

Mizoram Municipality Authorities (Prohibition of Defection) Act, 2011

MIZORAM

India

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Act 14 of 2011

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Mizoram Municipality Authorities (Prohibition of Defection) Act, 2011(Act No. 14 of 2011)Last Updated 12th February, 2020(Received the assent of the Governor of Mizoram on the 13th July, 2011)An Act to prohibit defection by the councillors of Aizawl Municipality and other Municipality or Board being set up, from the political parties by which they were set up as candidates and matters connected therewith.Whereas, it is expedient to prohibit defection by the councillors of Municipal Council or Municipal Board from the Political Parties by which they were set up as candidates and matters connected therewith.It is enacted by the legislative Assembly of the State of Mizoram in the Sixty second year of the Republic of India as follows :

1. Short title, extent and commencement.

(1)This Act may be called the Mizoram Municipality Authorities (Prohibition of Defection) Act, 2011.(2)It shall come into force from the date of its publication in the Mizoram Gazette.

2. Definitions.

- In this Act, unless the context otherwise requires,-(a)"Chief Executive Officer" means :(i)In the case of a Municipal Council, the Chief Executive Officer of the Minicipal Council ;(ii)in the case of a Municipal Board, the Chief Executive Officer or Executive Officer of the Municipal Board.(b)"Councillors" means councillors of Aizawl Municipal Council or any other Council or Board being set up by the Government of Mizoram;(c)"Deputy Commissioner" means Deputy Commissioner of concerned District;(d)"Local Authority" means the City or Town Municipal Council or Town Municipal Board;(e)"Municipal Board" means a Town Municipal Board being set up by the Government of Mizoram;(f)"Municipal Council" means a City or Town Municipal Council established under the Mizoram Municipalities Act, 2007;(g)"Political Party" in relation to a

councillor means a Political Party recognized by the Election Commission of India as a National Party or a State Party in the State of Mizoram under the Election Symbols (Reservation and Allotment) Order, 1968, and to which he belongs for the purpose of sub-section (1) of section 3.(h)"State Election Commissioner" means the State Election Commissioner appointed by the Governor under article 243K of the Constitution of India read with section 345 of the Mizoram Municipalities Act, 2007;

3. Disqualification on the ground of defection.

(1)Subject to the Provision of Section 3-A, 3-B and 4, a councillor belonging to any political party, shall be disqualified for being such Councillor,-(a)If he has voluntarily given up his membership of such political party ; or(b)If he votes or abstains from voting in, or intentionally remains absent from any meeting of the Municipal Council or Municipal Board contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf, without obtaining the prior permission of such party, person or authority; and such voting, abstention or absence has not been condoned by such political party, person or authority within fifteen days from the date of voting or such abstention or absence.Explanation. - for the purpose of this sub-section,-(a)A person elected as a Councillor, shall be deemed to belong to the political party, if any, by which he was set up a Candidate for Election as such Councillor :(b)A person elected as a Councillor otherwise than as a candidate set up by a political party shall be deemed to belong to the political party of which he becomes a member before the expiry of six months from the date of commencement of his term of office, or in the case of a Councillor whose terms of office has commenced on or before the date of commencement of the Mizoram Municipality Authorities (Prohibition of Defection) Act, 2011, within six months from such date.(2)An elected Councillor, who has been elected as such, otherwise than as a candidate set up by a political party shall be disqualified for being a Councillor, if he joins a political party after expiry of six months from the date of commencement of his term of office, or in the case of a Councillor whose term of office has commenced on or before the date of commencement of the Mizoram Municipality Authorities (Prohibition of Defection) Act, 2011 after expiry of six months from such date.(3)Notwithstanding anything contained in the foregoing provisions of this section, a person who on the commencement of this Act, is a Councillor shall, -(a)where he was a member of a political party immediately before such commencement, be deemed, for purposes of sub-section (1), to have been elected a Councillor as a candidate set up by such political party;(b)in any other case, be deemed to be an elected Councillor who has been elected as such otherwise than as a candidate set up by any political party for the purpose of sub-section(2).

3A. Disqualification on ground of defection not to apply in case of split.

- Where a Councillor makes a claim that he and any other Councillors of his political party constitute the group representing a faction which has arisen as a result of a split in his political party and such group consists of not less than one-third of the Councillors concerned, -(1)He shall not be disqualified under sub-section (1) of section 3 on the ground, -(a)That he has voluntarily given up his membership of his political party, or(b)That he has voted or abstained from voting in, or intentionally remained absent from, any meeting of the Municipal Council, or Municipal Board

contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf, without obtaining in any case, the prior permission of such political party, person or authority and such voting or abstention or absence has not been condoned by such political party, person or authority within fifteen days from the date of voting or such abstention or absence, and (2) from the time of such split, such faction shall be deemed to be the political party to which he belongs for the purpose of sub-section (1) of section 3 and to be his political party for the purpose of this section.

3B. Disqualification on ground of defection not to apply in case of merger.

(1) A Councillor shall not be disqualified under sub-section (1) of section 3, where his political party merges with another political party and he claims that he and any other Councillors of his political party, - (a) have become members of such other political party, or as the case may be, of a new political party formed by such merge; (b) have not accepted the merger and opted to function as a separate group, and from and time of such merger, such other political party or new political party or group, as the case may be, shall be deemed to be the political party to which he belongs for the purposes of sub-section (1) of Section 3 and to be his political party for the purposes of this section. (2) For the purposes of sub-section (1) of this section, - (a) the merger of the political party of a Councillor shall be deemed to have taken place if, and only if, not less than two-thirds of the Councillors concerned have agreed to such merger; (b) the expression "such other Political Party" and "New Political Party" shall include a political party whether such political party has been recognized or not by the Election Commission of India as a National Party or a State Party in the State of Mizoram under the Election Symbols (Reservation and Allotment) Order, 1968.

4. Decision on the question as to disqualification on the ground of defection.

(1) A complaint that a Councillor has become subject to the disqualification under Section 3 may be made by a Councillor or a Political Party to the Chief Executive Officer of the concerned local authority, - (a) in a case falling under clause (a) of sub-section (1) after the Councillor gives up the membership of the political party; (b) in case falling under clause (b) of sub-section (1), after the expiry of fifteen days specified therein; (c) in case falling under sub-section (2), after he joins the political party. (2) Where a complaint under sub-section (1) is received by the Chief Executive Officer of the concerned local authority, he shall, within twenty - four hours from the receipt of such complaint, refer the same for decision, - (a) in the case of Municipal Council, to the State Election Commissioner; (b) in the case of Municipal Board, to the Deputy Commissioner; Who shall decide the question within 30 (thirty) days after the receipt by him of the reference and his decision shall be final.

5. Bar on Jurisdiction of courts.

- Notwithstanding anything contained in any law, no Courts shall have any jurisdiction in respect of any matter connected with disqualification of a Councillor of a member under this Act.

6. Power of State Government to make rules.

(1)The State Government may, by notification, make rules for carrying out the provision of this Act.(2)Every rule made under this Act shall be laid, as soon as may be, after it is made, before the State Legislature for a total period of 14(fourteen) days, while it is in session which may comprise in one session or in two or more sessions. If the State Legislature agrees in making any modification in the rule or the State Legislature agrees that the rule should not be made, the rule thereafter shall have effect only in such modified form, or be of no effect, as the case may be.