrative Court.

PART V

GENERAL

28 Exemption of Board from liability

No liability shall attach to the Board or any committee thereof or to a member of the Board or any committee thereof for any loss or damage sustained by any person as a result of the bona fide exercise or performance by the Board or any committee thereof of any power or duty conferred or imposed upon the Board by this Act:

Provided that this section shall not be construed so as to prevent any person from recovering by action in any competent court compensation for any loss or damage sustained by him which was caused by negligence.

29 Appointment of inspectors and analysts for purposes of this Act

(1) Subject to the law relating to the Public Service, the Minister may appoint—

(a) such persons to be inspectors as he may consider necessary for the proper enforcement of this Act;

(b) such analysts as he may consider necessary for the purposes of the testing, examination or analysis of hazardous substances in terms of this Act:

Provided that, in the case of a person employed in a department for which the Minister is not responsible, the Minister shall first consult such other Minister as is responsible for that department.

(2) Every person appointed as an inspector in terms of subsection (1) shall be furnished with a certificate of appointment signed by the Licensing Officer.

(3) An inspector shall, on demand by any person affected by the exercise or performance by him of any power or function under this Act, exhibit the certificate issued in terms of subsection (2).

30 Powers of inspectors

(1) Subject to subsection (2), an inspector may at all reasonable times—

(a) enter upon and search any premises, place, vehicle, vessel or aircraft at or in which there is, or is on reasonable grounds suspected to be, any hazardous substance or hazardous article;

(b) inspect any substance or mixture of substances or article which is, or is on reasonable grounds, suspected to be, a hazardous substance or hazardous article, or any book, record or document found in or upon such premises, place, vehicle, vessel or aircraft;

(c) seize any such substance or mixture of substances or article or any book, record or document so found in respect of which any provision of this Act appears to have been contravened;

(d) by notice in writing to the person in control thereof prohibit the sale or removal of, or any other dealing whatsoever in connection with, such substance or mixture of substances or article in respect of which any provision of this Act appears to have been contravened;

(e) take so many samples of any such substance or mixture of substances as he may consider necessary for the purpose of testing, examination or analysis in terms of this Act;

(f) carry out any investigation, test or examination he may consider necessary for the purposes of this Act in respect of any substance or article which is or which he reasonably believes to be a hazardous substance or hazardous article.

(2) An inspector may not enter upon or search any dwelling-house unless he believes

on reasonable grounds that evidence relating to a contravention of this Act is to be found therein.

(3) Any person who sells, removes or has any dealing in connection with any substance, mixture of substances or article in contravention of a notice issued in terms of paragraph (d) of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[substituted by Act 22 of 2001, with effect from the 10th September, 2002]

(4) An inspector may at any time return any thing seized in terms of paragraph (c) of subsection (1) or by notice in writing to the appropriate person withdraw a notice of prohibition issued in terms of paragraph (d) of subsection (1).

(5) The owner of a substance or mixture of substances from which a sample has been taken in terms of this section shall, unless within twelve months thereafter he or his manager, agent or employee is convicted of an offence under this Act in connection therewith, be entitled to be paid by the State an amount equal to the cost to him of the sample and any claim therefor shall be made in writing to the Secretary and shall be supported by such evidence as the Secretary may require.

31 Analysis of samples

(1) A sample taken in terms of paragraph (e) of subsection (1) of section thirty shall be taken and submitted to an analyst in the prescribed manner.

(2) The analyst to whom a sample has been submitted in terms of subsection (1) shall with all convenient speed test, examine or analyse the sample and the results of the test, examination or analysis shall be stated in a certificate in the prescribed form.

32 Advertisement of hazardous substance

(1) No person shall publish, distribute or in any other manner whatsoever bring to the notice of the public or cause or permit to be published or distributed or to be so brought to the notice of the public any false or misleading advertisement concerning the hazard of use or the toxic, corrosive, irritant, sensitizing, inflammable or radioactive nature of a hazardous substance or concerning the hazard of use of any hazardous article.

(1a) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[inserted by Act 22 of 2001, with effect from the 10th September, 2002]

(2) It shall be sufficient defence in any prosecution for an offence under subsection (1a) if it is proved to the satisfaction of the court that the accused, not being a person selling, possessing, storing or using the hazardous substance or hazardous article to which the false or misleading advertisement which is the subject of the prosecution relates, did not know and could not reasonably be expected to have known that the advertisement was in any respect false or misleading unless it is proved that the accused failed, on demand by the Licensing Officer, an inspector or a police officer, to furnish the name and address of the person at whose instance the advertisement was published, distributed or brought to the notice of the public.

[amended by Act 22 of 2001, with effect from the 10th September, 2002]

33 Offences and penalties

(1) Any person who resists, hinders or obstructs an inspector in the exercise of his functions under this Act shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(2) Any person who tampers with any sample taken in terms of this Act, with intent to defraud or to frustrate the proper testing of the sample, shall be guilty of an offence

and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(3) Any person who-

(a) in any statement to the Board in connection with any hazardous substance or hazardous article; or

(b) in the course of or for the purposes of selling any hazardous substance or hazardous article;

make any statement which he knows to be misleading or false or which he does not have reasonable grounds for believing to be true, shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(4) Any person who sells any hazardous substance or hazardous article on which or on or in the container of which there is a statement which he knows or ought reasonably to know is false or misleading in regard to the substance or article, shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(5) Any person who, in order to acquire a hazardous substance or hazardous article-

(a) give information to a supplier which he knows or ought reasonably to know is false or misleading; or

(b) presents to a supplier a document which he knows or ought reasonably to know is forged;

shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(6) Any person who, for the purposes of business or trade, publishes any report or certificate made or issued by an inspector or analyst under this Act shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding one month or to both such fine and such imprisonment.

[substituted by Act 22 of 2001, with effect from the 10th September, 2002]

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[repealed by Act 22 of 2001, with effect from the 20th May, 2002]]

35 Procedure and evidence

(1) In any criminal proceedings under this Act—

(a) any quantity of a hazardous substance in or upon any premises, place, vehicle, vessel or aircraft at the time a sample is taken in terms of this Act shall, unless the contrary is proved, be deemed to possess the same properties as such sample;

(b) any person who is proved to have tampered with a sample or article taken in terms of this Act shall be deemed to have acted with fraudulent intent unless the contrary is proved;

(c) a certificate stating the result of an investigation, test, examination or analysis carried out in terms of section thirty or thirty-one and purporting to be signed by the inspector or analyst who carried out such investigation, test, examination or analysis shall be accepted as prima facie proof of the facts stated therein;

(d) any statement or entry contained in a book, record or document kept by the owner of a hazardous substance or hazardous article or by the manager, agent or employee of such owner or found upon or in any premises occupied by, or any vehicle, vessel or aircraft used in the business of, that owner shall be admissible in evidence against him as an admission of the facts set forth in that statement or entry, unless it is proved that that statement or entry was not made by that owner or by any manager, agent or employee of that owner in the course of his work as manager or in

the course of his agency or employment, as the case may be;

(e) if it is proved that a person who was in possession of any hazardous substance or hazardous article in respect of which precautions have been prescribed to ensure the safe custody thereof has lost that hazardous substance or has had it stolen he shall, unless the contrary is proved, be deemed not to have taken the precautions so prescribed.

(2) No prosecution shall be instituted as a result of an investigation, test, examination or analysis carried out in terms of section thirty or thirty-one unless a copy of the certificate of the inspector or analyst concerned has, at least twenty-one days before the institution of such prosecution, been handed or transmitted by registered post to the person who is to be the accused.

(3) The court in which a certificate referred to in subsection (2) is adduced in evidence may in its discretion—

(a) cause the person who signed such certificate to be summoned to give oral evidence in the proceedings in question;

(b) cause written interrogatories to be submitted to that person for reply, and such interrogatories and any reply thereto purporting to be a reply from that person shall be admissible in evidence in such proceedings.

36 Act or omission by manager, agent or employee

(1) Whenever any manager, agent or employee of any person, hereinafter called the employer, does or omits to do any act which it would be an offence under this Act for the employer to do or omit to do, then, unless it is proved that—

(a) in doing or omitting to do that act the manager, agent or employee was acting without the connivance or the permission of the employer; and

(b) all reasonable steps were taken by the employer to prevent any act or omission of the kind in question; and

(c) it was not under any conditions or in any circumstances within the scope of the authority, or in the course of the employment, of the manager, agent or employee to do or omit to do acts, whether lawful or unlawful, of the character of the act or omission charged;

the employer shall be presumed himself to have done or omitted to do that act and shall be liable to be convicted and sentenced in respect thereof.

(2) The fact that the employer issued instructions forbidding any act or omission of the kind in question shall not, of itself, be accepted as sufficient proof that he took all reasonable steps to prevent the act or omission.

(3) Whenever any manager, agent or employee of any such employer does or omits to do an act which it would be an offence under this Act for the employer to do or omit to do, he shall be liable to be convicted and sentenced in respect thereof as if he were the employer.

(4) Any such manager, agent or employee may be so convicted and sentenced in addition to the employer.

37 Preservation of secrecy

(1) Any person who discloses, except—

(a) to the Minister or to any other person for the purposes of the carrying out of his duties or the performance of his functions under this Act; or

(b) to a police officer for the purposes of an investigation or inquiry relating to the enforcement of the provisions of this Act; or

(c) when required to do so by any court or under any enactment;
any information acquired by him in the carrying out of any duty or the performance of any function under this Act in relation to the business or affairs of any other person shall be guilty of an offence and liable to a fine not exceeding level ten or to

imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[amended by Act 22 of 2001, with effect from the 10th September, 2002]

(2) Any person who has acquired information relating to the business or affairs of another person in the course of carrying out any duty or performing any function under this Act, and who uses that information for personal gain, shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

[inserted by Act 22 of 2001, with effect from the 10th September, 2002]

38 Regulations

(1) Subject to subsections (4) and (5), the Minister may by regulation provide for all matters which by this Act are required or permitted to be prescribed or which, in his opinion, are necessary or convenient to be prescribed in order to carry out or give effect to this Act.

(2) Regulations made in terms of subsection (1) may—

(a) in relation to Group II and Group III hazardous substances provide for—

(i) regulating, controlling or restricting the manufacture, sale, possession, storage, conveyance, importation or use of any such hazardous substance including the prohibition of—

A. the manufacture, sale, conveyance or importation of hazardous substances by or to particular classes of persons;

B. the sale by retail of such hazardous substances in particular classes of premises, vehicles, vessels or aircraft;

(ii) the differentiation of the containers thereof and the containers of food and potable liquids;

(iii) regulating, controlling or restricting the purposes for which such hazardous substances may be used and prohibiting the harvesting, sale or consumption of food crops in respect of which such provisions have been contravened;

(iv) the addition to such hazardous substances of specified ingredients in order to render them easily distinguishable as such;

(b) in relation to Group IV hazardous substances or hazardous articles provide for—

(i) prohibiting, regulating, controlling or restricting possession, storage, conveyance, importation, exportation or use of any such hazardous substances or hazardous articles;

(ii) the minimum requirements in respect of any premises, vehicles, vessels or aircraft in which any such hazardous substances or hazardous articles are stored, installed, operated or used;

(c) generally provide for—

(i) the precautions to be taken for the safe custody of hazardous substances or hazardous articles;

(ii) the labelling of hazardous substances or hazardous articles with particulars, warning and instructions;

(iii) the packaging of hazardous substances or hazardous articles;

(iv) the protection of personnel engaged in the manufacture, use or disposal of hazardous substances or hazardous articles or of any other person who is likely to be or may be exposed to hazardous substances or hazardous articles;

(v) the investigations, tests, examinations, analyses and inspections necessary for the purposes of this Act;

(vi) the procedure for sampling, testing, analysing and reporting by inspectors and analysts;

(vii) the destruction or disposal of hazardous substances or their containers;

(viii) the reporting of the theft or loss of hazardous substances or hazardous articles;

(ix) the qualifications and experience required by persons engaged in selling or using hazardous substances or hazardous articles.

(3) Regulations made in terms of subsection (1) may prescribe penalties for contraventions thereof, but no such penalty shall exceed a fine of level eight or to imprisonment for a period of one year or both such fine and such imprisonment.

[amended by Act 22 of 2001, with effect from the 10th September, 2002]

(4) Before making any regulations relating to the imposition of fees the Minister shall consult the Minister responsible for finance.

(5) Any regulations made in respect of a hazardous substance which, immediately before the date of publication of the regulations in a statutory instrument—

(a) was available for sale in Zimbabwe, shall come into operation on such date as may be fixed in the regulations;

(b) was not available for sale in Zimbabwe, shall come into operation on the date of publication of the regulation.

39 Exemptions

(1) The Minister, after consultation with the Board, may, by notice in writing, exempt from the operation of all or any provisions of this Act, subject to such conditions as he may specify, any hazardous substance or hazardous article which—

(a) is to be exported from Zimbabwe;

(b) is imported into Zimbabwe for the purpose of export, whether after processing or otherwise.

(2) The Minister may, on the recommendation of the Board, at any time amend or revoke any exemption granted in terms of subsection (1).

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