

FOODSTUFFS, COSMETICS AND DISINFECTANTS AMENDMENT BILL

*(As amended by the Portfolio Committee on Health (National Assembly))
(The English text is the official text of the Bill)*

(MINISTER OF HEALTH)

[B 35B—2005]

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

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

BILL

To amend the Foodstuffs, Cosmetics and Disinfectants Act, 1972, so as to amend certain definitions and insert new definitions; to authorize medical practitioners, environmental health practitioners and veterinarians to administer the Act; to increase the deposit required for further analysis or examination of a sample; to amplify the Minister's powers to regulate the handling, importation and exportation of foodstuffs, the removal, detention and destruction of food-producing animals or foodstuffs, the inspection of food-producing animals, the medical examination of food handlers and the water used for food processing; to further regulate mollusc farming and fish farming; to omit the provision in respect of secrecy; to simplify the provisions relating to penalties; and to provide for the delegation of power by the Director-General; and to provide for matters connected therewith.

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

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

1. Section 1 of the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (hereinafter referred to as the principal Act), is hereby amended—

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

“ ‘**appliance**’ means the whole or any part of any implement, machine, instrument, apparatus, equipment, robot or other object used or capable of being used for, in or in connection with the manufacture, treatment, 10 packing, labelling, storage, conveyance, preparation, display, sale, serving or administering of any foodstuff, cosmetic or disinfectant:”;

(b) by the substitution for the definition of “cosmetic” of the following definition:

“ ‘cosmetic’ means any article, preparation or substance (except a **[drug]** medicine as defined in the **[Drugs Control] Medicines and Related Substances Act, 1965** (Act No. 101 of 1965)) intended to be rubbed, poured, sprinkled or sprayed on or otherwise applied to the human body, including the epidermis, hair, teeth, mucous membranes of the oral cavity, lips and external genital organs, for purposes of cleansing, perfuming, correcting body odours, conditioning, beautifying, protecting, promoting attractiveness or improving or altering the appearance, and includes any part or ingredient of any such article or substance;”;

- (c) by the substitution for the definition of “Director-General” of the following definition:
 “**‘Director-General’** means the **[Director-General: Health, Welfare and Pensions]** head of the national department;”;
- (d) by the insertion after the definition of “disinfectant” of the following definitions:
 “**‘environmental health practitioner’** means a person registered as such in terms of the Health Professions Act, 1974 (Act No. 56 of 1974);
 ‘export’ means to take or send goods, or to cause them to be taken or sent, from the Republic to a country or territory outside the Republic;”;
- (e) by the substitution for the definition of “foodstuff” of the following definition:
 “**‘foodstuff’** means any article or substance (except a **[drug]** medicine as defined in the **[Drugs Control]** Medicines and Related Substances Act, 1965 (Act No. 101 of 1965)) ordinarily eaten or drunk by **[man]** a person or purporting to be suitable, or manufactured or sold, for human consumption, and includes any part or ingredient of any such article or substance, or any substance used or intended or destined to be used as a part or ingredient of any such article or substance;”;
- (f) by the substitution for the definition of “local authority” of the following definition:
 “**‘local authority’** means **[an institution or body contemplated in section 84(1)(f) of the Republic of South Africa Constitution Act, 1961 (Act No. 32 of 1961)]** a municipality as defined in section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);”;
- (g) by the insertion after the definition of “manufacture” of the following definition:
 “**‘medical practitioner’** means a person registered as such in terms of the Health Professions Act, 1974 (Act No. 56 of 1974);”;
- (h) by the substitution for the definition of “Minister” of the following definition:
 “**‘Minister’** means the **[Minister of Health, Welfare and Pensions]** member of Cabinet responsible for Health;”;
- (i) by the insertion after the definition of “Minister” of the following definitions:
 “**‘mollusc’** means any member of the phylum Mollusca;
 ‘national department’ means the national department of Health;”;
- (j) by the insertion after the definition of “prohibited article” of the following definition:
 “**‘provincial department’** means the provincial department responsible for health;” and
- (k) by the insertion after the definition of “treated” of the following definition:
 “**‘veterinarian’** means a person registered as such in terms of the Veterinary and Para-Veterinary Professions Act, 1982 (Act No. 19 of 1982).”.

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

2. Section 10 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
 “(1) The Director-General may authorize **[such persons as]**—
 (a) any employee of the national department;
 (b) after consultation with a head of provincial department, any employee of a provincial administration or local authority; or
 (c) any other person,
 that he or she **[may deem]** considers fit, as an **[inspectors who shall]** inspector who is, subject to his or her control, **[be]** vested with the powers, duties and functions conferred or imposed on inspectors by this Act.”;
- (b) by the substitution in subsection (3) of the words preceding paragraph (a) of the following words:
 “**[The]** Despite subsection (1), the powers, duties and functions of an inspector in terms of this Act may be exercised or performed—”;

- (c) by the substitution in subsection (3) for paragraph (b) of the following paragraph:
 “(b) for the purposes of the administration of any provision of this Act by a local authority under section 23, or by any **[person employed by such local authority as a health inspector]** medical practitioner, environmental health practitioner, veterinarian or other person considered fit and authorized thereto in writing by such local authority;”;
- (d) by the substitution in subsection (3) for paragraph (c) of the following paragraph:
 “(c) by any member of the South African Police Service, of or above the rank of sergeant;”;
- (e) by the substitution in subsection (3) for paragraph (d) of the following paragraph:
 “(d) by any member of the South African Police Service below the rank of sergeant authorized thereto in writing by a member referred to in paragraph (c);”;
- (f) by the substitution in subsection (3) for paragraph (e) of the following paragraph:
 “(e) in respect of any foodstuff, by any person appointed under section **[18] 28** of the Standards Act, **[1962 (Act No. 33 of 1962)] 1993 (Act No. 29 of 1993)**, as an inspector for the purposes of that Act.”;

Amendment of section 13 of Act 54 of 1972

3. Section 13 of the principal Act is hereby amended by the substitution in subsection (3) for paragraph (a) of the following paragraph:
 “(a) A request by the accused for such a further analysis or examination shall be granted only on condition that he or she deposits **[the sum of twenty-five rand]** such sum as may be determined by the Director-General by notice in the Gazette.”;

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

4. Section 15 of the principal Act is hereby amended—
- (a) by the insertion in subsection (1) after paragraph (n) of the following paragraphs:
- “(nA) regarding the control, restriction or prohibition of the use of any premises that are connected with the handling, processing, production, manufacturing, packing, storing, preparing, conveyance, displaying, sale or serving of any foodstuff;
- (nB) regarding the provision of a sewerage and drainage system for premises that are connected with the handling, processing, production, manufacturing, packing, storing, preparing, conveyance, displaying, sale or serving of any foodstuff;
- (nC) regarding the control, restriction or prohibition of water, washing and sanitary conveniences, lighting and ventilation at premises that are connected with the handling, processing, production, manufacturing, packing, storing, preparing, conveyance, displaying, sale or serving of any foodstuff;
- (nD) prescribing the structural requirements and the material used in the construction of any building on premises that are connected with the handling, processing, production, manufacturing, packing, storing, preparing, conveyance, displaying, sale or serving of any foodstuff, to ensure conformity;
- (nE) prescribing uniform norms and standards to which appliances, storing spaces, working surfaces and places used in connection with the handling of any foodstuff must adhere;
- (nF) prescribing uniform norms and standards to which the cleansing of facilities, the vehicles used for the transport of various foodstuffs, the container in which any foodstuff is stored, processed, displayed or transported and the clothing worn by persons handling any foodstuff must adhere;

- (nG) regarding the examination, control and supervision of the manufacturing and preparation processes, storage, keeping and dispatch of any foodstuff that is intended to be sold in, or to be exported from, the Republic;
- (nH) relating to the prohibition of the manufacture, preparation, storage, keeping, dispatch or sale in or export from the Republic of any foodstuff which is, or contains an ingredient which is, diseased, unsound or unfit for human consumption, or which has been exposed to any infection or contamination; 5
- (nI) regarding the removal or detention of animals or foodstuffs which, pending an examination or analysis, are suspected to be diseased, unsound, unwholesome or unfit for human consumption; 10
- (nJ) relating to the manner in which any foodstuff which is found to be unwholesome, unsound, infected or contaminated and any diseased animals sold or intended to be sold for human consumption must be seized, destroyed, treated or disposed of; 15
- (nK) regarding the contents of a warning and the manner in which such warning must be given to any person that sells, keeps or dispatches any foodstuff which has been found to be below the standard of composition, strength, purity or quality prescribed in terms of this Act; 20
- (nL) pertaining to the requirements relating to the issue of an order that prohibits the sale or the keeping of foodstuffs;
- (nM) pertaining to the requirements for an application for an order to close any premises where any foodstuff is sold or kept, after an analysis has found the foodstuff in question to be below the required standard of composition and where a warning, in writing, has been issued; 25
- (nN) regarding the inspection of dairy cattle and animals intended for human consumption and of the premises where any foodstuff is handled, processed, manufactured, prepared, kept, packed, conveyed, displayed, sold or served; 30
- (nO) regarding the—
 - (i) medical examination of a person employed in the food industry with that person's consent for any notifiable medical condition contemplated in the National Health Act, 2003 (Act No. 61 of 2003), or any adverse health condition such as a suppurating abscess, sore, cut or abrasion which may pose a food safety risk; 35
 - (ii) method of protective covering of any adverse health condition contemplated in subparagraph (i) to exclude the risk of contamination to foodstuffs; 40
 - (iii) type of protective clothing to be worn by employees in the food industry; 45
 - (iv) standard of examinations, the persons who must carry out the examination and the frequency with which the examination must be carried out;
- (nP) regarding the control, restriction or prohibition of the provision of water intended for food processing and originating from any specified source or the blending of such water originating from different specified sources; 50
- (nQ) prescribing the requirements relating to purity, chemical composition and quality with which water must comply;
- (nR) regarding the taking of samples of water and the analysis of such samples; 55
- (nS) regarding the reporting of pollution or suspected pollution of water;
- (nT) regarding the keeping of records in connection with water provision; 60
- (nU) regarding the payment of fees for the taking of any sample, the examination or analysis of any sample taken or any inspection or medical examination performed in terms of this Act; and”;

- (b) by the insertion after subsection (1) of the following subsection:
“(1A) The records of any medical examination performed in terms of this Act must be kept confidential and may be made available only—
(a) in accordance with the ethics of medical practice;
(b) if required by law or court order; or
(c) if the employee referred to in paragraph (nO) has in writing consented to the release of that information.”;
 (c) by the substitution for subsection (4) of the following subsection:
“(4) Any regulation may be expressed to apply only in such area as may be specified in it and different regulations may be made under subsection (1) in respect of different classes of premises, appliances and vehicles used for conveying any foodstuff and in respect of different categories of persons handling any foodstuff.”; and
 (d) by the addition of the following subsections:
“(8) Any medical practitioner, environmental health practitioner or veterinarian who has reasonable grounds to suspect that any foodstuff is unsound or unwholesome or that an animal is diseased may in the prescribed manner seize, detain or destroy such unsound or unwholesome foodstuff or diseased animal.
(9) Regulations made under subsection (1) apply, to the extent to which they can be applied, in respect of the quality, ingredients, preparation, manufacture, packing, conveying and storing of any article of food prepared or manufactured in a private dwelling with the purpose of selling it to the public.”.

Insertion of section 15A in Act 54 of 1972

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

“Regulations relating to mollusc farming and fish farming

15A. The Minister may, after consultation with the Minister for Agriculture and Land Affairs, the Minister of Environmental Affairs and Tourism and the Minister of Water Affairs and Forestry, make regulations relating to—
 (a) the control, restriction or prohibition of the supply for human consumption of molluscs, crustaceans, echinoderms, algae or fish originating from mollusc nurseries, fish breeding stations or fish farms;
 (b) the purity, chemical composition and source of and the addition of substances to water used in the cultivation or breeding of molluscs, crustaceans, echinoderms, algae or fish intended for human consumption;
 (c) the location of mollusc nurseries, fish breeding stations or fish farms; and
 (d) the control, restriction or prohibition of the cultivation, breeding, storage or transport of molluscs, crustaceans, echinoderms, algae or fish cultivated or bred for the purposes of human consumption.”.

Repeal of section 16 of Act 54 of 1972

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

Amendment of section 18 of Act 54 of 1972

7. Section 18 of the principal Act is hereby amended by the substitution in subsection (1) for paragraphs (a), (b) and (c) of the following paragraphs:
 “(a) on a first conviction, to a fine [not exceeding four hundred rand] or to imprisonment for a period not exceeding six months or to both [such] a fine and such imprisonment;
 (b) on a second conviction, to a fine [not exceeding eight hundred rand] or to imprisonment for a period not exceeding twelve months or to both [such] a fine and such imprisonment;

- (c) on a third or subsequent conviction, to a fine [**not exceeding two thousand rand**] or to imprisonment for a period not exceeding twenty-four months or to both [**such**] a fine and such imprisonment.”.

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

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

“Delegation of powers by Director-General

25. (1) Subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999), the Director-General may delegate a power or assign a duty vested in him or her by or under this Act to—

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- (a) the holder of an office in the national department; or
(b) after consultation with a provincial head of department, an officer in that provincial administration or local authority.

(2) A delegation referred to in subsection (1)—

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- (a) must be in writing;
(b) may be subject to conditions;
(c) does not prevent the exercise of the power or the performance of the duty by the Director-General himself or herself; and
(d) may be withdrawn by the Director-General.”.

Amendment of long title of Act 54 of 1972

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9. The following long title is substituted for the long title of the principal Act:

“To control the sale, manufacture, [**and**] importation and exportation of foodstuffs, cosmetics and disinfectants; and to provide for [**incidental**] matters connected therewith.”.

Short title and commencement

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10. This Act is called the Foodstuffs, Cosmetics and Disinfectants Amendment Act, 2005, and comes into operation on a date to be determined by the President by proclamation in the *Gazette*.

**MEMORANDUM ON THE OBJECTS OF THE FOODSTUFFS,
COSMETICS AND DISINFECTANTS AMENDMENT BILL, 2005****1. PURPOSE OF BILL**

Since 1972, when the principal Act was passed, the Act was amended only once, namely in 1981. There have been some developments with regard to the regulation of foodstuffs that necessitate a review of the principal Act.

The Bill seeks to amend the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972), hereinafter referred to as "the Act", by providing for—

- the authorization of medical practitioners, environmental health practitioners and veterinarians to administer certain provisions of the Act;
- an increase on the sums to be deposited by persons requesting an analysis or examination of samples;
- further regulation of food premises, the handling of foodstuffs, the exportation and importation of foodstuffs, the inspection and removal, detention and destruction of food-producing animals or foodstuffs and the water used for food processing;
- the regulation of mollusc farming and fish farming; and
- the delegation of functions to provincial departments.

2. IMPLICATIONS FOR PROVINCES

Provincial departments responsible for health matters as well as environmental matters may be involved in the administration of the Act. In many respects provinces and local authorities are already involved in the administration of the Act.

3. FINANCIAL IMPLICATIONS FOR STATE

None.

4. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

None.

5. DEPARTMENTS, OTHER BODIES AND ORGANISATIONS CONSULTED

All nine provincial health departments;
Various local authorities;
Department of Agriculture;
Agriculture Research Council;
South African Bureau of Standards;
Food Legislation Advisory Group;
University of Stellenbosch;
University of the Witwatersrand;
Pretoria Technikon;
National Consumer Forum;
Consumer Goods Council;
SA National Consumer Union;
Food Advisory Consumer Service;
Council for Scientific and Industrial Research;
Association for Dietetics in South Africa;
Nutrition Society;
SA Association for Food Science and Technology;
SA Chamber of Baking;
SA Sugar Association;
SA Association of Flavour and Fragrance Manufacturers;
National Chamber of Milling;
International Life Sciences Institute; and
Various food retailers.

6. PARLIAMENTARY PROCEDURE

6.1 The State Law Advisers and the Department of Health are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 76 of the Constitution since it falls within functional areas listed in Schedule 4 to the Constitution, namely Agriculture and Animal control and diseases.

6.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

