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ANTI-DOPING IN SPORTS (AMENDMENT) ACT, 2023

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No. 62 of 2023

ANTI-DOPING IN SPORTS (AMENDMENT) ACT, 2023

AN ACT TO AMEND THE ANTI-DOPING IN SPORTS ACT

[Date of Assent - 29th December, 2023]

Enacted by the Parliament of The Bahamas

1. Short title and commencement.

- (1) This Act, which amends the Anti-Doping in Sports Act (*Ch. 385A*), may be cited as the Anti-Doping in Sports (Amendment) Act.
- (2) This Act shall come into operation on a date to be appointed by the Minister, by notice published in the Gazette.

2. Amendment of section 2 of the principal Act.

Section 2 of the principal Act is amended as follows —

- (a) by the deletion of the definition of the term “**anti-doping organisation**” and the substitution of the following —
“**anti-doping organisation**” means the World Anti-Doping Agency or a Signatory to the Code that is responsible for adopting rules for initiating, implementing or enforcing any part of the doping control process and includes —
 - (a) the International Olympic Committee;
 - (b) the International Paralympic Committee;
 - (c) other major event organisations that conduct testing at their events;
 - (d) an International Federation; and
 - (e) any other National Anti-Doping Organisation;”;
- (b) by the deletion of the definition of the term “**athlete**” and the substitution of the following —

“athlete” means any person who competes in sport at the international level, as defined by each International Federation or at the national level, as defined by each National Anti-Doping Organisation;”;

- (c) by the deletion of the definition of the term **“international level athlete”** and the substitution of the following —

“international level athlete” means an athlete who competes in sport at the international level, as defined by each International Federation, consistent with the International Standard for Testing and Investigations;

- (d) by the deletion of the definition of the term **“Registered Testing Pool”** and the substitution of the following —

“Registered Testing Pool” means the pool of highest-priority athletes established separately at the international level, by International Federations and at the national level, by National Anti-Doping Organisations, who are subject to focused in-competition and out-of-competition testing, as part of that International Federation's or National Anti-Doping Organisation's test distribution plan;

- (e) by the deletion of the definition of the term **“tampering”** and the substitution of the following —

“tampering” means intentional conduct which subverts the doping control process but which would not otherwise be included in the definition of prohibited methods and includes —

- (a) offering or accepting a bribe to perform or fail to perform an act;
- (b) preventing the collection of a sample, affecting or making impossible the analysis of a sample;
- (c) falsifying documents submitted to an Anti-Doping Organisation or Therapeutic Use Exemption Committee or hearing panel;
- (d) procuring false testimony from witnesses;
- (e) committing any other fraudulent act upon the Anti-Doping Organisation or hearing body, to affect results management or the imposition of consequences; and
- (f) any other similar intentional interference or attempted interference with any aspect of doping control;

- (f) by the insertion, in the appropriate alphabetical order, of the following new terms and definitions —

“Administration” means providing, supplying, supervising, facilitating, or otherwise participating in the use or attempted use by another person of a Prohibited Substance or prohibited method and excludes —

- (a) any actions of *bona fide* medical personnel involving a Prohibited Substance or prohibited method used for genuine and legal therapeutic purposes or other acceptable justification;
- (b) any actions involving Prohibited Substances which are not prohibited in out-of-competition testing, unless the circumstances as a whole demonstrate, that such Prohibited Substances are not intended for genuine and legal therapeutic purposes or are intended to enhance sport performance;

“athlete support personnel” means any coach, trainer, manager, agent, team staff, official, medical, paramedical personnel, parent or any other person who works with, treats or assists an Athlete, who participates in or is preparing for any sports competition;

“attempt” means purposely engaging in conduct that constitutes a substantial step in a course of conduct planned to culminate in the commission of anti-doping rule violations;

“consequences of Anti-Doping Rule Violations” or **“consequences”** means an athlete’s or other person’s violation of an anti-doping rule which may result in one or more of the following —

- (a) disqualification;
- (b) ineligibility;
- (c) provisional suspension;
- (d) financial consequences; and
- (e) public disclosure;

“disqualification” means the athlete’s results in a particular Competition or event are invalidated, with all resulting consequences including forfeiture of any medals, points and prizes;

“fault” means any breach of duty or any lack of care appropriate to a particular situation;

“ineligibility” means the athlete or other person is barred on account of anti-doping rule violations for a specified period of time from participating in any Competition or other activity or funding as provided in *Article 10.14* of the Code;

- “International Standard”** means a standard adopted by World Anti-Doping Agency in support of the Code;
- “person”** includes a natural person or any public body and any body of persons, corporate or unincorporate;
- “possession”** means the actual, physical possession, or the constructive possession of a prohibited substance or prohibited method or the premises in which a prohibited substance or prohibited method exists;
- “Prohibited Substance”** means any substance, or class of substances, so described on the Prohibited List;
- “Provisional Suspension”** means the athlete or other person is barred temporarily from participating in any competition or activity prior to the final decision at a hearing conducted under Article 8 of the Code;
- “results management”** means the process encompassing the time frame, between notification as per *Article 5* of the International Standard for results management, or in certain cases, such pre-notification steps expressly provided for, in *Article 5* of the International Standard for results management, through the charge until the final resolution of the matter, including the end of the hearing process at first instance or on appeal, if an appeal was lodged;
- “Therapeutic Use Exemption”** or **“TUE”** allows an athlete with a medical condition, to use a prohibited substance or prohibited method, but only if the conditions set out in *Article 4.4* and the International Standard for Therapeutic Use Exemptions are met;
- “trafficking”** means selling, giving, transporting, sending, delivering or distributing or possessing for any such purpose, a prohibited substance or prohibited method, either physically or by any electronic or other means, by an athlete, an athlete support person or any other person subject to the authority of an Anti-Doping Organisation, to any third party;”.

3. Amendment of section 5 of the principal Act.

Section 5 of the principal Act is amended in subsection (1) —

- (a) in subparagraph (iv) of paragraph (c) of subsection (1), by the deletion of the words “therapeutic use exemptions” and the substitution of the words “Therapeutic Use Exemption”;

- (b) in paragraph (e), by the deletion of the words “international standards” and the substitution of the words “International Standard”.

4. Amendment of section 6 of the principal Act.

Section 6 of the principal Act is amended —

- (a) in the chapeau, by the deletion of the words “with the approval of”; and
- (b) in paragraph (a), by the deletion of the words “doping control” and the substitution of the words “doping control”.

5. Repeal of section 7 of the principal Act.

Section 7 of the principal Act is repealed.

6. Amendment of section 8 of the principal Act.

Section 8 of the principal Act is amended —

- (a) by renumbering the section as subsection (1);
- (b) in paragraph (c), by the deletion of the words “the refusal or failure” and the substitution of the words “the evading, the refusal or the failure”;
- (c) in paragraph (g), by the insertion, immediately after the word “trafficking”, of the words “or attempted trafficking”;
- (d) by the deletion of the period at the end of paragraph (h) and the substitution therefor of a semi-colon;
- (e) by the insertion, immediately after paragraph (h), of the following new paragraphs (i) to (k) —
 - “(i) the complicit or attempted complicit assisting, encouraging, aiding, abetting, conspiring, covering up or any other type of intentional complicity or attempted complicity, involving anti-doping rule violations, attempted anti-doping rule violations or violation of *Article 10.14.1* or any other article of the Code;
 - (j) the prohibited association by an athlete or other person with an athlete support person who —
 - (i) if subject to the authority of an Anti-Doping Organisation, is serving a period of Ineligibility; or
 - (ii) if not subject to the authority of an Anti-Doping Organisation, and where ineligibility has not been addressed in a results management process pursuant to the Code, has been convicted or found in a criminal,

disciplinary or professional proceeding to have engaged in conduct which would have constituted a violation of anti-doping rules, if rules compliant with the Code had been applicable to such person;”;

- (k) the taking of any act by an athlete or other person, which threatens or seeks to intimidate another person with the intent of discouraging another person from reporting in good-faith, the information that relates to alleged anti-doping rule violations or alleged non-compliance with the Code to World Anti-Doping Agency, an Anti-Doping Organisation, law enforcement, regulatory or professional disciplinary body, hearing body or person conducting an investigation for World Anti-Doping Agency or an Anti-Doping Organisation to discourage or retaliate against reporting to Authorities.”;
- (f) by the insertion, immediately after subsection (1), of the new subsection (2) as follows —
 - “(2) For the purposes of this section, “Authorities” means WADA, an Anti-Doping Organization, law enforcement, regulatory or professional disciplinary body, hearing body or person conducting an investigation for WADA or an Anti-Doping Organization.”.

7. Amendment of section 10 of the principal Act.

Section 10 of the principal Act is amended in paragraph (c), by the deletion of the words “provisional suspension” and the substitution of the words “Provisional Suspension”.

8. Amendment of section 11 of the principal Act.

Section 11 of the principal Act is amended in paragraph (c), by the deletion of the words “provisional suspension” and the substitution of the words “Provisional Suspension”.

9. Amendment of section 12 of the principal Act.

Section 12 of the principal Act is amended —

- (a) by the deletion of subsection (2) and the substitution therefor of the following —
 - “(2) Notwithstanding the provisions of subsection (1), —
 - (a) where the Athlete already has a Therapeutic Use Exemption granted by their National Anti-Doping Organisation for the substance or method in question, if that Therapeutic Use

Exemption meets the criteria set out in the International Standard for Therapeutic Use Exemptions, then the International Federation must recognise it;

- (b) where the International Federation considers that the Therapeutic Use Exemption does not meet those criteria specified in paragraph (a) and so refuses to recognise it, it must notify the Athlete and the Athlete's National Anti-Doping Organisation promptly, with reasons;
- (c) where the Athlete does not already have a Therapeutic Use Exemption granted by their National Anti-Doping Organisation for the substance or method in question, the Athlete must apply directly to the Athlete's International Federation for a Therapeutic Use Exemption as soon as the need arises;
- (d) where the International Federation (or the National Anti-Doping Organisation has agreed to consider the application on behalf of the International Federation) denies the Athlete's application, it must notify the athlete promptly, with reasons;
- (e) where the International Federation grants the athlete's application, it must notify not only the Athlete but also the Athlete's National Anti-Doping Organisation, and if the National Anti-Doping Organisation considers that the Therapeutic Use Exemption does not meet the criteria set out in the International Standard for Therapeutic Use Exemptions, it has twenty-one days from such notification to refer the matter to World Anti-Doping Agency for review.”;
- (f) where the National Anti-Doping Organisation refers the matter to World Anti-Doping Agency for review, the Therapeutic Use Exemption granted by the International Federation remains valid for international-level Competition and Out-of-Competition Testing, but is not valid for national-level Competition, pending World Anti-Doping Agency's decision.
- (g) where the National Anti-Doping Organisation does not refer the matter to World Anti-Doping Agency for review, the Therapeutic Use Exemption granted by the International Federation becomes valid for national-level Competition as well when the twenty-one day review deadline expires.

10. Amendment of section 13 of the principal Act.

Section 13 of the principal Act is amended —

- (a) in paragraph (a) of subsection (2), by the deletion of the words “Therapeutic Use Exemptions” and the substitution of the words “Therapeutic Use Exemption”;
- (b) in the marginal note therefor, by the deletion of the words “international standards” and the substitution of the words “International Standard”.

11. Amendment of section 23 of the principal Act.

Section 23 of the principal Act is amended —

- (a) in subparagraph (iii) of paragraph (a) of subsection (2), by the deletion of the words “Anti-Doping Rules violation” where they twice appear, and the substitution therefor of the words “Anti-Doping Rule Violations”;
- (b) in subparagraph (iv) of paragraph (a) of subsection (2), by the deletion of the words “provisional suspension” and “Provisional Suspension”.

12. Amendment of section 26 of the principal Act.

Section 26 of the principal Act is amended, by the deletion of the words “The Minister may” and the substitution therefor of the words “The Commission may, after consultation with the Minister.”.

13. Amendment of the First Schedule to the principal Act.

The *First Schedule* to the principal Act is amended as follows —

- (a) by the deletion of paragraph 1 and the substitution of the following —
 - “1. The Commission shall consist of nine members who shall be appointed by the Governor-General by instrument in writing, based on the following selection criteria —
 - (a) the Chairman shall possess a minimum of ten years of executive-level experience;
 - (b) the Deputy Chairman shall possess a minimum of ten years of executive-level experience;
 - (c) the Financial Manager or Accountant who is designated to serve as the Treasurer of the Board, shall possess a minimum of five years of professional experience in the field of finance;
 - (d) an person who is employed as an educator, who has undergraduate qualifications in either physical education or science and who has been working in either of these respective fields for a minimum

period of five years;

- (e) a counsel and attorney-at-law, with at least five years standing at The Bahamas Bar;
 - (f) a duly licensed and registered medical practitioner, who has practised medicine for a minimum period of ten years; and
 - (g) an athlete representative who has previously attained national level athlete status;
 - (h) one other member with a demonstrable connection to the realm of sports, who shall also serve on the Board; and
 - (i) the Athletic Director of the University of The Bahamas, *ex c,ificio.*”;
- (b) in paragraph 2 —
- (i) in subparagraph (1), by the deletion of the words “The Minister shall appoint” and the substitution therefor of the words “The Governor-General, shall appoint in writing”;
 - (ii) in subparagraph (3), by the deletion of the words “the Minister may appoint” and the substitution therefor of the words “the Governor-General may appoint”;
- (c) in paragraph 3, by the deletion of the words “the Minister may appoint” and the substitution therefor of the words “the Governor-General may appoint”;
- (d) in subparagraph (1) of paragraph 4, by the deletion of the words “the Minister” and the substitution therefor of the words “the Governor-General”;
- (e) in paragraph 6 —
- (i) in subparagraph (1), by the deletion of the words “the Minister” and the substitution therefor of the words “the Governor-General”;
 - (ii) in subparagraph (2), by the deletion of the words “the Minister” and the substitution therefor of the words “the Governor-General”;
 - (iii) in subparagraph (4), by the deletion of the words “the Minister” and the substitution therefor of the words “the Governor-General”;
- (f) in paragraph 7, by the deletion of the words “The Minister” and the substitution therefor of the words “The Governor-General”;

- (g) in paragraph 11, by the deletion of the words “the Minister” and the substitution therefor of the words “the Governor-General”;
- (h) by the deletion of paragraph 12 and the substitution of the following —

- “12. (1) The Commission will comply with the operational independence in their activities, both from the Sports Movement and Government, as outlined in *Article 20.5.1* of the Code.
- (2) Subject to the provisions of this Act, the Commission may regulate its own proceedings.
 - (3) For the purposes of this paragraph, “**operational independence**” means —
 - (a) that board members, staff members, commission members, consultants and officials of the Anti-Doping Organisation with responsibility for results management or its affiliates, as well as any other person involved in the investigation and pre-adjudication of the matter, cannot be appointed as members or clerks, or members and clerks of hearing panels of that Anti-Doping Organisation, with responsibility for Results Management; and
 - (b) that hearing panels shall be in a position to conduct the hearing and decision-making process, without interference from the Anti-Doping Organisation or any third party, with the objective of ensuring that members of the hearing panel or individuals otherwise involved in the decision of the hearing panel, are not involved in the investigation of, or decisions to proceed with, the case;”.

14. Amendment of the Second Schedule to the principal Act.

The *Second Schedule* to the principal Act is amended as follows —

- (a) in paragraph 2, by the deletion of the words “the Minister” and the substitution therefor of the words “the Governor-General”;
- (b) in subparagraph (1) of paragraph 3, by the deletion of the words “the Minister” and the substitution therefor, of the words “the Governor-General”;
- (c) in paragraph 4 —

- (i) in subparagraph (1), by the deletion of the words “the Minister” and the substitution therefor of the words “the Governor-General”;
- (ii) in subparagraph (2), by the deletion of the words “the Minister” and the substitution therefor of the words “the Governor-General”;
- (iii) in subparagraph (4), by the deletion of the words “the Minister” and the substitution therefor of the words “the Governor-General”;
- (d) in the chapeau of paragraph 5, by the deletion of the words “The Minister” and the substitution therefor of the words “The Governor-General”;
- (e) in paragraph 7, by the deletion of the words “the Minister” and by the substitution therefor of the words “the Governor-General”.

15. Amendment of the Third Schedule to the principal Act.

The *Third Schedule* to the principal Act is amended as follows —

- (a) in paragraph 1 —
 - (i) in subparagraph (a), by the deletion of the words “shall be appointed by the Minister and”;
 - (ii) in subparagraph (d), by the deletion of the comma at the end thereof; and
 - (iii) by the insertion immediately after subparagraph (d), of the words “who shall be appointed in writing, by the Governor-General.”;
- (b) in paragraph 2, by the deletion of the words “the Minister” and the substitution therefor of the words “the Governor-General”;
- (c) in subparagraph (1) of paragraph 3, by the deletion of the words “the Minister” and the substitution therefor of the words “the Governor-General”;
- (d) in paragraph 4 —
 - (i) in subparagraph (1), by the deletion of the words “the Minister” and the substitution therefor of the words “the Governor-General”;
 - (ii) in subparagraph (2), by the deletion of the words “the Minister” and the substitution therefor of the words “the Governor-General”;
 - (iii) in subparagraph (4), by the deletion of the words “the Minister” and the substitution therefor of the words “the Governor-General”;

- (e) in paragraph 5, by the deletion of the words “The Minister” and the substitution therefor of the words “The Governor-General”;
- (f) in paragraph 7, by the deletion of the words “the Minister” and by the substitution therefor of the words “the Governor-General”.



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