

REPUBLIC OF BENIN

Brotherhood – Justice – Labor

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PRESIDENCY OF THE REPUBLIC

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LAW No. 2017-27 OF DECEMBER 18, 2017

concerning the production, packaging, labeling, sale and use of tobacco, its derivatives and similar items in the Republic of Benin

The National Assembly has deliberated and adopted in its session of September 14, 2017;

The Constitutional Court has handed down a decision in conformity with the Constitution, DCC 17-218 of October 2017, and the President of the Republic promulgates the law whose content is as follows:

TITLE ONE

PRELIMINARY PROVISIONS

CHAPTER ONE

DEFINITIONS

Article 1: For the purposes of the present law, the following definitions shall apply:

Adult: Any person over 35 and older.

Similar items: products, whether synthetic or not, made up of substances similar to those found in tobacco.

Celebrity: Any person who, by any means whatsoever, has attained to widespread recognition within a given geographical community.

Illicit trade in tobacco products: Any practice or conduct prohibited by law relating to the production, shipping, receipt, possession, distribution, display, sale or purchase of tobacco products, tobacco derivatives or similar items, including any practice or conduct intended to facilitate such activity.

Package: the number of cigarettes contained in a pack, of packs contained in a carton, or of cartons contained in a case.

Tobacco derivatives: products made from leaf tobacco as a raw material, with the addition of other substances, and intended to be smoked, sucked, chewed or sniffed.

Child: a human being between 0 and 14 years of age.

Smoke-free space: any public place, work place or means of transportation where smoking is prohibited.

Labeling: the outer form of the pack containing images, drawings, figures, signs or any other writing.

Tobacco industry: companies engaging in the production, manufacture and/or wholesale distribution of tobacco products, tobacco derivatives or similar items, as well as importers of such products

Young person: for the purposes of the African Charter on Youth, this refers to any young person between 15 and 35 years of age.

Young adult: any person between 25 and 35 years of age.

Major youth: any person between 18 and 24 years of age.

Minor youth: any person between 15 and 17 years of age.

Work place: a place used by one or several individuals in the course of their employment, whether paid or voluntary, including the adjacent spaces used in this context.

Public place: a place where everyone is admitted indiscriminately, and for this reason, because of this status, judicial and administrative police forces are more extensively present than on private property.

Tobacco control: strategies for reducing the supply, the demand and the harmful effects of tobacco, seeking to improve the health of the population by eliminating or reducing the consumption of tobacco products, derivatives or similar items, as well as exposure of the public to tobacco smoke.

Sponsorship of tobacco: any kind of contribution to any event, activity or support for a person having as its aim, effect or likely effect to directly or indirectly promote a tobacco product, derivative or similar item.

Tobacco products: products entirely or partially made from leaf tobacco as their raw material, and intended to be smoked, sucked, chewed or sniffed.

Tobacco advertising and promotion of tobacco, its derivatives or similar items: any kind of communication, or recommendation of an action or commercial action having as its aim, effect or likely effect to

directly or indirectly promote a tobacco product, derivative or similar item, or their use.

Sponsoring: any public or private contribution granted to a third party in relation to an event, a team or an activity.

Tobacco: an aromatic plant of the *Solanaceae* family, tall with big alternating leaves containing nicotine, a toxic alkaloid. Its leaves are dried and processed for manufacturing products for smoking, sniffing, sucking or chewing.

Single: any tobacco product presented singly in the form of a rod.

Public transportation: any means of transportation used by the public, including elevators, to which people have access either for free or in exchange for payment.

CHAPTER II

GUIDING PRINCIPLES AND OBJECTIVES

Article 2: The policy to control the use of tobacco, its derivatives or similar items is based on the guiding principles set forth below:

Public information on the consequences to health, on the addictive character and mortal risk induced by tobacco consumption and exposure to smoke from tobacco, its derivatives or similar items;

Taking appropriate measures to protect all people against exposure to smoke from tobacco, its derivatives or similar items;

The possibility of government authorities having recourse, as needed, to international cooperation in order to strengthen their financial and technical capacities for tobacco control;

The drafting, implementation, updating and periodic review of national, multisectoral and global strategies, plans and programs for tobacco control.

Article 3: The purpose of this law is to protect present and future generations from the devastating health, social, environmental and economic effects relating to tobacco consumption and exposure to smoke from tobacco, its derivatives or similar items.

To this end, this Law:

Provides a legal framework for the implementation of tobacco control measures by government authorities with a view to regularly reducing

in particular the prevalence of tobacco use and exposure to tobacco smoke;

Creates sufficient conditions for the organization of such control, and

Contributes to the “de-normalization” of the use in society of tobacco, its derivatives or similar items.

TITLE II

REDUCTION OF THE DEMAND AND SUPPLY FOR TOBACCO PRODUCTS, TOBACCO DERIVATIVES AND SIMILAR ITEMS

CHAPTER I

REDUCTION OF DEMAND

Article 4: It is prohibited to smoke in any publicly used spaces that are enclosed or covered, regardless of whether they are public or private: places to accommodate the public, places of work, means of transportation, and, as applicable, any other places of public use.

Article 5: The Annual Finance Law provides financial and fiscal measures seeking to reduce access by the public to tobacco, its derivatives or similar items.

Article 6: Any tobacco product, tobacco derivative or similar items intended for consumption in the Republic of Benin must, in its composition, be in compliance with the regulatory provisions defined by the Minister of Health.

The Ministry of Health shall make arrangements to test and analyze the composition of emissions from products, and shall establish a body for oversight of such provisions.

Article 7: Any manufacturer or importer of tobacco products, its derivatives or similar items, is required annually to report to the Ministry of Health information concerning the composition and emissions of such products.

The competent ministerial departments shall adopt and implement regulatory measures in order to have the information on the toxic ingredients of tobacco products and the harmful effects that they are able to produce communicated to the public.

Article 8: Any packaging and labeling of tobacco, tobacco products, derivatives or similar items, that are susceptible to giving an erroneous impression with respect to the characteristics, health effects, risks or emissions of the product, is prohibited.

Article 9: Each pack or carton of tobacco products, tobacco derivatives or similar items, and any other packaging intended for use in the Republic of Benin, shall display the statement, "For Sale in the Republic of Benin," as well as the health warnings in the form of texts and color images describing the harmful effects of the product.

The presentation and labeling of tobacco, its derivatives or similar items using terms such as "low in tar content," "light," "ultra-light," "mild," or other misleading terms, is prohibited.

Article 10: The health warnings that should be printed on packs of tobacco products, tobacco derivatives or similar items are to be determined by the Ministry of Health.

The image shall cover at least 50% of each of the two main surfaces of the package, with at least 25% for the written message.

Health warnings are to be renewed every two (2) years.

Article 11: Advertising, promotion, sponsorship or underwriting in favor of tobacco, its derivatives or similar items are prohibited in all forms in the Republic of Benin, particularly:

- Radio and TV broadcasts, publications in the print press or on internet sites, regardless of who the authors are;
- Posted messages on advertising billboards, leaflets or signs, whether illuminated or not;
- Motorbikes, cars or any other vehicles on wheels, parasols, sales booths, displays or gift boxes;
- Any other means of communication intended to be seen, read or understood by more than one person at a time.

Article 12: Advertising or publicity for an article or product other than tobacco, its derivatives or similar items that, by its shape, color, graphic appearance, vocabulary or by any other means, calls to mind tobacco or its derivatives or similar items, is prohibited.

Article 13: It is prohibited for any company manufacturing or commercializing tobacco, its derivatives or similar items, to sponsor, underwrite, finance,

either directly or indirectly, activities of a social, athletic or cultural nature.

Article 14: The promotional sale of tobacco, its derivatives or similar items, is prohibited in the Republic of Benin.

CHAPTER II

REDUCTION OF SUPPLY

Article 15: It is prohibited to manufacture, import or commercialize tobacco, its derivatives or similar items without prior authorization.

Article 16: It is prohibited to manufacture, import or commercialize packs containing fewer than twenty (20) individual cigarettes.

Article 17: The sale of cigars, cigarettes, or cigarillos individually is prohibited.

Article 18: It is prohibited to sell tobacco, its derivatives or similar items inside or in the immediate vicinity of preschool institutions, schools, vocational training centers, institutions of higher education, health care establishments, athletic, cultural and administrative facilities within a radius of less than five hundred (500) meters.

Article 19: The free distribution by a manufacturer, importer or vendor of tobacco, its derivatives or similar items is prohibited.

Article 20: The direct display of tobacco products, tobacco derivatives or similar items on shelves, stands or other mobile sales displays is prohibited.

Article 21: It is prohibited to manufacture, import or sell candy, toys or other articles in the shape of a package of tobacco products.

Article 22: It is prohibited to sell tobacco, its derivatives or similar items in vending machines.

Article 23: The sale to international travelers and importing by them of tax- and duty-free tobacco, its derivatives or similar items, are prohibited.

Article 24: Any kind of illegal trade in tobacco products, tobacco derivatives or similar items, are prohibited.

TITLE III
CRIMINAL PROVISIONS

Article 25: The State, territorial communities, public establishments or enterprises and all public buildings are prohibited to engage in any collaboration or agreement, particularly with the tobacco industry, of a kind that would be harmful to the public health policy.

Any representative of a public community who infringes the provisions of sub-paragraph 1 above shall be punished by imprisonment of five (5) to ten (10) years, and a fine of five million (5,000,000) to ten million (10,000,000) Francs CFA, without impairment to administrative or disciplinary sanctions.

Article 26: Operators or managers of places that are supposed to be smoke-free as indicated in Article 4 of this Law are required to take all measures to cause the prohibition of smoking to be respected, including posting prominent and clear signs, which are to be defined by regulatory provision, under penalty of a fine of fifty thousand (50,000) to three hundred thousand (300,000) Francs CFA.

Article 27: Any natural or juridical person that is a perpetrator or accomplice of acts associated with the promotion, advertising, sponsoring or underwriting or direct or indirect publicity for tobacco products, derivatives or similar items is susceptible to the punishments of imprisonment from two (2) years to five (5) years, and/or a fine of ten million (10,000,000) to fifty million (50,000,000) Francs CFA.

Article 28: Any natural or juridical person that is a perpetrator or accomplice engaged in the counterfeiting or illicit sale of tobacco products, its derivatives or similar items is susceptible to the punishments of imprisonment from two (2) years to five (5) years, and/or a fine of ten million (10,000,000) to fifty million (50,000,000) Francs CFA.

Article 29: Any person who sells to a person under the age of eighteen years, or causes the latter to sell, tobacco products, derivatives or similar items, is susceptible to a fine of twenty thousand (20,000) to one hundred thousand (100,000) Francs CFA.

Article 30: Any person who produces, imports, supplies or distributes tobacco products, derivatives or similar items in packages, labeling and wrappings that are not in compliance with the standards set forth by this law is susceptible to imprisonment of one (1) to two (2) years and/or

a fine of ten million (10,000,000) to fifty million (50,000,000) Francs CFA.

Article 31: Anyone caught in the act of using tobacco, its derivatives or similar items in the places of common use indicated in Article 4 of this Law, is susceptible to a fine of ten million (10,000,000) to fifty million (50,000,000) Francs CFA.

Article 32: Any manufacturer, importer or vendor of candies, toys or other articles having the shape of a package of tobacco products that is attractive to children and young minors is susceptible to a fine of five hundred thousand (500,000) to ten million (10,000,000) Francs CFA.

Candies, toys or other articles found to be in violation hereof shall be confiscated and destroyed.

Article 33: Any vendor caught violating the prohibition of selling tobacco, its derivatives or similar items on the same display racks as candies, toys or other articles that are attractive to children, is susceptible to a fine of fifty thousand (50,000) to one hundred thousand (100,000) Francs CFA.

Article 34: Anyone who manufactures, imports or commercializes tobacco, its derivatives or similar items without prior authorization, is susceptible to a punishment of two (2) years to five (5) years imprisonment and a fine of five million (5,000,000) to one hundred million (100,000,000) Francs CFA.

Article 35: Any person who sells tobacco products, derivatives or similar items inside, or less than five hundred (500) meters from, a preschool institution, school, vocational training center, institution of higher education, health care establishment, athletic, cultural or administrative facility, is susceptible to a fine of fifty thousand (50,000) to five hundred thousand (500,000) Francs CFA.

Article 36: Any manufacturer, importer or vendor of tobacco, its derivatives or similar items that engages in the free distribution of such products, is susceptible to imprisonment of two (2) years to five (5) years and/or a fine of five million (5,000,000) to fifty million (50,000,000) Francs CFA.

Article 37: Any manufacturer or importer of tobacco, its derivatives or similar items who has not reported to the Ministry of Health for a period longer than one year information on the composition and emissions of its products offered for consumption, is susceptible to a fine of five million (5,000,000) to ten million (10,000,000) Francs CFA, temporary closing for six (6) months to twelve (12) months, and the confiscation of the products subject to incrimination, or to only one of these three sanctions

Article 38: Any importer of tobacco, its derivatives or similar items who provides for consumption in the Republic of Benin products that in their composition are not in compliance with the regulatory provisions in force, is susceptible to a fine of fifty million (50,000,000) to one hundred million (100,000,000) Francs CFA.

Products subject to incrimination are to be confiscated and destroyed.

Article 39: Any vendor who provides direct access to tobacco products, derivatives or similar items to clients on its shelves, racks or sales displays, is susceptible to a fine of fifty thousand (50,000) to three hundred thousand (300,000) Francs CFA.

Article 40: Violations of this law are to be ascertained by officers of the judiciary police, or by agents of the sanitary police, and punished in accordance with the laws and regulatory texts in force.

Article 41: Repetition of the various offenses indicated in this Law are to be punished by double the initial penalty.

TITLE IV

FINAL PROVISIONS

Article 42: Any natural or juridical person involved in the occurrence of the harm caused by the consumption of tobacco products, derivatives or similar items, shall be liable for his part in incriminated acts.

Article 43: Any organization of civil society, duly registered and specializing in the domain of health protection in general, and tobacco control in particular, that has a specific interest, has standing to file suit against those who infringe this Law.

Article 44: To ensure the efficacy of tobacco control, pursuant to the provisions of Law 94-009 of April 28, 1994, concerning the creation, organization and operation of offices of a cultural, scientific and technical character, a national body of a social nature is hereby created, having the status of juridical personality and financial autonomy, and shall be called the National Office for Tobacco Control (ONLCT – *Office national de lutte contre le tabagisme*).

Procedures concerning the organization, composition and operation of the Office are to be defined by a Decree to be adopted by the Council of Ministers.

Article 45: Procedures for the implementation of this law shall be the subject of Decrees to be adopted by the Council of Ministers.

Article 45: This law hereby supersedes any prior provisions to the contrary, notably those of Law No. 2006-12 of August 7, 2006, concerning the regulation of the production, commercialization and consumption of cigarettes and other tobacco products in the Republic of Benin.

Article 47: The present Law is to be executed as a Law of the State.

Done in Cotonou, December 18, 2017

By the President of the Republic
Head of State, Head of the Government

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Patrice TALON.

The Attorney General, Minister of
Justice and Legislation

[illegible signature]

Joseph DJOGBENOU

The Minister of Health

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Cossi Gaston DOSSOUHOUI

The Minister of Industry
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Serge Mahouwèdo AHISSOU

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