

OO/HO
BURKINA FASO

Unity – Progress – Justice

DECREE No. 2010-823 /PRES
promulgating Law No. 040-2010/AN of
November 25, 2010 concerning the
Campaign against tobacco in Burkina Faso

**THE PRESIDENT OF FASO
PRESIDENT OF THE COUNCIL OF MINISTERS**

IN LIGHT OF the Constitution;

IN LIGHT OF letter No. 2010-086/AN/PRES/SG/DGSL/DSC of December 23, 2010 by
the President of the National Assembly transmitting for promulgation
Law No. 040-2010/AN of November 25, 2010, concerning the campaign
against Tobacco in Burkina Faso;

DECREES

ARTICLE 1: Law No. 040-2010/AN of November 25, 2010 concerning the campaign against
tobacco in Burkina Faso is hereby promulgated.

ARTICLE 2: This decree is to be published in the *Journal Officiel du Faso* [Official Journal of
Faso]

Ougadougou, December 31, 2010

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Blaise COMPAORE

BURKINA FASO ----- UNITY – PROGRESS – JUSTICE ----- NATIONAL ASSEMBLY	4th REPUBLIC ----- FOURTH LEGISLATURE
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LAW No. 040 – 2010 / AN

**CONCERNING THE CAMPAIGN AGAINST TOBACCO
IN BURKINA FASO**

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THE NATIONAL ASSEMBLY

In light of the Constitution;

In light of Resolution No. 001-2007/AN of June 4, 2007 concerning validation of the mandate of the deputies;

Has deliberated at its session on November 25, 2010 and adopted this law whose contents are set forth below:

CHAPTER I: GENERAL PROVISIONS

Article 1:

This law strengthens the campaign against the use and consumption of tobacco and tobacco products in Burkina Faso.

It seeks to protect present and future generations from the devastating health, social, environmental and economic effects of the consumption of tobacco and exposure to tobacco smoke.

Article 2:

The field of application for this law covers the industrial cultivation or organized cultivation of tobacco, the manufacture, processing, sale and consumption of tobacco and tobacco products, as well as exposure to tobacco smoke.

It also extends to access to tobacco, tobacco products, advertising, informing the public and protection of the environment.

CHAPTER II:

Article 3:

For the purposes of this law, the following definitions shall apply:

Cigarette: combined shreds of tobacco in the form of a tube rolled in paper, one of whose tips may or may not be glued to a filter;

Organized cultivation: the activity of growing crops that is non-industrial but organized and technically and/or financially supported by the tobacco industry or by those engaged in the promotion of its interests;

Industrial cultivation of tobacco: any large-scale cultivation of tobacco that is conducted or promoted by the tobacco industry or at its behest;

Health effects: the direct or indirect consequences of the action of tobacco on the individual or group level;

Manufacturer: any natural or juridical person that manufactures, makes, produces, processes, packages and/or labels tobacco products;

Tars: a gross anhydrous condensate of smoke, that is carcinogenic and comes from the burning of tobacco;

Tobacco industry: all manufacturing and bulk distribution companies of tobacco products, as well as the importers of such products;

Public place: any place accessible to the general public, and any place for group use regardless of whether it is publicly or privately owned, or conditions for access;

Anti-tobacco campaign: a series of strategies to reduce the supply, demand and harmful effects of tobacco, seeking to improve public health by eliminating or reducing the consumption of tobacco products and exposure of the public to tobacco smoke;

Nicotine: a major nicotinic alkaloid and natural component of tobacco, responsible for the addiction to tobacco of the consumer;

Sponsorship or Underwriting of tobacco: any kind of contribution to any event, activity or person, having as its purpose, effect or likely effect the direct or indirect promotion of a tobacco product or the use of tobacco;

Tobacco advertising and tobacco promotion: any kind of communication, recommendation or commercial action having as its purpose, effect or likely effect the direct or indirect promotion of a tobacco product or the use of tobacco or tobacco products;

Tobacco products: products made entirely or partially of tobacco as a raw material, and intended to be smoked, sucked, sniffed, chewed, or consumed in any manner whatsoever;

Tobacco: An herbaceous plant of the *solanaceae* family whose leaves are processed and offered in various forms for consumption: snuff, tobacco for sucking, tobacco for smoking and chewing tobacco;

Tobacco use: the regular use of tobacco and tobacco products leading to toxic effects and addiction;

Passive tobacco use: the act of exposing others to the harmful effects of tobacco smoke.

CHAPTER III: GROWING TOBACCO, MANUFACTURE OF TOBACCO PRODUCTS

Article 4:

The industrial cultivation and organized cultivation of tobacco are forbidden in Burkina Faso.

Article 5:

The Government is developing policies and programs with a view to replacing the traditional growing of tobacco practiced by farmers by other economically viable crops that have no impact on public health.

Article 6:

The manufacture for purposes of sale of tobacco products shall be subject to prior authorization by the Minister of Commerce following the opinion of the Minister of Health.

The conditions for the issuance of this authorization are to be determined by regulatory procedure.

CHAPTER IV: LIABILITY OF THE TOBACCO INDUSTRY

Article 7:

Any natural or physical person whose interest is harmed by the activities of the tobacco industry may take legal action against the latter in the appropriate jurisdictions.

CHAPTER V: INFORMATION, EDUCATION, NOTIFICATION, TRAINING AND RAISING THE AWARENESS OF THE PUBLIC

Article 8:

The Government is preparing policies and multi-sectoral programs with a view to reducing the use and consumption of tobacco and tobacco products, and to inform the public on the harmful effects of tobacco.

Article 9:

The Government is organizing and coordinating the campaign against tobacco in Burkina Faso.

To this end, it is putting in place a national structure charged with the coordination of the campaign against tobacco in Burkina Faso.

Article 10:

The Government is preparing and implementing strategies in order to inform, educate, notify, train, and raise the awareness of the public on the harmful effects of tobacco and tobacco products.

Article 11:

The Government is taking steps to provide the public with information concerning the activities of the tobacco industry. The conditions and means of providing information to the public on activities of the tobacco industry are determined by regulatory provision.

CHAPTER VI: PACKAGING AND LABELING OF TOBACCO PRODUCTS

Article 12:

The packaging and labeling of tobacco products shall not serve to promote a tobacco product by means that are false, tendentious, misleading or likely to give an erroneous impression with regard to the characteristics, health effects, risks or emissions of the product.

Article 13:

Each package, carton or case of tobacco products, or any other kind of packaging, or inner or outer labeling of such products must bear health warnings in the form of statements.

The manner of packaging, labeling and printing on the packs, cartons or cases, or any other form of packaging sold in Burkina Faso are to be set by regulatory provision.

CHAPTER VII: COMPOSITION OF TOBACCO PRODUCTS

Article 14:

Each pack and carton of tobacco products, and any kind of outer packaging and labeling of these products shall bear, in addition to health warnings, pertinent information on the components and emissions of the tobacco products that are to be defined by regulatory provision.

Article 15:

Prior to authorization for importation and/or distribution on the market, all products must be tested by a competent structure approved by the Minister of health.

The conditions for approval are set by regulatory provision.

CHAPTER VIII: ADVERTISING FOR TOBACCO, PROMOTION AND SPONSORSHIP

Article 16:

Advertising, including trans-boundary advertising, and direct or indirect promotion in any form whatsoever for tobacco and tobacco products are forbidden, except in the spaces authorized by regulatory provision.

Article 17:

Sponsorship or underwriting in any form of any activity of any kind whatsoever by the tobacco industry and its appendages is forbidden.

Article 18:

With the exception of those images used in the activities of the campaign against tobacco and tobacco products, the use of images of tobacco for purposes of promotion is forbidden, except in spaces authorized by regulatory provision.

Article 19:

The free distribution of tobacco and tobacco products is forbidden, except in spaces authorized by regulatory provision.

Article 20:

The distribution of gifts and advertising gadgets bearing the brand of a tobacco or tobacco products is forbidden, except in spaces authorized by regulatory provision.

Article 21:

It is forbidden to fabricate or sell candies, toys or any other object with the shape or taste of tobacco or a tobacco product.

CHAPTER IX: ACCESS TO TOBACCO PRODUCTS

Article 22:

The display of tobacco and tobacco products is forbidden, except at points of sale authorized by regulatory provision.

Article 23:

The sale of tobacco or tobacco products to any person under the age of 18, or the sale of tobacco or tobacco products by any person under the age of 18, is forbidden.

Article 24:

The sale of tobacco products by automatic vending machines, or by any other means that allows direct access to tobacco products, is forbidden.

Sale over the internet, or by any other means that does not allow for verification of the age of the buyer, is forbidden.

Article 25:

The sale of cigarettes other than in packs containing at least twenty cigarettes is forbidden.

CHAPTER X: PROTECTION AGAINST EXPOSURE TO TOBACCO SMOKE AND SUPPORT FOR QUITTING TOBACCO

Article 26:

Anyone responsible for a public place or public transportation is obliged to prominently display a notice prohibiting smoking.

Enclosed or open public places and public transportation vehicles are defined by regulatory provision.

Article 27:

It is forbidden for any person to expose others to tobacco smoke.

It is forbidden to smoke in enclosed or open public places and on public transportation.

Article 28:

The Minister of Health is drafting and implementing policies and programs for assistance quitting tobacco.

CHAPTER X: PROTECTION OF PUBLIC HEALTH POLICIES CONCERNING THE ANTI-TOBACCO CAMPAIGN AGAINST COMMERCIAL INTERESTS AND OTHERS SUPPORTING THE TOBACCO INDUSTRY

Article 29:

The tobacco industry is obliged to provide to the competent administrative body all information concerning its activities, particularly those concerning production, distribution and promotion.

Moreover, the government shall make public its relations with the tobacco industry.

Article 30:

The tobacco industry and its appendages are not eligible for provisions involving privileged treatment in the investment code of Burkina Faso.

It is also forbidden to grant them any other privilege.

CHAPTER XII: FINANCIAL AND TAX MEASURES

Article 31:

The rates of taxation on tobacco products are set in accordance with the community regulations of the West African Economic and Monetary Union (UEMOA) bearing on this matter.

Article 32:

The Government is setting up funding to finance the activities of the campaign against tobacco, particularly support in quitting tobacco. The means of financing and the operations of these funds are set by regulatory provision.

CHAPTER XIII: PENAL PROVISIONS

Article 33:

Infractions in connection with the ban on smoking in enclosed or open public spaces, on public transportation and exposure of third parties to tobacco smoke, are punishable in accordance with the laws in force.

Article 34:

Anyone selling tobacco or tobacco products, or causing such to be sold with full awareness of the matter to a person under the age of 18

shall be subject to imprisonment from one to six months, and a fine of fifty thousand (50,000) francs CFA to two hundred and fifty thousand (250,000) francs CFA, or to only one of these two penalties.

The jurisdiction in question shall, moreover, order the confiscation and destruction of the products sold, or for sale.

Article 35:

Anyone distributing tobacco or tobacco products for free, or gifts or advertising gadgets displaying a tobacco brand, shall be subject to payment of a fine from one hundred thousand (100,000) francs CFA to one million (1,000,000) francs CFA.

The jurisdiction in question shall, moreover, order the confiscation and destruction of the products sold, or for sale.

Article 36:

Anyone guilty of advertising tobacco or tobacco products, or of sponsoring or causing to be sponsored or underwriting any activity of any kind whatsoever by the tobacco industry or its appendages, shall be subject to a fine of one million (1,000,000) francs CFA to fifty million (50,000,000) francs CFA.

The jurisdiction in question shall, moreover, order the confiscation and destruction of the advertising items.

Article 37:

Anyone who manufactures or sells candies and/or toys, or any other object having the shape or taste of a tobacco product, shall be subject to imprisonment from three months to one year, and to a fine of one million (1,000,000) francs CFA to five million (5,000,000) francs CFA, or to only one of these two penalties.

The jurisdiction in question shall, moreover, order the confiscation and destruction of the offending toys and candies.

Article 38:

Anyone who uses images of tobacco products for purposes of promotion shall be subject to a fine of one hundred thousand (100,000) francs CFA to five hundred thousand (500,000) francs CFA.

The jurisdiction in question shall, moreover, order the prohibition of the broadcast of the aforesaid images throughout the national territory, and the temporary or definitive closure of the establishment in cases of repeat offenses.

Article 39:

Anyone who has sold products by automatic vending machines, or by any other means that permits direct access to tobacco products, shall be subject to imprisonment from one to six months, and to a fine of one hundred thousand (100,000) francs CFA to one million (1,000,000) francs CFA, or to only one of these two penalties.

The jurisdiction in question shall, moreover, order the confiscation of the products and means of distribution, and the temporary or definitive closure of the establishment.

Article 40:

Anyone who has failed to respect the provisions concerning packaging and labeling of tobacco and tobacco products in accordance with the provisions of this law shall be subject to imprisonment from one to six months, and to a fine of one million (1,000,000) francs CFA to five million (5,000,000) francs CFA.

The jurisdiction in question shall, moreover, order the prohibition of any similar activity throughout the extent of the national territory, with the seizure and destruction of the products.

Article 41:

For the tobacco industry to provide information to the Government that is incomplete and/or erroneous concerning its activities shall subject it to a fine of one million (1,000,000) francs CFA to fifty million (50,000,000) francs CFA.

Article 42:

Anyone who engages in the industrial cultivation of tobacco, or the cultivation of tobacco organized by the tobacco industry in violation of the provisions of this law, shall be subject to imprisonment of three months to one year, and to a fine of one million (1,000,000) francs CFA to one hundred million (100,000,000) francs CFA, or to only one of these two penalties.

The jurisdiction in question shall, moreover, order the destruction of the crops in question.

CHAPTER XIII: TRANSITORY AND FINAL PROVISIONS

Article 43:

The companies of the tobacco industry are granted a period of one year to comply with the provisions of this law.

Article 44:

This law is to be executed as a law of the State.

So done and determined in public session in
Ougadougou, November 25, 2010.

The President

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Roch Marc Christian KABORE