

AS INTRODUCED IN THE RAJYA SABHA
ON THE 4TH DECEMBER, 2009

Bill No. XXXI of 2009

THE CONSUMER PRODUCTS SAFETY AUTHORITY BILL, 2009

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BILL

to provide for establishment of a Consumer Products Safety Authority as an independent authority to protect the consumer from unsafe and hazardous products; to constantly monitor safety of various consumer products; to make mandatory for consumers, retailers, distributors and manufacturers to report product related accidents and injuries; to direct the distributors and manufacturers to recall the defective products and to prevent supply of defective and spurious products in the market and for matters connected therewith and incidental thereto.

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Consumer Products Safety Authority Act, 2009.
- (2) It shall extend to the whole of India.
- (3) It shall come into force at once.

Short title,
extent and
commen-
cement.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) “Authority” means the Consumer Products Safety Authority established under section 3.

(b) “prescribed” means prescribed by rules made under this Act.

(c) words and expressions used but not defined in this Act and defined in the Consumer Protection Act, 1986 shall have the meanings respectively assigned to them in that Act.

Constitution of Authority

3. (1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be constituted an Authority, to be known as the Consumer Products Safety Authority to perform the functions assigned to it, by or under this Act.

(2) The Authority shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property both movable and immovable, and to contract and shall, by the said name, sue or be sued.

(3) The Authority shall consist of:—

(a) a Chairperson, who shall be an eminent person active in the field of consumer related matters.

(b) not more than nine members, *ex officio*, to be appointed by the Central Government from amongst the officers, not below the rank of the Joint Secretary to the Government of India, representing the Ministries or Departments of the Government of India dealing with Agriculture and Cooperation, Law and Justice, Textiles, communication and IT, Commerce & Technology, Food Processing Industries, Consumer Affairs, Food & Public Distribution, Chemical and Fertilizers, Micro, Small and Medium Enterprises;

(c) The Chief Secretary or his nominee of any five States to be nominated by rotation in such manner as may be prescribed;

(d) five representatives of traders/manufacturers to be appointed by the Central Government, on case-to-case basis, wherever necessary; and

(e) such other representatives as the Central Government may co-opt for functional purposes.

(4) The Chairperson and the members referred to in clause (a) and (b) shall be appointed by the Central Government and shall be whole-time members of the Authority.

(5) The head office of the Authority shall be at such place as the Central Government may decide.

Disqualifications for office of member.

4. A person shall be disqualified for being appointed as a member if, he—

(a) has been convicted and sentenced to imprisonment for an offence, which, in the opinion of the Central Government, involves moral turpitude; or

(b) is an undischarged insolvent; or

(c) is of unsound mind and stands so declared by a competent court; or

(d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or

(e) has, in the opinion of the Central Government such financial or other interest in the Authority as is likely to affect Prejudicially the discharge by him of his functions as a member.

5. (1) Subject to the provisions of section 6, every whole-time member shall hold office for a period of five years from the date on which he assumes office or till he attains the age of sixty-five years, whichever is earlier: Term of office and conditions of service of members.

Provided that the Central Government may—

(a) terminate the appointment of any whole-time member, after giving him notice of a period of not less than three months or, in lieu thereof, on payment of an amount equal to his salary and allowances, if any, for a period of three months;

(b) terminate at any time the appointment of any member, who is a servant of the Government.

(2) The salary and allowances and other conditions of service of the chairperson and other members shall be such as may be prescribed.

(3) The other conditions of service of the members shall be such as may be prescribed.

(4) Any member may resign his office by giving notice in writing for such period as may be prescribed, to the Central Government and, on such resignation being notified in the Official Gazette.

6. Any person ceasing to be a member shall, unless disqualified under section 4, be eligible for re-appointment. Eligibility of member for reappointment.

7. (1) The Authority shall meet at such times and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at such meetings), as may be provided by rules. Meetings of Authority.

(2) If for any reason, the Chairperson, is unable to attend any meeting of the Authority, any other member chosen by the members present at the meeting shall preside at the meeting.

(3) All questions which come up before any meeting of the Authority shall be decided by a majority of the votes of the members present and voting, and in the event of an equality of votes, the Chairperson, or in his absence the Person Presiding shall have and exercise a second or casting vote.

8. No act or proceeding of the Authority shall be invalidated merely by reason of— Vacancies etc. not to invalidate proceedings of Authority.

(a) any vacancy in, or any defect in the constitution of the Authority; or

(b) any defect in the appointment of a person acting as a member of the Authority;

or

(c) any irregularity in the procedure adopted by the Authority not affecting the merits of the case.

9. (1) For the purpose of enabling it to efficiently discharge its functions under this Act, the Authority shall appoint such number of officers and other employees as it may consider necessary: Appointments of Officers and other employees of Authority.

Provided that the appointment of such category of officers, as may be specified, shall be subject to the approval of the Central Government.

(2) Terms and conditions of service and salaries and allowances of officers and employees of the Authority shall be such as may be prescribed.

10. (1) Subject to the provisions of this Act, the Authority shall have powers to develop and manage activities for safety of consumers from unsafe and hazardous products in the country. Functions of the Authority.

(2) Without prejudice to the generality of the provisions contained in sub-section (1) the Authority may,—

(a) Monitor safety of all consumer products available in the market;

(b) make it mandatory for the manufactures and traders to report immediately any complaint pertaining to safety of a product;

(c) direct the manufacturers and distributors to recall the defective products;

(d) direct the manufacture to rectify the defect or replace it within a time frame;

(e) direct the manufacture to put in place measures for quick traceability of defective products;

(f) provide a twenty four hour toll free hotline for consumers to report product related accidents and injuries to the Authority;

(g) *Suo motu* take up safety aspect of any consumer product; and

(h) cause the collection and analysis of product-related accidents and injuries.

Authority to charge fee.

11. The Authority may with the previous approval of the Central Government determine and charge fee or rent, not being statutory levy under any other Act, in such manner as may be provided by rules.

Authority to establish its fund.

12. The Authority shall establish its own fund and all receipts of the Authority shall be credited thereto and all payment by the Authority shall be made therefrom and shall have power to spend from the fund subject to the provisions of this Act.

Submission of annual report.

13. (1) The Authority shall, as soon as may be, after the end of each financial year, prepare and submit to the Central Government in such form as may be prescribed, a report giving an account of its activities during that financial year and the report shall also give an account of the activities which are likely to be undertaken by the Authority during the next financial year.

(2) The Central Government shall cause such report to be laid before both Houses of Parliament, as soon as may be, after it is submitted.

Power of Central Government to issue directions.

14. (1) Without prejudice to the foregoing provisions of this Act, the Authority shall, in the discharge of its functions and duties under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time:

Provided that the Authority shall, as far as practicable, be given opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government whether a question is one of policy or not shall be final.

(3) The Central Government may, from time to time, issue directions to the Authority regarding the discharge of any functions by it under the clauses of sub-section (2) of section 10 and the Authority shall be bound to comply with such directions.

Central Government to provide funds.

15. The Central Government shall, after due appropriation made by Parliament by law in this behalf, provide adequate funds for carrying out the purposes of this Act.

Penalty.

16. Whoever contravenes the provisions of this Act and rules made thereunder shall be punishable with imprisonment, which may extend to three years or with fine which may extend to five lakh rupees or with both.

Offences by companies.

17. (1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of business of the company as well as the company, shall be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any Director, manager, Secretary or other Officer of the company, such Director, Manager, Secretary or other Officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Explanation:— For the purpose of this section:—

(i) “company” means anybody corporate and include a firm or other association of individuals; and

(ii) “director”, in relation to a firm, means a partner in the firm.

18. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by general or special order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to it to be necessary or expedient for removing the difficulty: Power to remove difficulties.

Provided that no such order shall be made after the expiry of a period of two years from the date of the commencement of this Act.

(2) Every order made under this Act shall as soon as may be after it is made, be laid before each House of Parliament.

19. The provisions of this Act and the rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, but save as aforesaid, the provisions of this Act shall be in addition to and not in derogation of any other law, for the time being in force. Act to have overriding effect.

20. The Central Government may, by notification in Official gazette, make rules for carrying out the purposes of this Act. Power to make rules.

STATEMENT OF OBJECTS AND REASONS

In 1986, the Consumer Protection Act was enacted in order to protect the rights of consumers buying products from market. Since then the Act has come a long way in protecting the consumers in various eventualities against marketing of unsafe and hazardous goods. But the Consumer Protection Act does not cover the product related injuries and accidents nor it provides for recall of goods found to be unsafe. The product related accidents and injuries do take place in the country. But, as of now generally these matters are dealt with in a casual manner and sorted out locally without much involvement of any Government agency or manufactures. At present there is no mechanism in place for reporting of product related accidents and injuries to any agencies. There is no system of collecting and analysing product related accidents to assess their safety. In many countries there are independent regulatory authority and commissions, which constantly monitor products safety. These authorities provide a toll free twenty-four hour hotline for consumer to report product related accidents and injuries. In the United States of America there is a Consumer Product Safety Commission which mandates the retailers, distributors and manufacturers to report immediately any complaint or information pertaining to safety of the product that they manufacture or sale. It also directs the manufacturers for recall of unsafe product. Similarly, in Europe, there are the General Product Safety Regulations, which place an obligation on manufacturers to not only provide safe goods but also monitor the safety of their products released into the market and withdraw those found to be unsafe. These regulations have also put in place measures to ensure quick traceability of the product and report to the competent authority any information that comes to their knowledge pertaining to the safety. Similar laws are there in Canada and Australia also.

There is a major gap in the area of consumer safety in our country and many a time consumer safety is compromised. In the expanding globalization, our consumer protection laws also need to be of global standard. It is, therefore, proposed to establish an authority to monitor the safety of consumer products which will *inter alia* also direct for recall of the defective product.

Hence this Bill.

MAHENDRA MOHAN

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for establishment of the Consumer Products Safety Authority. Clause 9 provides for appointment of officers and employees of the Authority. Clause 15 provides that the Central Government shall provide funds for the purposes of the Act. The Bill, if enacted, will involve expenditure of Rupees one hundred crore from the Consolidated Fund of India. A non-recurring expenditure of rupees fifty crore will also be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 20 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Bill. Since the rules will relate to matters of details only, the delegation of legislative power is of a normal character.

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(Shri Mahendra Mohan, M.P.)