

KERALA TODDY WORKERS WELFARE FUND ACT

NwlkOll/KI/68/Üw. GOVÄNMÖn OF . NOMCAITÖN •med. Tivandrum, • 17th April, 1969/ • •ä7th Chatthra 1891. . following Act of the' Kerala Siitp Legislature is hereby publiihed for informatiOL Bill iassed Oe LewsI.aivé'AB.m'bly received fre a.ssent of the President on then lth day dfApril 1969.*** By order of Govemor, •p. SANXI.FÄNI MENON, • Additional..Law -Secretary. KAALA TODDY WORKnS' WE-FARÉ FOND ACT, 1969 uc•r 22 OF' 1969) Ao Act to •provide for the 9öistiDtion of a fund to promote the welfare, of, and for payment of Pemion to toddy warket8•in the of Kerala. Preamble.—WHÉREAs, it •is expedient to provide for the constitution of a fundi to. •prömoté the welfare of, gna for payment of pension to •toddy .woskas ii the State of Kerala; BE it aacted •in Nineteenth Year of die Republic of India, as follows:— L Shårt title, This Aét .be calléd tie •Toddy Wörkem' welfirv Femd Act,• 1969. (2) rt extenu to the vhole of Smt.e. of.kcmta. . It ihal.l c.ome into force on such date as the Goééâment may,' by notification in the Gazette, anoint 2. Definitions.—Ln thie Act, unless the context othawise requires— (a) "Board" means. the Workers' Welfaié Fund .Boad constituted section 6; GCPT. 3/810?20U/DTP. 2 (aa) "Compensaion" mems an amount payable in lump sum to a mem 6r his treaunent for injuries sustained during the course of his employment or to his legal heirs in the event of his death as a result of the injuHes so sustained; (b) "conuibution" means a' conn•ibution in lespect ofa under scheme; (c) "employer" means any person Who employs whether directly or through mother person, or whether on behakf of himself or any other person, one or more —ployees and includes any persul Y'ho has a licence for Lhe manufacture, ustribution, or sale of toddy under the Abkari Act for Lhé time being in • force: (d) "employee" means any *son who is employed for wages in With the tapping, manufacture, transport; or sale of toddy and who gets his yages directly or indirectly from the employer and includes any person employed by or through contractor or through an agent in •or in with the tapping, menumcture, transport snrage or sale of toddy; (e) "Fund" means the *Kerala Toddy Workers' Welfare Fund established imder scheme ; . (f) "manufacture" means any process för the preparation of toddy and includes the preparation of a tree for tapping; (g) "member" means a member ofthe fund a of the fund: *(gg) "nrscribed" ptescribed by made under Chis Aqt: (h) "schedule" means the schedule to this Act; (i) "scheme" means scheme framed under Act; 'wages" means all emolu.ments which are.eamed by an employee while duty or on leave wages in accordancce with the terms of the contract of employment and Which am paid 01 payable'in casb to bun, but does not include— (i) the cash value of any food concession; (ii) overtime allowance, bonus and commission; 3. Tony Workers welfare Government may, by notification in dte Gazette, frame a scheme to he called the 2Kemh_1bddy Workers' Welfare Fund Scheme for the .establishment of a fund under Olis Act for employees' and there shall be established, as soon as may be after the framing of the scheme, a fund in accordance wiå the provisions of this Act and the scheme. (2) The fund shall vest in, and be administered by the Board Constituted under secüon 6. (3) Subject to the provisions of this Act the scheme framed under sub-section (l) may provide for all or any the matter specified iri the Schedule. .1 3 4. Contribution and matters which may be provided forri (l) contributioq .which 8ball be paid by the shall be ten per cat of the wages fur the employees, and employee 's contribuäon Aall be equal to by the employer in respect of him. (2) he employer -shall, in to the contröutioi payable under sub-section (l), contribute to the fund 8s vatuity an amount equal to five per cem- . of the wages för tte time being payable:to- each of the employees: Provided that where the a;nount of any contribution payable under this Act involves a fraction of a rupee, scheine may provide for rounding off such fraction to the nearest rypee, half of a ruiee or quarter of a rupee. (3) * *The government shall contribute to the fund every year an amount not less than 7.5 per cent of the •employees' donb•ibution to the funa by way of grant. (4) Every employer shill pay to the ten rupees eacÄ•for every half year io tie case of.every coconut t•éé and twenty rupees each for every yer. in the case of every palmirah tapped, under his control to be utitized for payment of compa»sation. (4'.A.) Power of Notwithstanding anything contained in section 4, where the Govergmt, on the recommendation ome Roué, are of opinion that it is necessary in the public interest so to do, they may, by notification in the Gartte, exempt any class of employers, either prospectively retrospecâvely, from payrment of contibution under that section for such period as may be specified the notification. (2) For the removal of doubt it is hereby declared that an emp16yee shall not be.liable go pay bis contribuäon under sub-section (l) of section 4 for pesiod for which his employer is exempted from

payment of contribution. S. Modification of Scheme.—Q) 'The Government may, by notification in Gazette add to, amend or vary the scheme framed under this Act * Å.lhÄ or rmsxqtiydi'l' (2) Every notification under sub-section (1) shall be laid as swn u may be, after it is issued, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following, the Assembly agrees in making any modification or agrees that the notification should not be issued, the notification 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 notification. Note: As G O. (Rt.) No. 2174/99LBR dt 7. -1999 Government, have enhanced the contribution to 10 per cent. 46, Constitution of - The Government may, by notification in the Gazette, constitute with effect from such date as may be specified therein, a Board to be called the Toddy Workers' Welfare Fund Board for the administration of the fund and to supervise or carry out the activities financed from the fund. (2) 'The Board shall be a body composed by the name aforesaid, having perpetual succession and a common seal and shall by the said name sue and be sued. (3) The Board shall consist of such number of Directors as may be appointed by the Government and they shall be chosen in such manner as may be provided for in the scheme: Provided that the Board shall include an equal number of Directors representing the Government, the employers and the employee. (4) One of the Directors of the Board shall be appointed by the Government as Chairman. (5) The Government shall publish in the Gazette the names of all the Directors of the Board. (6) The Board shall administer the fund vested in it in such manner as may be specified in the scheme. The Board may with the previous approval of the Government, delegate to its Chairman or to the Chief Welfare Fund Inspector or to any Welfare Fund Inspector such of its powers under this Act or the Scheme as it may consider for the efficient administration of the fund subject to such restrictions and conditions, if any, as it may specify : Provided that no delegation shall be made under this sub-section unless all the members present support such delegation. Not act or proceeding of the Board shall be invalidated merely by reason of any vacancy in, or defect in the constitution of the Board

7. Appointment of The Government may appoint a Chief - Welfare Fund Inspector and as many Welfare Fund Inspectors as they consider necessary to assist the Chief Welfare Fund Inspector in the discharge of his duties. The Chief Welfare Fund Inspector in the discharge of his duties the Chief Welfare Fund Inspector shall be the Chief Executive Officer of the Board. (2) The Board may with previous approval of the Government appoint such staff as it may consider necessary. (3) The mode of recruitment, salary and allowances, discipline and other conditions of service of the Chief Welfare Fund Inspector and the Welfare Fund Inspectors shall be such as may be specified by the Government and the method of salary and allowances; discipline and other conditions of service of the staff appointed by the Board shall be such as may be specified by the Board with the previous approval of the Government. 58. Determination of amounts due from Welfare Fund Inspector or any person in his behalf may, by order, determine the amount due from any person under this Act or of aid for any purpose may. conduct such inquiry as he may deem necessary. (2) officer conducting the inquiry under sub-section (1) for the purpose of such inquiry. have the same powers as are vested in a court for the purpose of a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:— (a). enforcing the person or examining him on oath; (b) requiring the discovery and production of documents; (c) receiving evidence on oath; (d) issuing commissions for the examination of witnesses. (3) Any inquiry under this section shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Criminal Procedure Code. (4) No order determining the amount due from any employer shall be made under sub-section (1) unless the employer has been given an opportunity of being heard. (5) Any person aggrieved by an order under (1) may prefer an appeal to the Government or any other authority as may be specified by the Government within sixty days from the date of the receipt of the order and the decision of the Government or of such authority on such appeal shall be final. 8A. Provisional Assessment of Every Employer shall, pending determination under section 8 of the amount due from him in year, pay every month by way of advance contribution an amount equivalent to one-twelfth of the amount payable annually in respect of his employees according to the determination under the said section: Provided that every employer, in respect of whom an order of determination under section 8 has not been made at any time, shall pay every month by advance contribution an amount equivalent to one-twelfth of the amount of contribution payable by him under section 4 in respect of his employees according to the order of his :

Provided that the advance contribution is paid by an employer to the best of his showing manner in which such was made by him. (2) The Advance Contribution for a month shall become payable on or before the 5th succeeding month. (3) Where the contribution is not paid on or before the due date, the Welfare Fund is at liberty to the defaulter showing the amount of arrears and if the amount is not paid within seven days of the receipt of such notice, it may be recovered in the as arrear of land revenue. (4) The amount paid under this section for an year shall be adjusted against the amount determined under Section 8 for that year. 8B. Power to rectify errors, etc.—(1) The Chief Welfare Fund Inspector or any other Welfare Fund Inspector who has passed an order under sub-section (1) of section 8, against which no appeal has been made to the Government as provided in sub-section (5), may, on application or any time within four years from the date of passing such order, rectify any error apparent on the face of the order. Provided that such rectification, which has the effect of enhancing the amount determined, shall be made unless the employer concerned has been given a reasonable opportunity of being heard. Provided further that the time-limit mentioned in this sub-section shall not be applicable for a period of six months from the date of commencement of the Kerala Toddy Workers' Welfare Fund (Amendment) Act, 1996, in the case of an order under sub-section (1) of section 8 which is prejudicial to the interests of the Fund. Where any such rectification has the effect of reducing the amount determined, the officer concerned shall make refund to the employer entitled thereto or against future contribution of the employer according to his option. (3) Where any such rectification has the effect of enhancing the amount determined, the provisions of this Act and the scheme made there under shall apply to every such order of enhancement, as if such determination has been made under sub-section (1) of section 8. 8C. Power of revision.—The Chairman of the Board may, on his own motion, call for and examine any order passed under sub-section (1) of section 8 or sub-section (1) of section 8B at any time within a period of two years from the date of passing such order if he has reason to believe that such an order is prejudicial to the interests of the Board; and subject to the provisions of this Act and the scheme made thereunder may pass such orders as he thinks fit: Provided that no such order shall be passed unless the employer concerned has been given a reasonable opportunity of being heard: Provided further that the time limit mentioned in this section shall not be applicable for a period of six months from the date of commencement of the Kerala Toddy Workers' Welfare Fund (Amendment) Act, 1996.

9. Mode of recovery of amounts due from employers.—Any amount due from the employer in pursuance of the provisions of this Act or the scheme, if the amount is in arrear, shall be recovered together with interest thereon at the same rate as applicable, from time to time, to the dues in arrears under the Abkari Act, 1904 of 1077 in the same manner as in the case of land revenue. The employee shall not in any way be deemed to be liable to attach or order of any court in respect of his liability incurred by the employer and no receiver appointed under the Insolvency Act, 1902 shall have any claim on any such amount. (2) Any amount payable to a nominee under the scheme shall be paid to the nominee and shall be free from any other liability incurred by the deceased or the nominee before the death of the deceased. 11. Priority of payment of contributions over other debts. Where any employer is adjudicated insolvent or where a company is ordered to be wound up, the amount due from the employer under the scheme shall have priority over all other debts. Where an order of liquidation or winding up is made, the amount due shall be included among the debts which under section 64 of the Insolvency Act, 1902 or under section 530 of the Companies Act, 1956 are to be paid in priority, to all other debts in the liquidation of the property of the insolvent or the assets of the company being wound up as the case may be.

12. Employers not to reduce Wages etc.—No employer shall by reason only of his liability for the payment of any contribution to the fund, reduce whether directly or indirectly the wages of or to whom the scheme applies or the total quantum of benefits to which the employee is entitled under the terms of his employment or implied.

13. Members of Board etc. to be public servants.—Every Director of the Board, the Chief Welfare Fund Inspector and every Welfare Fund Inspector appointed under this Act shall be deemed a public servant within the meaning of section 21 of the Indian Penal Code.

14. Whoever for the purpose of avoiding my payment to be made by himself under this Act or under any other law relating to the recovery of such dues knowingly makes default or omits to pay or fails to discharge his liability or contravenes or attempts to contravene or abets or aids or assists in the contravention of any provision of this Act or of the scheme

if no other penalty is provided by or under this Act for such offence or punishable with imprisonment for a term which with fine which may extend to five or With 5h*11 ÅY auy 8 No court shall take of any offence p this-M exc. i oa- a report of the facts constituting such offence previous sanction of Chief Fund • 14 A. Enhanced punishment for default in payment: \$ ployees contribution,' already Whoever makes default in the "ment Of the employees share of the contribution to the hating deducted it from the wages. of the employees, in accordance with the provisions of this Act or the Scheme shall be punishable with imprisonment for a term which may extend to one year but which shall not be less than three months and with fine which may extend to four thousand rupees. Notwithstanding anything contained in the code of criminal procedure, 1973 (Central Act 2 of 1974); an under sub section (i) shall be cognizable. t 14B. Enhanced punishment for Second or subsequent offence—Whoever having been convicted by a court of an offence punishable under this Act, commits the same offence again shall be punishable for every such subsequent offence with imprisonment for a term which may extend to one year but which shall not be less than three months and with fine which may extend to four thousand rupees

15. Offence by Companies.—(1) If the person committing an offence under this Act is a company, every officer of the company who is in default as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and accordingly: Provided that in any proceeding against an officer of the company in respect of an offence under this Act it appears to the Court hearing the case that the offence is attributable to the negligence, default, breach of duty, misfeasance or breach of trust committed by the officer, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought not to be excused, the Court may relieve him either wholly or partly, from his liability on such terms as it may think fit. (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any wilful negligence, default, breach of duty, misfeasance or breach of trust on the part of any officer of the company, such officer of the company, shall be deemed to be guilty of offence and shall be liable to be proceeded against and punished accordingly. the purpose of this section,— f means any body corporate and includes a firm, a co-operative (a) society or association of individuals; (b) 'Director' in relation to a firm means a partner in the firm ; 9 (c) "Officer of the Director, Directors; Managing Agent, Secretary, Treasurer, Manager of the company and includes officer of a firm, co-operative or other (d) "Officer of the company is defined" means any officer of the company who is knowingly guilty of non-compliance, failure or of the provisions of this Act or the Scheme made or who knowingly and wilfully authorises or permits such failure or contravention. 'L.S.A.. Directions by Government after consultation with the Board, give to the Board general instructions to be followed by Board. (2) In exercise of its powers and duties under this Act, the Board shall not be bound by any general instruction issued under sub-section (1), except with the previous permission of the Government. t 13B. Empowerment any person to inquire into working of the Board and to submit a report (2) The Board shall have the power to so all facilities for the conduct of the inquiry to him' such documents, accounts or information in possession of the Board as he may require. t 13C. Power to supersede the Board.— (i) If, under section 5B or otherwise, the Government is of opinion that the Board has persistently made default in the performance of the duties imposed by or under the provisions of this Act or the scheme or has exceeded or abused its powers, Government may, by notification in the Gazette, direct the Board to be superseded for a period not exceeding six months as may be specified in the notification: Provided, that, before issuing notification under this sub-section the Government shall give a reasonable opportunity to the Board to show why it should not be superseded and shall consider the representations of any member of the Board. (2) Upon the publication of a notification under sub-section (1), the members of the Board shall, within the time specified in the notification, vacate their offices as if they were removed and the duties which may be performed or performed by such officers as may be specified in the notification and other duties which may be performed by such officers as may be specified in the notification (3) On the expiration of the period of supersession issued under sub-section (1) the Board shall, in the manner provided in section 6. t 10 D; Power to Board may, with the previous approval of the Government and subject to such terms and conditions as may be specified by the Government, borrow money for the purposes of the Scheme. ISE, Audit of Accounts of the Board.—The accounts of the Board shall be examined and once in every year by the Director of Local Fund Audit. 15F. Laying of annual report and audited accounts of the Board before the

Legislative) The copy of the annual report of the Board, prepared under the direction of, and, approved by, the Board together with an audited statement of accounts shall be submitted to Government before the end of the month of December, every year. (2). The Government shall, as soon as the receipt of the same, cause to be laid on the table of the Legislative Assembly. * 16. Deleted. 17: Protection for acts done in good faith.—No suit or other legal proceeding shall lie against any Director of the Board or the Chief Welfare Fund Inspector or any other in respect of anything which is in good faith done or intended to be done under this Act or under the scheme. * 17 A. 'Bar of jurisdiction of civil courts.—No civil court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Act required to be settled, decided or dealt with or to be determined by the Government or the Board or the Chief Welfare Fund Inspector or any Welfare Fund Inspector"

18. Special provision for transfer and vesting of welfare funds established by custom or agreement.—All welfare funds established either by custom or agreement before the date of commencement of this Act and standing to the credit of the employees on the date of commencement of this Act shall, notwithstanding anything to the contrary contained in any law for the time being in force or in any deed or instrument, stand transferred to and vest in the fund established under section 3 and shall be credited to the accounts of the employees entitled thereto in the fund. (1) The Government, may by notification in the Gazette, make rules for the purpose of carrying into effect the provisions of Act.. •Power to make — the Gazette, make rules for the purpose of carrying into effect the provisions of Act.. (2) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect in that case; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule". 11 SCHEDULE (See Section 3 (3)) MATIAS FOR WHICH PROVISION MAY BE MADE SCMD,æ 1. The time and manner in which contributions shall be made to the fund by employers and by or on behalf of employees (whether employed directly, or by or through a contractor) the contributions which an employee may receive under section 4 and the manner in which such contributions may be recovered. 2. The manner in which contributions may be recovered by deductors from employees employed by or through such contractors. payment by the employer of such sum of money as may be necessary to meet the cost of administering the fund and the rate at which and the manner in which such payment shall be made. 3. The constitution of a committee for assisting the 4. The manner in which accounts shall be kept, the investment of money belonging to the fund in accordance with any directions issued or conditions specified by the Government, the preparation of the budget, the audit of accounts and the submission of reports to the Government. 5. The conditions under which withdrawals from the fund may be permitted and any deduction or forfeiture may be made and the maximum amount of such deduction or forfeiture. 6. The fixation by the Government in consultation with the Board of interest payable to members

7. The form in Which an employee furnish particulars about his family whenever required. 8. The nomination of a person to receive the amount standing to the credit of a member at his death and the variation of such nomination

9. The registers and records to be maintained with respect to the employees and the returns to be furnished by the employee or contractor. 10. Form or design of any identity card, token or disc for the purpose of identifying any employee and for issue, custody and replacement thereof. 11. The fees to be levied for any of the purposes specified in this Schedule. 12. Any further powers, if any, which may be exercised by the officer appointed under Act 12 13. The conditions under which a member may be permitted to pay premium on life insurance from the fund

14. The manner in which the Directors of the Board shall be chosen and appointed. 15. Conditions of service, duties and remuneration of officers appointed under this Act

16. The manner in which any welfare fund under section 18 is to be brought and credited to the accounts of the employees entitled thereto in the fund. 16A. Rate of gratuity payable to members and the conditions for such eligibility for, and the manner of payment of, pension from the 16AAA. Eligibility for

and the manner of payment of compensation from fund. 16B The conditions under which any amount due to the Board may be • off

17. Any other matter which is to be provided for in the scheme or which may be necessary or proper for the purpose of implementing the scheme. 'As amended by Kerala Toddy Workers' Welfare Fund (Amendment) Act, 1978. It shall come into effect from 1-2-1979. '*As amended by Kerala Toddy Workers' Welfare Fund (Amendment) Act, 1978 (31 Of 1978). It came into force with effect from 1-4-1979. by the Kerala Toddy Workers' Welfare Fund (Amendment) Act, 1996.(3 of 1996). It shall come into force from 26-3-1996. amended by the Kerala Toddy Workers' Welfare Fund (Amendment) Ordinance, 2009 (5 of 2009). It shall come into force with effect from

