

**THE KERALA SHOPS AND COMMERCIAL ESTABLISHMENTS
(AMENDMENT) BILL, 2023**

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BILL

Further to amend the Kerala Shops and Commercial Establishments Act, 1960 (34 of 1960) .

Preamble.-WHEREAS, it is expedient further to amend the Kerala Shops and Commercial Establishments Act, 1960 (34 of 1960) for the purposes hereinafter appearing;

BE it enacted in the seventy fourth year of the Republic of India as follows:-

- 1. *Short title, extent and commencement* .- (1) This Act may be called the Kerala Shops and Commercial Establishments (Amendment) Act,2023.
(2) It extends to the whole of the State of Kerala.
(3)It shall come into force at once.**

- 2. Amendment of section 29.-In the Kerala Shops and Commercial Establishments Act, 1960 (34 of 1960), (hereinafter referred to as the Principal Act), for section 29, the following section shall be substituted, namely:-**

“29.Penalties.- (1) Whoever commits any breach of the provisions of sections 5A and 5C of Chapter 1A of this Act shall be liable to a penalty of,-

- (a) twenty five thousand rupees for the first offence and two hundred and fifty rupees for every day during which the breach continues after imposing penalty for the first offence; and
- (b) two hundred and fifty rupees for every day during which the breach continues after receipt of notice from the competent authority to discontinue such breach.

(2) Whoever contravenes any of the provisions of sections 5D,5E,5F,6,8,9 to 11,13 ,13A,14,18,21,21A,21B and 22 of this Act shall be liable to a penalty of fifty thousand rupees for the first offence and one lakh rupees for the second or subsequent offence:

Provided that the amount of penalty for contravention of any of the provisions shall not exceed two thousand five hundred rupees per employee employed.

(3) Whoever contravenes any of the provisions of sections 7,19,20,28 and 30 of this Act shall be liable to a penalty of twenty five thousand rupees:

Provided that the amount of penalty for contravention of any of the provisions shall not exceed two thousand rupees per employee employed.

(4) Whoever willfully obstructs an Inspector in exercising all or any of the powers conferred upon him by or under this Act or the Rules made thereunder or refuses or willfully neglects to afford the Inspector any reasonable facility for making any inspection, examination, enquiry or investigation authorized by or under this Act or the Rules made thereunder, in relation to a

shop or establishment, shall be liable to a penalty of fifty thousand rupees.”.

3. Insertion of new sections 29A and 29B.- After section 29 of the principal Act, the following sections shall be inserted, namely:-

“29A. Power of Officers of Government to impose penalty.- (1) For the purpose of imposing penalty provided under section 29 of this Act, the Government may appoint an officer and he shall impose the penalty as provided under this Act after holding an enquiry in the manner as may be prescribed.

(2) While holding enquiry, the officer shall have the power to summon and enforce attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document, which in the opinion of the officer may be useful or relevant to the subject matter of the enquiry and if on such enquiry he is satisfied that the person has committed the offence, the officer shall impose such penalty as provided under this Act.

(3) Any person aggrieved by an order made by the officer under sub section (2) may prefer an appeal in such form and in such manner with such fee, as may be prescribed before the appellate authority to be appointed by the Government in this behalf within thirty days from the date on which such order is communicated to him:

Provided that the Appellate Authority may entertain the appeal after the expiry of the said period of thirty days, if the appellate authority is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(4) The appellate authority may after giving the parties to the

appeal an opportunity of being heard pass such order as he thinks fit, confirming, modifying or setting aside the order appealed against within a period of sixty days from the date of receipt of the appeal.

29B. Mode of Recovery of money due from any person.- Any amount due from any person under this Act or the Rules made thereunder may be recovered with interest in the same manner as arrears of public revenue due on land as per the provisions of the Kerala Revenue Recovery Act, 1968 (15 of 1968), for the time being in force.”.

STATEMENT OF OBJECTS AND REASONS

Government of Kerala have initiated steps to make the State a top investment destination in the country and as a part of this process simplification of procedures, speedy and easy disposals have been initiated years back.

Government have earlier constituted a Committee vide G.O(Rt) No.770/2021/ID dated 26th July, 2021 consisting of Dr.K.C.Sunny, Vice-Chancellor, National University of Advanced Legal Studies as Chairman, Sri.K.Sasidharan Nair, Vice-Chairman, Kerala Law Reforms Commission as Member and Sri.T.Nandakumar IAS (Rtd) as Special Invitee to scrutinize all Acts and Rules that are relevant to business community and citizens and to suggest measures for de-criminalising the provisions and to enable the effective implementation of Ease of Doing Business in the State and accordingly the Committee proposes modifications in 35 State Acts including the Kerala Shops and Commercial Establishments Act 1960 (34 of 1960).

The Central Government recently enacted Labour Codes

by repealing or subsuming 29 Central Labour and Industrial Laws. Whereby the penal provisions have been replaced with fine or penalty and also included provision for compounding of the offences provided under those Acts.

The Law Reforms Commission considered the proposals in detail in the light of the report submitted by the aforesaid Committee and also provisions of the Labour Codes of the Union Government.

The existing penal provisions in the Kerala Shops and Commercial Establishments Act 1960 (34 of 1960) are not favorable to those who intends to participate in the investment for Ease of Doing Business in our State.

The penal provisions in the Kerala Shops and Commercial Establishment Act 1960 (34 of 1960) is time consuming and expensive for the investors and the Government. This would also involve more work pressure on criminal courts. Since majority of violations under the said Act are procedural in nature and they can be rightly tackled with penalties which are quicker and will create revenue to the State exchequer. It is the usual practice of criminal courts to impose meagre amount as fine even where the maximum fine provided under the Act may be a higher amount. Therefore the penalty being provided has to be a reasonable amount.

In these circumstances the Law Reforms Commission has decided to prepare adequate amendments to the Kerala Shops and Commercial Establishments Act,1960 (34 of 1964), after considering the latest amendments made in the parent Act, for providing provisions for replacement of penalty instead of fine.

Appointment of an Authority by the Government for imposing penalty and recovery of arrears under the provisions of Revenue Recovery Act are also provided in the proposed Bill.

The Bill seeks to achieve the above object.