

THE ASSAM DRUGS (CONTROL) ACT, 1950
(Assam Act 26 of 1950)

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**An Act to provide for the control of sale, supply and distribution of
drugs.**

Preamble : *Whereas it is expedient to control the sale, supply and distribution of drugs:
It is hereby enacted as follows:*

NOTES

This Act provides the control of sale, supply and distribution of drugs. The provision of this Acts are in Addition to any other law in force in force regulating any of the matters dealt in with this Acts, there is a Central Act with similar objects known as the Drugs (Control Act, 1950. Act 26 of 1950), The Drugs (Control) Ordinance, 1949 was promulgated in order to ensure that a certain essential important drugs and medicines were sold at reasonable prices. Similar Ordinance were issued by all provinces. The necessity for continuing the control of prices of the essential drugs continued and such the Central Ordinance was replaced by a Central Act and some provinces also similarly placed the ordinances by Acts. The States like Bombay, Madhya Pradesh, Madras, Mysore, Orissa, Uttar Pradesh and Assam enacted similar State Acts.

The Drugs and Cosmetics Acts, 1940 was enacted to regulate the import, manufacture, distribution and sell of drugs and the main object of this Acts to prevent sub-standards in drugs. (Chimanlal vrs. State, AIR 1963 SC 665). In exercise of the powers conferred by Sec. 3 of the Essential Commodities Act, 1955. and in super session of the Drugs Prices (Display and Control) Order, 1966. (Which repealed the Drugs Display of Prices) Order, 1962. and the Drugs (Control of Prices) Order, 1963 the Central Government made the Drugs (Price Control) Order, 1970, with similar objects.

1. **Short title, extent and commencement:**

- 1) This Act may be called the Assam Drugs (Control) Act, 1950.
- 2) It extends to the State of Assam.
- 3) It shall come into force at once.

2. **Interpretation:**

- (1) In this Act, unless there is anything repugnant in the subject or context-
 - (a) “dealer” means a person carrying on, either personally or through any other person, the business of selling any drugs whether wholesale or retail;

NOTE

The definition of the word “dealer” is similar to the definition thereof as provided in the Drugs (Control) Act, 1950 and the Central Order of 1970.

- (b) “drugs” means any drug as defined in CL. (b) of S. 3 of the Drugs Act, 1940 (Act XXIII of 1940), in respect of which a declaration has been made under S. 3

NOTE

The word “drugs” is defined in S. 3(b) of the Central Act of 1940 and reads as follows :

- (b) “drug” includes, -

- i) *all medicines for internal or external use of human beings or animals and all substances intended to be used for or in the diagnosis treatment, mitigation or prevention of disease in human being or animals and*

- ii) *such substances other than food intended to affect the structure or any function of the human body or intended to be used for the destruction of vermin or insects which cause disease in human beings or animals as may be specified from time to time by the Central Government by notification in the official Gazette”.*

(For similar definition see S. 2(b) of the Central Act of 1950).

- (c) “offered for sale” includes a reference to an intimation by a person of the price proposed by him for sale of any drug, made by the publication of a price list, by exposing the drug for sale in association with a mark a indicating price, by the furnishing of a quotation or otherwise howsoever;

NOTE

(For similar definition of the words “offer for sale” see S. 2(c) of the Central Act of 1950).

- (d) “producer” includes a manufactures;

NOTE

(For similar definition of the words “producer” see S. 2(d) of the Central Act of 1950).

- 2) A drug shall be deemed to be in the possession of a person-
 - i) When it is held on behalf that person by another person or when held by that person on behalf of another person.
 - ii) Notwithstanding that is mortgaged to another person.

NOTE

(This section is similar to S. 2(2) of the Central Act of 1950).

3. **Drugs to which this Act applies:** The State Government may by notification in the official Gazette, declare any drug to be a drug to which this Act shall apply.

NOTE

This section is similar to S. 3 of the Central Act of 1950, except that in the Central Act, instead of the word "State Government", the word "Central Government" have been used.

4. **Fixing of maximum prices and maximum quantities which may be held or sold:**

- 1) The State Government may, by notification in the official Gazette, fix in respect of any drugs :
 - (a) the maximum price or rate which may be charged by a dealer or producer :
 - (b)
 - (c) the maximum quantity which may at any time be possessed by a dealer or producer;
 - (d)
 - (e) the maximum quantity which may in any one transaction be sold to any person.
- 2) The prices or rates and the quantities fixed in respect of any drug under this section may be different in different localities or for different classes of dealers or producers.

NOTES

Under S.4 of the Central Order, 1970, the Central Government may, with a view to regulating equitable distribution of an essential bulk drug and making the same available at a fair price, from time to time, fix the maximum price at which the said essential bulk shall be sold. Similarly under this section, the State Government is empowered to fix maximum price or rate which may be charged by a dealer or purchaser.

By virtue of notification dated 14th March, 1951, being numbered MMD 455/50/65, the Government in exercise of the powers conferred under this section fixed maximum retail prices of the drugs, which prices were revised vide Notification No. MMD 455/50/72, dated 18th April, 1951.

This section is however similar to S.4 of the Central Act of 1950.

5. **Restrictions on sale, etc., where maximum is fixed under S.4:** No dealer or producer shall-

- (a) sell, agree to sell, offer for sale, or otherwise dispose of to any person any drug for a price or at a rate exceed the maximum fixed by notification under CL. (a) of sub-S(1) of S.4:
- (b) have in his possession at any time a quantity of any drug exceeding the maximum fixed by the notification under CI. (b) of sub-S.(1) of S.4; or
- (c) Sell, agree to sell or offer for sale to any person in any one transaction a quantity of any drugs exceeding the maximum fixed by notification under CI. (c) of sub- S. (1) of S. 4.

NOTE

This section is similar to S.45 of the Central Act of 1950. Where maximum prices or rates and quantities have been fixed under S.4, no dealer or producer shall do any thing in contravention of the provisions of S. 4.

6. **General limitation on quantity which may be possessed at one time:**

- 1) No person shall have in his possession at any one time a great quantity of drug to which this section applies than the quantity necessary for his reasonable needs.
- 2) This section shall apply only to such drugs as the Sate Government may, by order published in the official Gazette, specify for the purpose :

Provide that nothing contained in this section shall apply to a dealer or producer in respect of any drug sold or produced by him.

NOTE

This Section is similar to S.6 of the Central Act of 1950.

7. **Duty to declare possession of excess stocks:** Any person having in his possession a quantity of any drug exceeding that permitted by or under this Act shall forthwith report the fact to the State Government or other officer empowered in this behalf by the State Government and shall take such action as to the storage, distribution or disposal of the excess quantity as the State Government may direct.

NOTE

This section is similar to S.6 of the Central Act of 1950

8. **Refusal to sell:** No dealer or producer shall, unless previously authorize to do so by the State Government without sufficient cause refuse to sell to any person any drug within the limits as to quantity, if any, imposed by this Act.

Explanation. The possibility or expectation of obtaining a higher price for drug at a later date shall not be deemed to be a sufficient cause for the purpose of this section.

NOTE

This section is similar to S.8 f the Central Act of 1950

9. **Cash memorandum to be given of certain sales:**

- 1) Every dealer or producer when selling any drug for cash shall, if the amount of the purchase is less than five rupees, when so requested by the purchaser, give to the purchaser a cash memorandum containing particulars of the transaction.
- 2) The State Government may, by notification in the official Gazette, prescribe the particulars to be contained in any such memorandum.
- 3) The State Government may, by notification in the official Gazette, exempt specified areas, classes of dealer or producers or classes of drugs from operation of this section.

NOTES

This section is similar to S. 9 of the Central Act of 1950.

10. **Marking of prices and exhibiting price list:**

- 1) The State Government may direct dealers or producers in general, or any dealer or producer in particular, to mark any drug exposed or intended for sale with the sale prices or to exhibit on the premises a price list of drugs held for sale, and may further give directions as to the manner in which any such direction as aforesaid is to be carried out.
- 2) No dealer shall destroy, efface or alter any label or mark affixed to drug and indicating the price marked by a producer.

NOTES

This section is similar to S. 10 of the Central Act of 1950.

Under this section the Government is empowered to direct dealers or producers, to mark the drug with the sale prices or exhibit on the premises price list of drugs held for sale.

11. **Obligation to state price separately on composite offer:** Where a dealer or producer, makes an offer to enter into a transaction for a consideration to be given as a whole in respect both of a sale of any drug and of some other matter, the dealer or producer making the offer shall state in writing the price which he assigns to that drug, if he is required to do so by any person to whom the offer is made, and the offer shall be deemed for the purposes of this Act to be an offer to sell that drug at the price so stated.

NOTES

This section is similar to S. 11 of the Central Act of 1950.

12. **Prohibition or regulation of the disposal of drugs:** If in the opinion of the State Government it is necessary or expedient so to do, they may, by order in writing-
- a) Prohibit the disposal of any drug except in such circumstances and under such conditions as may be specified in the order;
 - b) direct the sale of any drug to such dealer or class of dealer and in such quantities as may be specified in the order; and make such further orders as

appear to them to be necessary or expedient in connection with any order issued under this section.

NOTE

Under this section the State Government is further empowered to give orders prohibiting the disposal of any drug except in such circumstances and under conditions and in such quantities as may be specified in the said order.

This section is similar to S. 12 of the Central Act of 1950.

13. **Penalties:**

1) Whoever contravenes any of the provisions of this Act, fails to comply with any direction made under authority conferred by this Act shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

2) A court convicting any person of an offence punishable under this Act may order that the whole or any part of the stock of drugs in respect of which the offence committed shall be forfeited to the Government.

3) It shall be a defense for a person charged with a contravention of any of the provisions of this section to prove that, in relation to the matter in respect of which he is charged, he acted in the course of his employment as a servant or agent of another person on the instructions of his employers or some of other specified person.

NOTES

This section is similar to S. 13 of the Central Act of 1950.

14. **Offence by corporation:** Where a person committing an offence punishable under this Act is a company or an association or a body of persons, whether incorporated or not, every Director, Manager, Secretary, Agent or other officer or person concerned with the management thereof, shall, unless he proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent its commission, be deemed to be guilty of such offence.

NOTES

This section is similar to S. 14 of the Central Act of 1950.

15. **Procedure:**

1) No person other than a Police Officer of or above the rank of an Inspector of Police or an Officer not below the rank of an Inspector of Police authorized in this behalf by the State Government by notification in the official Gazette, shall investigate any offence under this Act.

2) No prosecution for any offence punishable under this Act shall be instituted except the previous sanction of the District Magistrate.

NOTES

This section is similar to S. 15 of the Central Act of 1950.

16. **Powers of search and seizure:** Any person competent to investigate any offence under this Act may search any place in which he has reason to believe that

an offence under this Act has been, or is being committed and take possession of any stock of drugs in respect of which the offence has been or is being committed and the provisions of the Code of Criminal Procedure, 1898 (Act V- of 1898), shall so far as may be applicable apply to any search or seizure made under the authority of a warrant issued under S. 98 of that Code.

NOTES

This section is similar to S. 16 of the Central Act of 1950.

The Code of Criminal Procedure, 1898 is now repealed by the code of Criminal Procedure, 1973. The provisions for search and seizure are contained in Ss. 93 to 105 of the new Code. Section 98 of the Code is now S. 94 of the new Code.

17. **Power to make rules:**

- 1) The State Government may make rules to carry out the purposes of this Act.
- 2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters namely:
 - a) the maintenance by declares and producers generally, or any dealer or producer in particular, of records of all sales and purchase transactions made by them.
 - b) the furnishing of any information as may be required with respect into the business carried on by any dealer or producer.
 - c) the inspection of any books of account or other document belongings to, or under the control of, any dealer or producer.

NOTES

This section is similar to S. 17 of the Central Act of 1950, except that instead of the words, "State Government" the words "Central Government" have been used in the Central Act.

18. **Protection of action taken in good faith:** No suit, prosecution or other legal proceeding shall lie against any person for anything in good faith done or intended to be done under this Act.

NOTES

This section is similar to S. 18 of the Central Act of 1950.

19. **Saving of other laws:** The provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force regulating any of the matters dealt with in this Act.

NOTES

This section is similar to S. 19 of the Central Act of 1950.

Application in Meghalaya and Nagaland: This Act has been adapted in its application to the Mokochung and Kohima districts of Nagaland. (Notification No.

TAD/Misc/32/51/7, dated 31st March, 1951). Now by virtue of Tuensang and Mon Districts (Assimilation of Laws) (Amendment) Act 1975, the Acts applicable in Mokokchung and Kohima will now also apply to these districts.

This Act has also been adapted in its application to the State of Meghalaya by Adaptation of Laws Order (No. 1), 1974.

Application of the provisions of the Drugs and Cosmetics Act, 1940 in Assam: Chapter IV of this Act come into force in Assam on 27th July, 1964, as published in the Assam Gazette dated 27th July, 1967, Pt. II-A page 1736.

Section 18 of the Act came into force in Assam on 1st April, 1947 and S. 18(a) (iii) came into force on 1st April, 1948.