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NOTIFICATION

No.H. 12018/67/96-LJD, the 9th February 1996. The following Act of the Mizoram Legislative Assembly, which received the assent of the Governor of Mizoram is hereby published for general information.

The Mizoram Act No. 10 of 1995.

The Mizoram Liquor Total Prohibition Act, 1995.

Received the assent of the Governor of Mizoram on 31.1.1996.

AN

ACT

to provide for total prohibition of import, transport, manufacture, possession, sale and consumption of liquor in the State of Mizoram

Be it enacted by the Legislative Assembly of Mizoram in the Forty-sixth Year of the Republic of India as follows :—

CHAPTER - I

Preliminary

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Mizoram Liquor Total Prohibition Act, 1995.
- (2) It shall extend to the whole of the State of Mizoram except the three autonomous Districts of Chakma, Lai and Mara as constituted under the Sixth Schedule to the Constitution of India.
- (3) It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint in this behalf.

Definitions

2. (1) In this Act, unless the context otherwise requires,—
 - (a) “advertisement” includes any printed, cyclostyled, type-written, hand-written or painted matter or a design or pictorial representation and also the distribution or display of such matter, design or representation on any wall, building or hoarding in a public place or an announcement by means of producing or transmitting light or sound, whether by cinematographic exhibition, neon signs or otherwise;
 - (b) “Armed Forces” means person under the control of the Army Act, 1950, the Air Force Act, 1950 and the Naval Act, 1957, and includes persons belonging to Assam Rifles, Border Security Forces, Central Reserved Police Forces and General Reserved Engineering Forces;
 - (c) “Buy”, with all its grammatical variations, means any receipt for price paid in cash or in kind, and includes any receipt by gift, loan or otherwise;
 - (d) “Collector” means a Collector of Excise appointed under the Excise Act in force and includes an Officer appointed as such under sub-section (3) of section 3 of this Act;
 - (e) “Commissioner” means the Commissioner of Prohibition or any other person duly empowered by the Government to exercise some or all of the powers of the Commissioner of Prohibition under this Act;
 - (f) “Denatured Spirit” means spirit so mixed with another substance in order to render the mixture unfit for human consumption, whether as a beverage, or internally as a medicine;
 - (g) “Government” means the State Government of Mizoram;

- (h) "Intoxicant" means any liquor or intoxicating drug but does not include a drug as defined in the Drugs and Cosmetics Act, 1940 or a toilet preparation under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955;
- (i) "intoxication" means a state of mind and behaviour in which a person is incapable of knowing the nature of his actions or judging the consequences thereof;
- (j) "Liquor" means any intoxicating liquor and includes Zu, Rakzu, Tinzu, Zupui and all liquid consisting of or containing alcohol and any substance which the Government may, by notification, declare to be liquor for the purpose of this Act;
- (k) "Manufacture" includes every processes, whether natural or artificial, by which any liquor is produced or prepared, also re-distillation and every process for the rectification, flavouring, blending, or colouring of liquor;
- (l) "Prescribed" means prescribed by rules under this Act;
- (m) "Prohibition Council" or "Prohibition Committee" means such body of officials and non-officials residing in Mizoram as may be constituted by the Government by notification to be published in the Official Gazette;
- (n) "Prohibition Officer" means a person appointed under section 3 of this Act;
- (o) "Registered Medical Practitioner" means a person registered under the Indian Medical Council Act, 1956;
- (p) "Sell" with all its grammatical variations, means any transfer including transfer by gift or loan or otherwise;
- (q) "Spirit" means any liquor containing alcohol obtained by distillation, whether it is denatured or not and includes 'RAKZU';
- (2) Words and expressions used but not defined in this Act, shall have the same meaning and definition as have been respectively assigned to them in the Excise Act in force and the rules made thereunder.

CHAPTER—H

Establishment and Control.

Appoint-
ment of
Prohibition
Commis-
sioner, etc.

3. (1) The State Government may, by notification, appoint an officer to be called the Commissioner of Prohibition or Prohibition Commissioner, who subject to the control of the State Government, shall exercise duties and such functions the provisions of this Act and shall superintend and have the control over all matters connected with the administration of this Act.

(2) To assist the Prohibition Commissioner in carrying out the provisions of this Act, the State Government may appoint by notification such other officer or officers with such designations and assign to them such powers, duties and functions under this Act, rules or orders made there-under, as may be deemed necessary.

(3) Notwithstanding anything contained in sub-sections (1) and (2), on and from the date of commencement of this Act, all officers and staff appointed under the Excise Act in force, shall be deemed to be the officers and staff appointed also under sub-sections (1) and (2) of this section for the purpose of giving effect to this Act, and in particular the Commissioner of Excise, Deputy Commissioner of Excise, Assistant Commissioner of Excise, Superintendent of Excise, Excise Officer, Inspector of Excise and Sub-Inspector of Excise shall also stand designated respectively as Commissioner of Prohibition, Deputy Commissioner of Prohibition, Assistant Commissioner of Prohibition, Superintendent of Prohibition, Prohibition Officer, Inspector of Prohibition and Sub-Inspector of Prohibition, for the purposes of this Act, rules or orders made thereunder.

Functions
of the Col-
lector.

4. (1) The administration of prohibition within a district shall ordinarily be under the charge of the Collector who shall be responsible for carrying out the provisions of this Act within the limits of his jurisdiction.

(2) For the purposes of this Act, all Collectors shall be subordinate to the Commissioner.

(3) The State Government may, by notification appoint any person other than the Collector to exercise in any district or place all or any of the powers and to perform all or any of the duties and functions as are conferred and imposed by or under this Act on a Collector subject to such control as the State Government may from time to time direct.

(4) The State Government may appoint such other officers of the Excise Department, who shall be subordinate to the Collector, of such classes and with such designations, powers and duties as the State Government may think fit.

Delegation of powers 5. (1) The State Government may delegate any of its powers exercisable under this Act to the Commissioner or such other officer as may deem fit.

(2) Subject to the control and directions of the State Government, the powers conferred on the Commissioner may be delegated by him to any of his subordinates.

Control by the Commissioner 6. In exercise of their powers and in discharge of their duties and functions under the provisions of this Act or rules, or orders made thereunder, all Prohibition Officers, and all officers including the officers of the police and other departments shall, subject to the general or special orders of the State Government, be subordinate to and under the control of the Commissioner and shall be bound to follow such orders as the Commissioner may, from time to time, make.

CHAPTER — III

Prohibition and Penalties

Prohibition of manufacture of traffic in, and consumption etc. of liquors 7. No person shall —
 (a) (i) transport, import, export, or possess liquor;
 (ii) sell or buy liquor;
 (iii) manufacture liquor;
 (iv) use or keep for use any material, utensil, implement or apparatus whatsoever for manufacture of liquor; and
 (v) construct any distillery or brewery;

(b) consume liquor except on a prescription of a registered medical practitioner, or on a permit granted under the provisions of this Act or the rules made thereunder, as the case may be.

Punishment for contravention of section 7 8. (1) Whoever contravenes the provisions of clause (a) of section 7 of this Act shall, on conviction, be punished with imprisonment for a term which may extend to five years but not less than three months and also with fine which may extend to ten thousand rupees but not less than one thousand rupees;

Provided that a person, who is under 21 years of age and against whom no previous conviction is proved, may be awarded a sentence of less than three months and a fine less than one thousand rupees for reasons to be recorded in the judgement that in consideration of the age, character and antecedents of the person concerned, a lesser sentence is justified.

(2) Whoever in contravention of the provisions of clause (b) of section 7 of this Act, consumes liquor shall, on conviction, be punished with imprisonment for a term which may extend to one month but not less than 24 hours or with fine which may extend to one thousand rupees but not less than five hundred rupees or with both.

(3) Whoever in any street or thoroughfare or public place or in any place to which the public have or are permitted to have access is drunk, and in a state of intoxication for being drunk, or behaves in a disorderly manner under the influence of liquor shall, on conviction, be punished with imprisonment for a term which may extend to three months but not less than seven days and with fine which may extend to one thousand rupees but not less than five hundred rupees.

(4) In prosecution for an offence under sub-section (3), it shall be presumed, until the contrary is proved, that the person accused of the said offence has drunk liquor for the purpose of being intoxicated and not for medicinal purpose.

(5) Any registered medical practitioner shall be competent to examine and prove that a person has consumed liquor or has been in a state of intoxication.

Prohibition of publication of advertisement of liquor 9. No person shall publish or cause to be published any advertisement which solicits the use of or offers for sale any liquor or any preparation fit for use as liquor in any newspaper or magazine published in the State of Mizoram or in any other form or manner as specified in clause (a) of sub-section (1) of section 2 of this Act.

Punishment for publication of advertisement of liquor etc. 10. Whoever contravenes the provisions of section 9 of this Act shall be liable to be punished with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

Prohibition of alteration of denatured spirit 11. No person shall—
(a) alter or attempt to alter any denatured spirit by dilution with water or by any method whatsoever, with the intention that such spirit may be used for human consumption, whether as beverage or internally as a medicine or in any other way whatsoever; or

(b) have in his possession any denatured spirit in respect of which he knows or has reason to believe that such alteration or attempt has been made.

Punishment for alteration of denatured spirit etc. 12. Whoever contravenes the provisions of section 11 of this Act shall be liable to be punished with imprisonment for a term which may extend to three years and with fine which may extend to five thousand rupees :

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgement of the Court, such imprisonment shall not be less than two months and fine shall not be less than five hundred rupees.

Provided further that in prosecution for an offence under this section, alteration or attempt to alter any denatured spirit was done with the intention that such spirit may be used for human consumption as an intoxicant.

Prohibition of alteration of denatured spirituous preparation 13. No person shall—

(a) alter or attempt to alter any denatured spirituous preparation by dilution with water or by any method whatsoever, with intention that such preparation may be used for liquor, or

(b) have in his possession any denatured spirituous preparation in respect of which he knows or has reason to believe that such alteration or attempt has been made.

Punishment for alteration of denatured spirituous preparation 14. Whoever contravenes the provisions of section 13 of this Act shall be liable to be punished with imprisonment for a term which may extend to two years and with fine which thousand rupees.

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgement of the Court, imprisonment shall not be less than two months and fine shall not be less than five hundred rupees.

Provided further that in prosecution for an offence under this section, alteration or attempt to alter any denatured spirituous preparation was done with the intention that it may be used for human consumption as an intoxicant.

Prohibition of issuing prescription for liquor except by a Registered Medical practitioner 15. (1) No person other than a Registered Medical Practitioner shall issue any prescription for any liquor.

(2) No Registered Medical Practitioner shall prescribe liquor, unless he believes in good faith after careful medical examination of the person for whose use such prescription is made, that the use of such liquor by such person is absolutely necessary for improvement or restoration of his health or will afford relief to him from some ailment.

(3) A Registered Medical Practitioner shall state, in every prescription for liquor issued by him, the full name and address of the person to whom issued, the date of issue, directions and dura-

tion for use including the nature of ailment, and the amount and frequency of dose, and shall preserve a copy of the prescription for one year from the date of issue.

Punishment for issuing false prescriptions etc.

16. If a registered medical practitioner issues a prescription with the intention that such prescription shall be used by the person to whom it is issued for the sole purpose of consuming liquor in contravention of the provision of this Act or rules made thereunder or any permit granted under this Act shall be liable to be punished with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

Prohibition of possession of denatured spirituous preparation in excess of prescribed limit.

17. (1) No person shall have in his possession, except under a permit granted by an Officer empowered by the Government on its behalf, any quantity of denatured spirituous preparation in excess of such quantity as the Government may, by notification in the Official Gazette, specify.

(2) In specifying quantity for possession of denatured spirituous preparation under sub-section (1) regard shall be had to the necessity for the free possession of such preparation for legitimate domestic and other purpose and different limits may be fixed for

- (a) different local areas;
- (b) different classes of persons, and
- (c) different occasions.

Punishment for possession of denatured spirituous preparation in excess of the prescribed limit

18. Whoever contravenes the provisions of sub-section (1) of section 17 of this Act shall be liable to be punished with imprisonment for a term which may extend to three years and with fine which may extend to five thousand rupees:

Provided that in the absence of special and adequate reasons to the contrary, to be recorded in the judgement of the Court, such imprisonment shall not be less than three months and fine shall not be less than five hundred rupees.

Prohibition of sale etc. of denatured spirit etc.

19. (1) No person shall—
- (a) sell or bottle for sale any denatured spirit or its preparation, except under the authority and in accordance with the terms and conditions of a licence;
 - (b) import, export or transport any denatured spirit or its preparation in excess of the limit of possession specified under sub-section (1) of section 17 except under the authority and in accordance with the terms and conditions of a permit;

(c) drink any denatured spirit or its preparation.

(2) A permit required under clause (a) of sub-section (1) shall be granted only by an officer empowered by the Government under the Mizoram Excise Rules in force.

Punishment 20. Whoever contravenes the provisions of sub-section (1) of section for sale etc. 19 of this Act shall be liable to be punished with imprisonment for of denatured a term which may extend to three years and with fine which may spirit etc. in extend to five thousand rupees:

contraven-
tion of this
Act

Provided that in the absence of any special and adequate reasons to the contrary, to be recorded in the judgement of the Court, such imprisonment shall not be less than three months and fine shall not be less than five hundred rupees.

Regulation 21. (1) No holder of a permit under any of the provisions of this of consump- Act shall drink liquor in a public place or institution to which the tion of public may have access or in contravention of any conditions of liquor by such permit.

certain per-
mit holders

(2) No holder of a permit granted under this Act shall allow the use or consumption of any part of the liquor held by him to any other person not so authorised to use or consume liquor under this Act.

Punishment 22. (1) Whoever contravenes the provisions of sub-sections (1) and for contrave- (2) of section 21 of this Act shall be liable to be punished with ning the imprisonment for a term which may extend to six months but not provisions less than seven days or with fine which may extend to five hundred of section 21 rupees but not less than two hundred rupees or with both.

(2) Any holder of a permit for consumption of liquor, purchases liquor from an illegal source in contravention of the provision of section 28 of this Act shall be liable to be punished with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both.

This chapter 23. (1) Nothing in this chapter shall apply to —
not to apply
to certain
articles

- (a) any toilet preparation containing alcohol which is unfit for use as liquor;
- (b) any medicinal preparation containing alcohol which is unfit for use as liquor;
- (c) any anticeptic preparation or solution containing alcohol which is unfit for use as liquor;
- (d) any flavouring extract, essence or syrup containing alcohol which is unfit for use as liquor.

(2) That the import, purchase, possession or use of any liquor or alcohol for the manufacture of any such article shall not be made or had except under a permit granted under section 32 of this Act.

(3) The Commissioner or any other officer duly authorised by him may, grant permit for the purchase, possession, or use of any liquor or denatured spirit for the manufacture of any articles mentioned in sub-section (1) above on such conditions as may be prescribed.

Explanation : Nothing in this section shall be construed to mean that any person may drink any toilet preparation, or antiseptic preparation solution, containing alcohol; and it is hereby provided that no person shall drink any such preparation.

(4) Whoever contravenes the provisions of sub-section (2) of this section shall be liable to be punished with imprisonment for a term which may extend to three years and with fine which may extend to five thousand rupees.

Punishment for allowing premises to be used for the commission of an offence 24. Whoever being the owner or occupier or having the use of any house, room, enclosure, space, vessel, compound, place or vehicle, knowingly permits it to be used for the commission, by any other person, of an offence punishable under this Act or the rules made thereunder shall be liable to be punished with imprisonment for a term which may extend to three years but not less than two months and with fine which may extend to five thousand rupees but not less than one thousand rupees;

Provided that a person who is under 21 years of age and against whom no previous conviction is proved, may be awarded a sentence of less than two months and a fine less than one thousand rupees for reasons to be recorded in the judgement that in consideration of the age, character and antecedents of the person concerned, a lesser sentence is justified.

Penalty for misconduct by permit holder 25. Whoever, being the holder of a permit granted under this Act, or a person in the employ of such holder or acting with his express or implied permission on his behalf —

- (a) fails to produce permit, pass or authorisation on demand by the Excise Officer of the rank of Sub-Inspector and above, or any other officer duly authorised by the Commissioner if such permit is in his possession or control, or
- (b) wilfully does or omits to do anything in contravention of any rule, or order made under this Act shall be liable to be punished for each such offence with imprisonment for a

CHAPTER — IV

Grant of Licences and Permits

General conditions

26. All licences and permits granted under this Act shall be in such form and shall be subject to such conditions as may be prescribed and shall be granted on payment of the prescribed fee; provided that every licence or permit shall be granted only on the conditions that the person applying undertakes, and in the opinion of the officer authorised to grant the licence or permit is likely to abide by all the conditions of the licence or permit and the provisions of this Act.

Health prescriptions

27. Notwithstanding anything herein before contained, the Government may prescribe the conditions under which permits may be issued by the authority for possession or consumption of liquor on health ground on the basis of the prescription made by a Registered Medical Practitioner.

Holder of a permit authorised to buy liquor from Departmental Store only

28. The holder of a permit for consumption of liquor on health ground shall directly purchase the liquor only from the Departmental Store established by the Government on the basis of the permit or authorization obtained by him from the permit issuing authority on payment of duty and fee as may be prescribed by the Government under section 30 of this Act.

Special permit to Foreign dignitaries etc.

29. The Government may grant special permit on such conditions and for such period as may be specified for the use and consumption of liquor to any person who is—

- (a) a sovereign or head of a foreign country;
- (b) an ambassador, diplomatic envoy or Consul, Honorary Consul, Trade, Commerce or other representatives of a foreign country;
- (c) a member of the staff appointed by or serving under any person specified in clause (a) or (b) provided that such member is a national of a foreign country;
- (d) a tourist from foreign or other parts of the country, and
- (e) the consort of any person specified in clauses (a) and (b), or (c) or any relation of such person dependent upon him, and
- (f) any foreign national employed by or otherwise engaged in any firm or any other concern in Mizoram.

Permission for import of liquor by armed forces for consumption in

30. The Commissioner, or any other Officer duly authorised by him may grant a licence and or a permit to—

the Armed Forces posted in Mizoram for the purchase of liquor from Canteen Stores Depot (India) and import the same into Mizoram for sale and consumption in their messes and canteens on pay-

their Mess- ment of excise duty and fee as may be prescribed by the Government
es and Can- from time to time by issuing Notification in the Official Gazette.
teens on pay-
ment of duty

Conditions 31. Notwithstanding anything herein before contained, the Govern-
for grant ment may prescribe the conditions under which permits may be issued
of permit for the use or consumption of liquor to persons on the following
amongst other conditions —

- (a) that such person is not below 21 years;
- (b) that such person actually requires for improvement or resto-
ration of his health or to relieve him from some ailment; or
- (c) that such person belongs to any of the armed forces.

Permit 32. The Commissioner or any other officer duly authorised by him
Issuing may grant permit to—
authority

- (a) any person having prescription from Registered Medical
Practitioner for purchase and consumption of liquor on health
ground;
- (b) any Hospital, Dispensary or Institution for the import of
different kinds of spirits for a bonafide medicinal, scientific
or industrial purpose:

Provided that no permit shall be necessary for the possession of
denatured spirit upto 2 (two) litres.

Power to 33. (1) The authority granting any licence or permit under this Act
cancel or may cancel or suspend the same if—
suspend Li-
cence or
Permit

- (a) any duty or fee payable by the holder thereof has not been
paid;
- (b) there is breach of any of the terms and conditions of the
licence or permit by the holder thereof or by his agent, or
by any one acting on his behalf with his express or implied
permission;
- (c) the holder thereof is convicted for an Offence punishable
under this Act, the Mizoram Excise Act in force or the
Narcotic Drugs and Psychotropic Substances Act, 1985;
- (d) the licence or permit has been obtained through wilful mis-
representation or fraud provided that the conditions of
licence, or permit provided for such cancellation.

(2) No person to whom a licence or permit has been granted
under this Act shall have any claim for compensation for the cancel-
lation or suspension of his permit under this Act or to the refund
of any amount paid or deposited relating thereto.

(3) Any holder of licence or permit for denatured spirit or liquor granted and covered under this Act may surrender his licence or permit, as the case may be, on expiration of one month's notice given by him to the officer granting it of his intention to surrender the same and on payment of the fee payable for the licence or permit for the whole period for which it would have subsisted but for such surrender.

(4) No person to whom a licence or permit has been granted under this Act shall have any claim for the renewal of such licence or permit or any claim to compensation on the termination thereof.

Right, title or interest under licence or permit not liable to be sold or attached in execution

34. Notwithstanding anything contained in any law for the time being in force, no right, title or interest in any licence, permit or authorisation granted under this Act, shall be liable to be sold, transferred or attached to execution of any process of any civil or any other Court.

Commissioner authorised to require permit holder to dispose stocks

35. (1) Notwithstanding the fact that the period during which any licence or permit is to be in force has not expired, and the holder of the licence or permit breaches any of the terms and conditions of the licence or permit, the Commissioner may require the holder thereof to dispose of his stock of liquor, denatured spirit or its preparation, before such date as may be specified in the order.

(2) The Commissioner may also require the owner of the stock of any liquor, denatured spirit or its preparation, who does not renew his licence or permit as required by the Rules made under this Act for such stock to dispose off the said stock before such date as may be specified in the order and owner shall comply with the order.

(3) Any stock of liquor, denatured spirit or its preparation left undisposed after the date so fixed under sub-section (2) shall, together with receptacles or packages in which it is contained, be liable to forfeiture to the Commissioner. On the cancellation or the expiry of the period of any licence or permit, the Commissioner may also direct that any stock of any liquor, denatured spirit or its preparation remaining with the holder of the licence or permit together with receptacles or packages thereof be forfeited to the Government.

(4) No direction or order under sub-section (1), (2) or (3) shall be made unless the person likely to be adversely affected by such direction or order is given reasonable opportunity of being heard, and the reasons are recorded in writing by the Commissioner.

Breach of licence or permit to be an offence

36. (1) In the event of any breach by the holder of any licence, permit or authorisation granted under this Act or by his servants or by any person acting with his express or implied permission on his behalf of any of the terms or conditions of such licence,

permit or authorisation such holder shall, in addition to the cancellation or suspension of the licence, permit or authorisation granted to him, be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both unless it is proved that all due and reasonable precautions were exercised by him to prevent such a breach.

(2) Any person who commits any breach shall, whether he acts with or without the permission of the holder of the licence, permit or authorisation, be liable to the same punishment.

Penalty for giving false information 37. Any person who maliciously and falsely gives information to any person exercising powers under this Act leading to a search, seizure, detention or arrest shall, on conviction, be punished with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

Punishment for contravention of provisions of this Act 38. Whoever contravenes any provision of this Act or any rule or order for offence made, or any condition of any licence, permit or authorisation issued or which no thereunder for which no punishment is separately provided in this Act, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

No suspension, remission or commutation in any sentence awarded under this Act 39. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other law for the time being in force, no sentence awarded under this Act shall be suspended or remitted or commuted.

Presumption of culpable mental state 40. (1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, it shall be presumed the existence of such mental state but it shall be the responsibility of the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation :— In this section, "Culpable mental state" includes intention, motive, knowledge of a fact and belief in or reason to believe, a fact.

(2) For the purpose of this section, a fact is said to be proved only when the Court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.

Presumption to the effect that 41. (1) In trial under any of the provisions of this Act, it shall be presumed without further evidence, until the contrary is proved, that

commission of an offence the accused person has committed an offence under this Act in respect of liquor, or any still, barrel, pot, tin, utensil, implement or apparatus, whatsoever for the manufacture of liquor or any materials which have undergone any process towards the manufacture of any liquor has been manufactured, for the possession of which he is unable to account satisfactorily.

(2) Where in any trial for an offence of manufacture of liquor and using a still, barrel, tin or pot for such purpose in contravention of the provisions of this Act, it is proved that the accused person was present by the side or within the vicinity of the still, barrel, pot or tin while it was working or having the care, wherein such still, barrel, pot or tin was used, then the burden of proving that the accused person had not used, or had not abetted in using the still, barrel, pot or tin for manufacturing liquor shall be on the accused person and the Court shall, in the absence of such proof presume to the contrary.

Offences by companies 42. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, or was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that nothing any such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed with the consent or connivance of, or is attributable to, any negligence 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 that offence and shall be liable to be proceeded against and punished accordingly.

Explanation : For the purpose of this section—

(a) "Company" means any body corporate or other association of individuals ; and

(b) "Director" in relation to a firm, means a partner in the firm.

Enhanced punishment after previous conviction 43. If any person, after having been previously convicted of an offence punishable under any of the provisions of this Act subsequently commits and is convicted of an offence punishable under any of these sections, he shall be awarded punishment to twice the punishment which might be imposed on a first conviction under this

Act. For the third and subsequent offences, the punishment shall not be less than one year imprisonment with a fine of rupees two thousand.

Attempt to
commit of-
fence under
this Act

44. Whoever attempts to commit any offence punishable under this Act shall be liable to the punishment provided for such offence.

Abetments

45. Whoever abets an offence punishable under this Act shall, whether such offence be or be not committed in consequence of such abetment, be punished with the punishment provided for the offence.

Liability to
confiscation

46. Whenever an offence punishable under this Act has been committed, the following things shall be liable to confiscation, namely—

- (a) the liquor, still, utensils, implement, apparatus or materials in respect of or by means of which such offence has been committed;
- (b) any newspaper, news-sheet, book, leaflet, booklet, magazine or any other single or periodical publication containing any advertisement of liquor or of any preparation fit for use as liquor published in the State of Mizoram;
- (c) the receptacles, packages and coverings in which anything liable to confiscation under clauses (a) and (b) is found and the other contents, if any, of such receptacles and packages ; and
- (d) the animals, carts, vessels, rafts, vehicles or other conveyances used in carrying anything referred to in the foregoing clauses:

Provided that no animal, cart, vessels, rafts, vehicles or other conveyances as specified in clause (b) shall be liable to confiscation in case the owner thereof is able to prove that he has not been implicated in the commission of the offence;

Provided further that in exceptional circumstances and for reasons to be recorded in writing, the Court may order the owner of such animal, cart, vessel, rafts, vehicle or other conveyance to pay a fine as it deems fit in lieu of confiscation of such animal, cart, vessel rafts, vehicle or other conveyance as the case may be.

Explanation : For the purposes of this section "owner" includes, in relation to any animal, cart, vessel, rafts or other conveyance,—

- (a) which is in the possession of a minor, the guardian of such minor,
- (b) which is the subject of a hire purchase agreement, the person in possession thereof under the agreement.

Confiscation by court in trial cases 47. When, in any case tried by a Court, the court decides that anything is liable to confiscation under section 46 of this Act, it shall order such thing to be confiscated and placed at the disposal of the Commissioner.

Confiscation by Commissioner, Collector and other Excise Officers when no prosecution is launched 48. When an offence under this Act has been committed and the offender is not known or cannot be found or when anything liable to confiscation under this Act is found or seized the Commissioner, or the Collector or any other Excise Officer duly authorised by the Commissioner in this behalf may make an inquiry and if, after such inquiry, he is satisfied that an offence has been committed, may order such thing found to be confiscated:

Provided that no such order shall be made before the expiry of one month from the date of seizure, or without hearing the person if any, who claim any right thereto and the evidence, if any, which he produces in support of his claim.

Demand for security for abstaining from commission of certain offences 49. (1) Whenever any person is convicted of an offence punishable under this Act, the Court convicting such person may, at the time of passing the sentence on such person, order him to execute bond for a sum proportionate to his means with or without sureties to abstain from the commission of offences punishable under the provisions of this Act during such period not exceeding three years as it may direct.

(2) The bond shall be in such form as may be provided under the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) and the provisions of the said Code shall, in so far as they are applicable, apply to all matter connected with such bonds as if it were a bond to keep the peace ordered to be executed under section 106 of the said Code.

(3) If the conviction is set aside on appeal the bond so executed shall become void.

CHAPTER—V

Prevention, Detection, Investigation, Prosecution
and Trial of offences.

Power of entry search, seizure and arrest 50. (1) Any Excise or Police Officer not below the rank of Sub-Inspector, who has reason to believe, from personal knowledge or from information received from any person that any liquor, material, utensil, implement or apparatus in respect of which an offence punishable under this Act or the rules made thereunder is kept or concealed in any building, vessel, or enclosed place may, at any time by day or night.

(a) enter into any such building, vessel or place and conduct search; and in case of resistance, break open any door and remove any other obstacle to such entry ;

(b) seize such liquor, material, utensil, implement, or apparatus, and any document or apparatus, or other articles which may furnish evidence of the commission of the offence ;

(c) detain, search and arrest any person whom he has reason to believe to have committed an offence against this Act relating to liquor, material, utensil, implement or apparatus ;

Provided that if such officer has reason to believe that a search warrant cannot be obtained without affording opportunity for the concealment of evidence or facilitate the escape of an offender, he may after recording the grounds of his belief, enter and search such buildings, vessel or place at any time by day or night.

(2) When an officer received any information under sub-section (1) or when the officer records the ground of his belief under the proviso thereto, he shall forthwith send a copy thereof to his immediate official superior.

Power of seizure and arrest in public places 51. Any Officer of Excise and Police Departments referred to in sub-section (1) of section 50 of this Act may —

(a) seize, in any public place or in transit any liquor, material, utensil, implement or apparatus in respect of which he has reasons to believe that an offence punishable under this Act or the rules made thereunder, has been committed, and alongwith it, any document or other article which may furnish evidence of the commission of the offence, and

(b) detain, search and arrest any person whom he has reason to believe to have committed an offence under this Act.

Magistrate to try offences under the Act 52. Any magistrate having the power of the Judicial Magistrate of the first class shall try any offence punishable under this Act.

Power to issue warrant of arrest 53. (1) Any magistrate of the first class or an officer of the Excise Department not below the rank of Superintendent of Excise, as the case may be, may issue warrant of arrest of any person whom he has reason to believe to have committed an offence punishable under this Act or the rules made thereunder or for the search, whether by day or by night, of any buildings, vessels or places in which he has reason to believe that any liquor, material, utensil, implement or apparatus, in respect of which an offence punishable under this Act has been committed, is kept or concealed.

(2) The Officer to whom a search warrant under sub-section (1) is addressed shall have all the powers of an Officer under section 51.

Power of investigation and prosecution, procedure for investigation and trial. 54. (1) The State Government may invest any Officer of the Excise Department not below the rank of Sub-Inspector the powers of an Officer-in-charge of a Police Station for the purposes of investigation and prosecution of offences under this Act.

(2) The State Government may invest any Officer of the Police Department with such powers, impose upon him such duties and direct him to perform such functions under this Act, rules or orders made thereunder, as may be deemed necessary, and such officer shall, thereupon, exercise the said powers, discharge the said duties and perform the said functions in addition to the powers, duties and functions in substantive capacity.

(3) Save as otherwise as expressly provided in this Act, the provisions of the Code of Criminal Procedure, 1973 shall apply to the investigation and trial of offences against this Act and the rules made thereunder.

Officers of Government, Council, and Village Defence party are bound to give information. 55. Every Officer of the Government, every member of a Village Government, Council, and Village Defence Party shall be bound to give immediate information to the nearest Excise or Police Station of the Village Council, and Village Defence Party of any offence and of the intention or preparation to commit any offence under this Act which may come to his knowledge.

Landlords and others to give information. 56. Every person who owns or occupies any land or building, or who is a landlord of an estate and the agent of such owner, occupier or landlord of the land, building or estate, as the case may be, in which there has been any unlawful manufacture of any liquor or any owner of a vessel or vehicle in which liquor is manufactured or carried shall in the absence of reasonable excuse, be bound to give notice of the same to the Excise or Police Officer immediately after the same have come to his knowledge.

Report of arrest and seizure. 57. Any Officer making an arrest or seizure under this Act shall, within twenty-four hours of such seizure and arrest make a full report of all the particulars of such arrest or seizure to his immediate official superior, and produce the arrested person before a magistrate. The time taken for the journey from the place of seizure or arrest to the Court shall not, however, be counted.

Cognizance of offence. 58. No Court shall take cognizance of an offence under this Act unless a complaint in this regard is made by the Collector or any other officer duly authorised by him in this behalf.

CHAPTER—VI

Miscellaneous

Prohibition Council and Committee 59. (1) The Government may, by notification in the Official Gazette, constitute for the whole of Mizoram and for such period as it may deem fit, a State Prohibition Council consisting of Official and non-official residents of the State of Mizoram as may be prescribed by the Government. The Government may also, by like notification dissolve or reconstitute any such Council.

(2) The Government may, by notification in the Official Gazette, constitute for a district, or part thereof and for such period as it may deem fit, Prohibition Committees consisting of official and non-official residents of the district. The Government may also, by like notification, dissolve or reconstitute such Prohibition Committees.

(3) The compositions, powers and functions of the Council and the Committee and their relation etc. shall be such as may be prescribed.

Punishment for vexatious search, seizure or arrest 60. Any officer or person exercising powers under this Act, who—

- (a) maliciously enters or searches or causes to be entered or searched any building or house or similar dwelling place, or
- (b) vexatiously and unnecessarily seizes the property of any person in the pretence of seizing or searching for anything liable to confiscation under this Act; or
- (c) vexatiously and unnecessarily detains, searches or arrests any person; or
- (d) in any other way maliciously exceeds or abuses his lawful powers,

shall, on conviction, be punished with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

Departmental Stores 61. The Commissioner may, with the previous sanction of the Government,—

- (a) establish a Departmental stores for stock of confiscated foreign liquor or beer for supply to permit holders under this Act or the rules made thereunder;
- (b) discontinue any such Departmental Stores so established.

Payment of reward 62. Rewards may be given to any person instrumental for the arrest and seizure under the provisions of this Act as may be prescribed in the rules.

Appeals

63. (1) All orders passed by any Prohibition Officer other than the Commissioner under this Act, shall be appealable to the Commissioner at any time within sixty days from the date of the order complained of.

(2) All orders passed by the Commissioner shall be appealable to the Government at any time within sixty days from the date of the order complained of:

Provided that no appeal shall lie against an order passed by the Commissioner on appeal.

(3) Subject to the foregoing provisions, the rules which the Government may make in this behalf shall apply to appeals under this section.

Revision

64. The State Government may call for and examine the record of any proceeding before any Prohibition Officer including that relating to the grant or refusal of a permit or authorisation under this Act, for the purpose of satisfying itself as to the correctness, legality or propriety of any order passed and as to the regularity of any such proceeding and may when calling for such record, direct that the order be not given effect to pending the examination of the record. On examining the record, it may either annul, reverse, modify or confirm such order, or pass such other order as it may deem fit.

Officers and persons acting under this Act to be public servant

65. All Officers and persons empowered to exercise any power or to perform any functions under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Bar of suits and prosecutions

66. (1) No Civil Court shall try any suit against the Government in respect of anything done, or alleged to have been done, in pursuance of this Act, and except with the previous sanction of the Government, no magistrate shall take cognizance of any charge made against any Excise or Police Officer under this Act, or any charge made against any other person under this Act, unless the suit or prosecution is instituted within one month after the date of the act complained of.

(2) Notwithstanding anything to the contrary contained in this Act or in any other law in force for the time being, when any Excise or Police Officer of any rank is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no court shall take cognizance of such offence, except with the previous sanction of the Government under section 197 of the Code of Criminal Procedure, 1973 as applicable in the State of Mizoram.

Bar of proceedings

67. No suit or proceedings shall lie in any Civil Court against the Government or against any person empowered to exercise powers or to perform functions under this Act, for anything done in good faith or purported to be done under this Act.

Power to remove difficulties

68. If any difficulty or doubt arises in giving effect to the provisions of this Act, the Government may by order published in the Official Gazette, make such provisions, not inconsistent with the purpose of this Act as appears to it to be necessary or expedient for the removal of the difficulty or doubt, and the order of the Government in such cases shall be final.

Power of suspension

69. The Government shall have the power to suspend all or any of the provisions of this Act, at any time, as a result of change of prohibition policy of the Government.

Power to make rules

70. (1) The Government may make rules for the purpose of carrying out the provisions of this Act,

(2) In particular and without prejudice to the generality of the foregoing provisions, such rules may provide—

- (a) for regulating the powers and duties of the Commissioner and any other Officers subordinate to him;
- (b) for regulating the delegation of powers by the Commissioner or by any other Excise and Prohibition Officer;
- (c) for regulating the consumption of liquor by holder of a permit or authorisation;
- (d) for prescribing the conditions for issuing permit, or authorisation;
- (e) for prescribing the procedure for payment of duty and fee by permit-holder;
- (f) for prescribing the composition, powers and functions of the Prohibition Council and the Committee;
- (g) for prescribing the procedure for disposal of confiscated articles;
- (h) for regulating the procedure for payment of rewards;
- (i) for the establishment of Departmental Store for the stock of India made foreign liquor and beer and for issue of liquor from the Departmental Store;
- (j) for prescribing the authority to whom an appeal shall lie;

(k) any other matter as may, or requires to be prescribed.

(3) Every rule made under this section shall be laid as soon as may be, after it is made, before the Mizoram Legislative Assembly while it is in session for a total period of seven days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session of which it is so laid or the sessions immediately following, the Legislative Assembly decide to make any modification in the rule or the Legislative Assembly agrees that the rule should not be made; the rule shall thereafter have effect only in such modified form, or be of no effect as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Repeal and
saving

71. (1) On and from the commencement of this Act, the provisions of the Mizoram Excise Act, 1973, shall, in so far as they are inconsistent with the provisions of this Act, stand repealed.

(2) Notwithstanding anything contained in sub-section (1), any act or anything done or purported to be done under the provision of the portion of the said Act so repealed shall be taken into account as any action done or purported to be done under this Act.

P. Chakraborty,
Secretary to the Govt. of Mizoram,
Law & Judicial Deptt.

C E R T I F I C A T E

This Bill was passed by the Mizoram Legislative Assembly on the 14th December, 1995. This Bill is a money Bill.

Aizawl
the 30. 1. 1996.

VAIVENGA
SPEAKER
Mizoram Legislative Assembly.

I assent to this Bill.

Dated Aizawl,
the 31. 1. 1996.

P.R.KYNDIAH
Governor, Mizoram.