



# THE OFFICIAL GAZETTE OF THE COLONY AND PROTECTORATE OF KENYA

Published under the Authority of His Excellency the Governor of the Colony and Protectorate of Kenya

---

Vol. LI—No. 37

NAIROBI, August 8, 1950

Price 50 Cents

---

## CONTENTS

	PAGE
Govt Notice No 869—Bill for introduction into the Legislative Council —An Ordinance to Amend the Pharmacy and Poisons Ordinance, 1942	642

## GOVERNMENT NOTICE NO 869

The Governor in Council has approved of the following Bill being introduced into the Legislative Council

T V N FORTESCUE,  
*Acting Clerk to the Legislative Council*

**A BILL ENTITLED  
AN ORDINANCE TO AMEND THE PHARMACY AND  
POISONS ORDINANCE, 1942**

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows —

Short title

Cap 128

Amendment of section 2 of the principal Ordinance

1. This Ordinance may be cited as the Pharmacy and Poisons (Amendment) Ordinance, 1950, and shall be read and construed as one with the Pharmacy and Poisons Ordinance, (hereinafter referred to as the principal Ordinance)

2. Section 2 of the principal Ordinance is amended in the following respects—

(a) by inserting immediately before the definition of “arrangement with creditors” the following new definition—

“advertisement” includes any notice, circular, label, wrapper, or other document, and any announcement made orally or by any means of producing or transmitting light or sound,

(b) by inserting next after the definition of “licensed seller of poisons” the following new definition—

“Member” means the Member of the Executive Council of the Colony for the time being responsible for Health and Local Government,

(c) by inserting next after the definition of “poison” the following new definitions—

“substance” includes a preparation,

“substance recommended as a medicine” in relation to the sale of an article consisting of or comprising a substance so recommended, means a substance which is referred to—

(i) on the article, or on any wrapper or container in which the article is sold, or on any label affixed to, or in any document enclosed in, the article or such a wrapper or container, or

(ii) in any placard or other document exhibited at the place where the article is sold, or

(iii) in any advertisement published after the day of \_\_\_\_\_, 19\_\_\_\_, by or on behalf of the manufacturer of the article, or the person carrying on the business in the course of which the article was sold, or, in a case where the article was sold under a proprietary designation, the proprietor of the designation,

and

(d) by renumbering the existing section as sub-section (1) and by inserting the following new sub-section—

(2) In this section references to the sale of an article include references to the supply of an article as a sample for the purpose of inducing persons to buy by retail the substance of which the article consists or which it comprises

3. There shall be inserted next after section 22 of the principal Ordinance the following new section—

Insertion of new section in the principal Ordinance

22A (1) Subject to the provisions of sub-section (2) of this section, no person shall be in possession of any poison listed in Part I of the Poisons List except pursuant to—

Possession of poisons

- (a) the prescription of a duly qualified medical practitioner or dentist or of a veterinary surgeon, or
- (b) a permit issued by any person or authority authorized by rules made under section 35 of this Ordinance to issue such a permit

(2) Nothing in this section shall be deemed to prohibit the possession of any poison listed in Part I of the Poisons List by—

- (a) a duly qualified medical practitioner or dentist or a veterinary surgeon,
- (b) an authorized seller of poisons,
- (c) a licensed seller of poisons,
- (d) any person or institution exempted in relation to the sale of poisons from the provisions of the Ordinance by section 25 of the Ordinance

4. Section 25 of the principal Ordinance is amended in the following respects—

Amendment of section 25 of the principal Ordinance

- (a) by renumbering sub-sections (3), (4), (5), (6) and (7), as sub-sections (4) (5), (6), (7) and (8), and
- (b) by inserting next after sub-section (2) the following new sub-section—

(3) In the case of the sale of any poison under paragraph (b) of sub-section (1) of this section the purchaser shall be in possession of such prescription, certificate or other document as may be prescribed by rules made under section 35 of this Ordinance

5. Sub-section (1) of section 31 of the principal Ordinance is amended by substituting for the words “in this Part referred to as an authorized officer may” the words “(in this Part referred to as an authorized officer) and any European police officer of or above the rank of Assistant Inspector may”

Amendment of section 31 (1) of the principal Ordinance

6. There shall be inserted next after section 33 of the principal Ordinance the following new section—

Insertion of new sections 33A 33B 33C, 33D and 33E in the principal Ordinance

33A (1) Subject to the provisions of this Ordinance, no person shall take any part in the publication of any advertisement referring to any article, or articles of any description, in terms which are calculated to lead to the use of that article or articles of the description for the purpose of the treatment of human beings for any of the following diseases, namely, Bright’s disease, cataract, diabetes, epilepsy or fits, glaucoma, locomotor ataxy, paralysis, tuberculosis or cancer

Prohibition of advertisements relating to certain diseases

Provided that this sub-section shall not apply to an advertisement published by a local authority, or by the governing body of a voluntary hospital, or by any person acting with the sanction of the Member

(2) In any proceedings for a contravention of the foregoing provisions of this section, it shall be a defence for the person charged to prove that the advertisement to which the proceedings relate was published only so

far as was reasonably necessary to bring it to the notice of persons of the following classes or of one or some of them, that is to say—

- (a) members of the Legislative Council,
- (b) members of a local authority, 5
- (c) members of the governing body of a voluntary hospital,
- (d) registered medical practitioners,
- (e) registered nurses,
- (f) registered pharmacists and authorized sellers of 10 poisons,
- (g) persons undergoing training with a view to becoming registered medical practitioners, registered nurses or registered pharmacists,
- (h) persons carrying on a business which includes the 15 sale or supply of surgical appliances

(3) In this section the expression "hospital" includes a clinic, dispensary, or other institution for the reception of the sick, whether as in-patients or out-patients

Prohibition of advertisements relating to abortion

33B Subject to the provisions of this Ordinance, no 20 person shall take any part in the publication of any advertisement referring to any article, or articles of any description, in terms which are calculated to lead to the use of that article or articles of that description for procuring the miscarriage of women 25

Provisions as to offences under the two preceding sections

33C (1) If any person contravenes any of the provisions of the last two preceding sections, he shall, subject to the provisions of this Ordinance, be liable—

- (a) in the case of a first conviction, to a fine not exceeding one thousand shillings, and 30
- (b) in the case of a subsequent conviction, to a fine not exceeding two thousand shillings, or to imprisonment for a term not exceeding three months, or to both such fine and such imprisonment 35

(2) Where, in any proceedings for a contravention of any of the provisions of the last two preceding sections, it is proved—

- (a) that an advertisement was published referring to any article or articles of any description, in terms 40 calculated to lead to the use of that article or articles of that description—
  - (i) in the case of a contravention of section 33A of this Ordinance, for the treatment of human beings for any such disease as is 45 mentioned in sub-section (1) of that section, or
  - (ii) in the case of a contravention of section 33B of this Ordinance, for procuring the miscarriage of women, and 50
- (b) that the advertisement also referred to the article or articles in terms calculated to indicate that it or they were manufactured, produced, imported, sold or offered for sale by the person charged,

then, unless the contrary is proved, it shall be presumed for 55 the purpose of those proceedings that that person took part in the publication of the advertisement, but without prejudice to the liability of any other person

(3) In any proceedings for a contravention of any of the provisions of the last two preceding sections, it shall be a defence for the person charged to prove—

- 5 (a) that the advertisement to which the proceedings relate was published in such circumstances that he did not know and had no reason to believe that he was taking part in the publication thereof, or
- 10 (b) that the said advertisement was published only in a publication of a technical character intended for circulation mainly amongst persons of the following classes, or of one or some of them, that is to say—
- 15 (i) registered medical practitioners,
- (ii) registered nurses,
- (iii) registered pharmacists and authorized or licensed sellers of poisons,
- 20 (iv) persons undergoing training with a view to becoming registered medical practitioners, registered nurses or registered pharmacists,
- (v) persons carrying on a business which includes the sale or supply of surgical appliances

25 (4) No prosecution for a contravention of any of the provisions of the last two preceding sections shall be instituted without the consent of the Attorney General

33D (1) Subject to the provisions of this Ordinance, no person shall—

Disclosure of composition of medicines

- 30 (a) sell by retail any article consisting of or comprising a substance recommended as a medicine, or
- (b) supply any such article as a sample for the purpose of inducing persons to buy by retail the substance of which it consists or which it comprises,

35 unless there is written so as to be clearly legible on the article or a label affixed thereto, or, if the article is sold or supplied as aforesaid in a container on the container or a label affixed thereto or, if the article is sold or supplied as aforesaid in more than one container, on the

40 inner container or a label affixed thereto—

- (i) the appropriate designation of the substance so recommended or of each of the active constituents thereof, or of each of the ingredients of which it has been compounded, and
- 45 (ii) in a case where the appropriate designation of each of the active constituents or the ingredients is written as aforesaid, the appropriate quantitative particulars of the constituents or ingredients

50 Provided that this sub-section shall not apply to any article made up and supplied for the use of a particular person, being an article prescribed by reference to the needs of that person

(2) In the preceding sub-section—

- 55 (a) the expression “appropriate designation”, in relation to a substance, constituent or ingredient means—
- (i) in the case where the substance, constituent or ingredient is a poison included in the Poisons List, the name with which the container of the poison is for the time being required to be labelled in pursuance of section 23 of this Ordinance,
- 60

(ii) in a case where the substance, constituent or ingredient is not such a poison and is described in any of the monographs contained in the edition of the British Pharmacopœia or the British Pharmaceutical Codex which was last published before the date on which the article was sold or supplied, the description set out at the head of that monograph,

(iii) in a case where the substance, constituent or ingredient is not such a poison and is not so described, the accepted scientific name, or other name descriptive of the true nature of the substance, constituent or ingredient,

(b) the expression "appropriate quantitative particulars" in relation to the active constituents or the ingredients of a substance means—

(i) the approximate percentage of each of those constituents or ingredients contained in the substance or the approximate quantity of each of those constituents or ingredients contained in the article sold or supplied, or

(ii) in a case where the said article consists of or comprises a number of separate portions of the substance either the approximate percentage or quantity aforesaid or the approximate quantity of each of the constituents or ingredients contained in each portion, and

(c) the expression "container" includes a wrapper

(3) If any person sells or supplies an article in contravention of the preceding provisions of this section, he shall, subject to the provisions of this Ordinance, be liable—

(a) in the case of a first conviction, to a fine not exceeding four hundred shillings, and

(b) in the case of a subsequent conviction, to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding three months, or to both such fine and such imprisonment

Provisions as to charges under the preceding section

33E (1) It shall be a defence for a person charged with selling or supplying, in contravention of any of the provisions of the last preceding section, an article consisting of or comprising a substance recommended as a medicine to prove—

(a) that he did not know, and had no reason to believe, that the article consisted of or comprised such a substance, or

(b) 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 employer or of some other specified person

(2) In any proceedings for a contravention of any of the provisions of the last preceding section a document purporting to be a certificate signed by a public analyst within the meaning of the Food and Drugs (Adulteration) Ordinance, and stating the result of an analysis made by him, shall be admissible as evidence of the matters stated therein, but any party to the proceedings may require the person by whom the analysis was made to be called as a witness

(3) No prosecution for a contravention of any of the provisions of the last preceding section shall be instituted without the consent of the Attorney General

#### MEMORANDUM OF OBJECTS AND REASONS

The main object of this Bill is to insert in the Pharmacy and Poisons Ordinance (referred to as the principal Ordinance), provisions designed—

- (a) to restrict the publication of advertisements of articles in terms calculated to lead to their use in the treatment of certain specific diseases or for procuring the miscarriage of women,
- (b) to require adequate disclosure of the composition of medicines

The opportunity has also been taken to amend the principal Ordinance in certain other respects in which it has been found to be defective

*Clause 2* will insert certain new definitions rendered necessary as a result of the amendments which this Bill will effect

*Clause 3* will insert a new section 22A prohibiting any person being in possession of any poison except pursuant to the prescription of a medical or dental practitioner or a veterinary surgeon or pursuant to a permit issued by any prescribed authority. The section expressly exempts possession by a medical practitioner, dentist or veterinary surgeon or by an authorized or licensed seller of poisons or by any person or institution exempted in relation to the sale of poisons from the provisions of the Ordinance by section 25 of the principal Ordinance

*Clause 4* will amend section 25 of the principal Ordinance so as to require the purchaser of a poison who buys from a person carrying on a regular business in mining, agricultural or horticultural accessories to be in possession of such prescription, certificate or other document as may be prescribed by rules

*Clause 5* will amend section 31 of the principal Ordinance so as to empower a European police officer of or above the rank of Assistant Inspector to exercise the powers conferred by that section

*Clause 6* will insert in the principal Ordinance new sections 33A, 33B, 33C, 33D and 33E. The new section 33A will restrict the publication of advertisements referring to any article or articles of any description in terms calculated to lead to the use of the article or articles of that description for the treatment of Bright's disease, cataract, diabetes, epilepsy or fits, glaucoma, locomotor ataxy, paralysis, tuberculosis or cancer. Provision is made for the section not to apply to any such advertisement if published by a local authority, the governing body of a voluntary hospital or by any person acting with the sanction of the Member. The section will also provide that it shall be a defence for any person charged to prove that the advertisement was published only so far as was reasonably necessary to bring it to the notice of one or more of certain specified classes of persons

The new section 33B will prohibit the publication of any advertisement of an article or articles of any description in terms calculated to lead to the use of the article or of articles of that description for procuring the miscarriage of women

The new section 33C contains provisions relating to punishment for offences against sections 33A and 33B. Sub-section (2) provides that if in any proceedings for a contravention of section 33A or 33B it is proved that the advertisement does refer to an article in terms calculated to lead to its use for the treatment of one of the specified diseases or for procuring the miscarriage of women and the advertisement also referred to the article in terms calculated to indicate that it was manufactured, produced, imported, sold or offered for sale by the person charged, then, unless the contrary is proved, it shall be presumed for the purpose of the proceeding that the person charged did take part in the publication of the advertisement. Sub-section (3) of the section provides that in any proceedings for a contravention of section 33A or 33B it shall be a defence to prove that the advertisement was published in such circumstances that he did not know and had no reason to believe he was taking part in its publication or that it was published in a publication of a technical character intended for circulation mainly among certain specified classes of persons.

The new section 33D prohibits the sale by retail or the supplying of a sample of any article consisting of or comprising a substance recommended as a medicine unless there is written so as to be clearly legible on the article or on the container thereof or on a label attached to the article or its container—

- (a) the appropriate designation of the substance so recommended or of each of the active constituents thereof or of each of the ingredients of which it has been compounded, and
- (b) the appropriate quantitative particulars of the constituents or ingredients

Provision is made that the section shall not apply to an article made up and supplied by reference to a prescription for a particular person. In sub-section (2) of the section the expressions "appropriate designation", "appropriate quantitative particulars" and "container" are defined for the purposes of the section. Sub-section (3) provides the penalties for a breach of the provisions of the section.

The new section 33E provides by sub-section (1) that it shall be a defence for a person charged with selling or supplying, contrary to section 33D, an article consisting of or comprising a substance recommended as a medicine to prove—

- (a) that he did not know and had no reason to believe that the article consisted of or comprised such a substance, or
- (b) 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 employer or of some other specified person

By sub-section (2) a document purporting to be a certificate signed by a public analyst and stating the result of an analysis made by him is rendered admissible in evidence, but provision is made for any party to the proceedings to require the analyst to be called as a witness. By sub-section (3) proceedings for a breach of section 33D may not be instituted without the consent of the Attorney General.

It is not expected that any additional expenditure of public moneys will be involved if the provisions of this Bill become law.

Nairobi,  
14th July, 1950

K K O'CONNOR,  
*Attorney General*