

Thirteenth Kerala Legislative Assembly

Bill No. 229

THE ABKARI (AMENDMENT) BILL, 2013

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further to amend the Abkari Act, 1077.

Preamble.—WHEREAS, it is expedient further to amend the Abkari Act, 1 of 1077, for the purposes hereinafter appearing;

BE it enacted in the Sixty-fourth Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Abkari (Amendment) Act, 2013.

(2) Clause (a) of section 6 shall be deemed to have come into force on the 26th day of April, 2013 and the remaining sections shall be deemed to have come into force on the 27th day of February, 2013.

2. *Amendment of section 15A.*—In section 15A of the Abkari Act, 1077 (1 of 1077) (hereinafter referred to as the principal Act),—

(a) in the marginal heading, for the figure “18”, the figure “21” shall be substituted;

(b) in the section, for the figure “18”, the figure “21” shall be substituted.

3. *Amendment of section 15B.*—In section 15B of the principal Act,—

(a) in the marginal heading, for the figure “18”, the figure “21” shall be substituted;

(b) in the section, for the word “eighteen”, the words “twenty one” shall be substituted.

4. *Amendment of section 18.*—In section 18 of the principal Act, in subsection (4), for clause (b) and the entries against it, the following clause and entries shall, respectively, be substituted, namely:—

“(b) when levied in the form of Rs. 30 (Rupees thirty) per
gallonage fee for foreign liquor bulk litre.”.
(Indian made)

5. *Insertion of new section 55 I.*—After section 55H of the principal Act, the following section shall be inserted, namely:—

“55 I. *Penalty for showing scene of liquor or consumption or exhibition of liquor in cinemas exhibited in theatres without warning.*—(1) No scene containing use or consumption or exhibition of liquor in cinema shall be picturised and exhibited in theatres without the warning “CONSUMPTION OF ALCOHOL IS INJURIOUS TO HEALTH/മദ്യപാനം ആരോഗ്യത്തിന് ഹാനികരം” in such scene in contrasting colours clearly visible and having a size covering 1/10th of the total size of the scene.

(2) Whoever exhibits or causes to exhibit any cinema having a scene in contravention of the provisions of sub-section (1) in any theatre shall, on conviction, be punished with simple imprisonment for a term which may extend to six months or with fine which may extend to ten thousand rupees or with both.”.

6. *Amendment of section 67.*—In section 67 of the principal Act,—

(a) in sub-section (2), for the letters, figures, words and brackets “Rs. 25,000 (Rupees Twenty five thousand only)”, the letters, figures, words and brackets “Rs. 3,00,000 (Rupees three lakhs)” shall be substituted;

(b) after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) Where a partnership firm or a company having a hotel (restaurant) holding a licence under this Act has, without the previous permission of the Commissioner, re-constituted, altered or modified any deed constituting such partnership or Board of Directors of the company, on the strength of which such licence is granted, the Commissioner may, on payment of the fine imposed under sub-section (2) and on an application from such licensee and subject to the other provisions of this Act and the rules made thereunder, regularise such re-constitution, alteration or modification after accepting such fee as may be prescribed by rules.”.

7. *Amendment of section 67A.*—In section 67 A of the principal Act, in column (1) of the Table under sub-section (1), for the figure “18” occurring in both the places, the figure “21” shall be substituted.

8. *Repeal and saving.*—(1) The Abkari (Amendment) Ordinance, 2013 (32 of 2013) is hereby repealed.

(2) Notwithstanding such repeal, anything done or deemed to have been done or any action taken or deemed to have been taken under the principal Act as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

The consumption of liquor is increasing in the State day by day. It is reported that students and youth are attracted to this menace of increasing consumption of liquor. The scene containing use or consumption or exhibition of liquor in cinema may influence the people for use of liquor. In these circumstances, the Government have decided to enhance the minimum age limit for consumption or use of liquor from 18 years to 21 years and also to prevent the sale of liquor to the persons below 21 years, so as to retract them from consuming liquor.

2. Government have also decided to increase the rate of luxury tax on foreign liquor (Indian made), when levied in the form of gallonage fee from the existing rate of rupees ten to rupees thirty per bulk litre.

3. It is further decided to make it compulsory to exhibit a warning in the scenes in cinemas where use or consumption or exhibition of liquor is shown and to provide for stringent punishment to those who show such scene in any cinema without showing a warning as stated above.

4. Government have further decided to enhance the amount of fine which the Excise Commissioner may impose under sub-section (2) of section 67 of the Abkari Act 1 of 1077 from rupees 25,000 to rupees 3,00,000 and to empower the Commissioner to regularise the re-constitution, alteration or modification of any deed so done by a partnership firm or a company having a hotel under the said Act on payment of fine imposed under sub-section (2) and on realisation of such fee as may be prescribed by the Rules.

5. As the Legislative Assembly of the State was not in session and the above proposals have to be given effect to immediately, the Abkari (Amendment) Ordinance, 2013 was promulgated by the Governor of Kerala on the 26th day of February, 2013 incorporating the provisions included in the Abkari (Amendment) Bill, 2012 (Bill No. 127) and the same was published as Ordinance No. 19 of 2013 in the Kerala Gazette Extraordinary No. 558 dated 27th February, 2013.

6. A Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 15th day of March, 2013 and ended on the 10th day of April, 2013. Therefore, in order to keep alive the provisions of the said Ordinance, the Abkari (Amendment) Ordinance, 2013 was promulgated by the Governor of Kerala on the 25th day of April, 2013 and the same was published as Ordinance No. 32 of 2013 in the Kerala Gazette Extraordinary No. 1171 dated 26th April, 2013.

7. The Bill seeks to replace Ordinance No. 32 of 2013 by an Act of the State Legislature.

FINANCIAL MEMORANDUM

The Bill, if enacted and brought into operation, would not involve any additional expenditure from the Consolidated Fund of the State.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-section (3) of section 67 of the Abkari Act, 1 of 1077, proposed to be inserted by sub-clause (b) of clause 6 of the Bill seeks to empower the Government to prescribe the fee for regularisation of the re-constitution, alteration or modification made in any deed constituting a partnership firm or a company having a hotel (restaurant) holding a licence under the said Act, without the permission of the Excise Commissioner.

2. The matters in respect of which rules are to be made are either administrative in nature or matters of procedure and are of routine. Further, the rules after they are made will be subject to the scrutiny of the Legislative Assembly. The delegation of Legislative power is, thus, of a normal character.

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55H. *Penalty for unlawful advertisement.*—Whoever prints, publishes or gives any advertisement soliciting use of or offering any liquor or intoxicating drug shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to twenty-five thousand rupees or with both:

Provided that, this section shall not apply to price list for display at the points of sale for consumer information.”

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67. *Power to impose fine.*—(1) The Commissioner shall be competent to impose such fine as may be prescribed in the rules, on any person holding a licence or permit issued under this Act, for contravention of any rule made under this Act:

Provided that no order imposing any fine under this section shall be made without giving the person an opportunity of being heard.

(2) The Commissioner may impose a fine of Rs. 25,000 (Rupees Twenty five thousand only) each on any person or persons holding a licence or permit under this Act for the violation by way of reconstitution, alteration or modification without the permission of the Commissioner of any deed on the strength of which any licence is granted.

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67A. *Power to compound offences.*—(1) The Commissioner of Excise or the Deputy Commissioner of Excise of the District concerned or any Abkari Officer specially empowered by the Government in this behalf by notification in the Gazette, may accept, from any person reasonably suspected of having committed any of the offences specified in column (1), a sum of money as specified in column (3) of the Table below by way of composition for the offence which may have been committed and where any property has been seized, the same shall be confiscated to Government or disposed of in such manner as may be prescribed.

TABLE

<i>Offence</i>	<i>Corresponding section in the Act</i>	<i>Compounding fee in rupees</i>
(1)	(2)	(3)
Transporting of liquor or intoxicating drug in excess of the quantity prescribed by the Government by notification	10	5,000

(1)	(2)	(3)
Possession of liquor or intoxicating drug in excess of the quantity prescribed	13	5,000
Consumption or use of liquor by persons under the age of 18 years	15A	5,000
Sale of liquor to person under the age of 18 years	15B	5,000
Consumption of liquor in public places	15C	5,000
Taps or causes to be tapped any toddy producing tree in contravention of the Act, Rules or any order made under the Act	55(d)	10,000
Draws or causes to be drawn toddy from any tree in contravention of the Act, Rules or any order made under the Act	55(e)	10,000
Misconduct by licensee etc.	56	25,000
Consumption of preparations containing liquor or intoxicating drug other than <i>bonafide</i> medicinal preparations in the business, manufacturing or stocking premises	56 A(2)	5,000

(2) Where any case involving an offence specified under sub-section (1) is pending before a court of law, such offence may be compounded with the permission of such court and a report of the action taken thereon shall be filed before the court.

(3) On payment of such sum of money or such value or both, as the case may be, to such officer empowered for the purpose under sub-section (1), the accused person, if in custody, shall be discharged.

Explanation:—For the purpose of this section, the word “compound” means compounding of offences.

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