

Acts of the Republic of Gabon
PARLIAMENT

Law No. 006/2013 of August 21, 2013, concerning the enactment of measures supporting the campaign for tobacco control in the Republic of Gabon.

THE NATIONAL ASSEMBLY AND THE SENATE HAVE DELIBERATED AND ADOPTED;
THE PRESIDENT OF THE REPUBLIC, HEAD OF STATE, PROMULGATES THE LAW, WHOSE
CONTENTS ARE AS FOLLOWS:

Article 1: This law, enacted to implement the provisions of Articles 47 and 53 of the Constitution on one hand, and the ratification of the Framework Convention for Tobacco Control of the WHO, has the following purpose:

- To define appropriate measures seeking to protect present and future generations from the health effects associated with the consumption of tobacco and its derivatives, as well as from exposure to tobacco smoke;
- To restrict the population's access to tobacco by protecting it from incitements to use tobacco;
- To raise the awareness of the public on the dangers of the use of tobacco and exposure to tobacco smoke.

Chapter 1: General Provisions

Article 2: For the purposes of this law, the following definitions shall apply:

“Tobacco control”: a whole series of strategies for the reduction of the supply, demand and harmful effects of tobacco, seeking to improve the health of the public by eliminating or reducing its consumption of tobacco products and its exposure to tobacco smoke;

“Tobacco products”: all products intended to be smoked, sniffed, sucked, or chewed as long as they are even partly composed of tobacco (cigars, cigarettes, pipe tobacco, rolling papers and prefabricated tubes of tobacco);

“Young person”: All people under the age of 18;

“Adult”: All people aged 18 or over;

“Celebrity”: all persons who have achieved widespread fame in a given geographic community;

“Distributor”: any natural or juridical person engaging in the regular or occasional sale of cigarettes or other tobacco products, whether wholesale or retail;

“Advertising/promotion”: Any kind of communication, recommendation, action or commercial contribution having as its purpose, effect or likely effect directly or indirectly to encourage the use of tobacco or a tobacco product, that seeks to encourage consumers to choose one brand of cigarettes over another brand;

“Underwriting/sponsorship”: any public or private contribution made to a third party in relation to an event, a team or an activity whose purpose is the promotion of a brand of cigarettes or any other tobacco product, all with the knowledge that this event, team or activity would continue to exist without this contribution;

“Distribution”: any commercialization or giving away for free, or any other kind of donation, including sampling of tobacco products;

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- **“Second-hand smoke”**: inhalation of tobacco smoke by non-smokers who are close to smokers in the same place;
- **“Illegal trade”**: any practice or conduct prohibited by law involving production, shipment, receipt, possession, display, distribution, sale or purchase, including any practice or conduct intended to facilitate such activity;
- **“Fiscal provisions”**: measures of taxation and assessment of duties.

Chapter 2: Packaging, labeling and measures for health warnings

Article 3: Manufacturers are obliged to show on cigarette packs and other packaging units the name of the brand, the commercial statement: “For sale in the CEMAC zone,” the name and country of origin of the manufacturer and the lot number.

The commercial statement on the pack must be printed on one of the lateral surfaces, in indelible, very prominent characters, of a height that must not be less than three millimeters high.

On cartons, characters are to be at least ten millimeters high.

Article 4: Cigarettes and other tobacco products may not under any circumstances be covered with the markings indicated in Article 3 above when they are intended:

- for sale subject to customs duties for re-export;
- to supply ships and aircraft serving international lines.

Article 5: Packs of cigarettes and other tobacco derivative products made available to the public must display the following health warnings:

- “Tobacco KILLS”;
- “Prohibited to anyone under 18 years of age.”

This statement is to be printed in indelible, perfectly legible characters, covering 60% of surface A, and 65% of surface B of the pack.

The health warning is to be printed:

- in bold, “red” Helvetica characters on a white background and in lower case, except for the first letter of the message;
- on the lower part of the pack, centered and parallel to the upper edge of the pack;
- surrounded by a black border, with a minimum thickness of 3 mm, not overlapping in any way with the text and images/photos in the warnings.

Article 6: Packages, cases or packs offered for public consumption must indicate the nicotine and tar content of the products on one of the lateral surfaces of the pack. Maximum content for tar and nicotine are 15 mg and 1.5 mg, respectively.

Chapter 3: Measures concerning advertising, sponsorship/underwriting, and the protection of people

Article 7: All manufacturers, importers, suppliers, distributors or vendors of cigarettes and

tobacco products are forbidden to engage in advertising that represents a person under the age of 21, or a celebrity.

Article 8: Any item of publicity or any advertising produced by a manufacturer, importer, supplier, distributor or vendor of cigarettes and other tobacco products must include the health warning noted in Article 5 of this law.

The health warning that should appear on materials, advertising items and other promotional articles must be printed in indelible and perfectly legible characters, in an area that may not be less than 65% of the space reserve for the advertising itself.

Article 9: Advertising for cigarettes and other tobacco products is prohibited in the print press, on the radio, TV, at the cinema, social networks and through any other communication technology.

Article 10: Posting of advertising is not allowed except on the inside of authorized points of sale. The authorization is subject to conditions that are determined by regulatory provision.

Article 11: All promotional activities concerning cigarettes and other tobacco products available to the general public are prohibited.

Article 12: No advertising of cigarettes or other tobacco products may be undertaken on:

- articles that are mainly sold to young people, or are primarily used by them;
- plastic bags and other packaging items.

Article 13: It is prohibited to distribute samples of cigarettes and other tobacco derivative products.

Article 14: No sponsorship in the name of a brand of cigarettes or tobacco product may be contributed:

- to a sporting, artistic or other kind of event;
- to a team that includes young people;
- to an individual, whether young or adult.

Article 15: No one is allowed to display in public any article of clothing, bag, umbrella, streamer, scarf, or other article that obviously displays the logo or name of a cigarette brand or product derived from tobacco.

Article 16: It is prohibited to cause a young person to participate in an advertisement or any other kind of promotion for cigarettes or other tobacco products.

Article 17: It is prohibited to sell cigarettes and other tobacco products, as well as advertising material to young people.

Article 18: The sale or distribution of cigarettes or any other tobacco derivative product by young people is prohibited.

Chapter 4: Prohibition of the use of tobacco in certain settings

Article 19: It is prohibited to smoke in the following places and vehicles subject to common use:

Unofficial Translation

- pre-school, school and university institutions;
- hospital establishments;
- other health care establishments;
- venues for spectacles, cinemas, theaters, concert halls;
- sports venues;
- libraries;
- elevators;
- bus shelters;
- public restrooms;
- government and public buildings;
- public transport vehicles (buses, taxis and other vehicles transporting two or more persons);
- halls and waiting areas in airports, bus stations and other public transportation facilities;
- common areas in apartment buildings, whether such buildings are cooperatively owned or not;
- tents, pavilions and other similar installations, whether set up temporarily or permanently, that accommodate the public;
- all other enclosed places that accommodate the public.

Notices stating the prohibition of smoking must be prominently displayed.

Article 20: It is incumbent upon the managers or proprietors of places subject to collective use or of means of public transport to see to the strict application of the aforesaid measures by all means available to them to dissuade people from smoking, notably:

- refusal of admission to smokers in establishments or means of transport;
- refusal to serve clients who are smokers;
- setting up a security service and internal surveillance;
- calling for the assistance of law enforcement agents to restrain offenders;
- any other legal means to dissuade people from smoking.

In the event of failure to respect the provisions set forth above, the manager or proprietor of the place subject to common use or of the means of public transport shall bear the fines indicated for such purpose.

The manager or proprietor of places subject to common use or of the means of public transport can provide proof of his attempt to bar a smoker from his establishment or to remind him of the order for the aforementioned modes of transport by calling upon witnesses. In this case, the violation can be imputed to the offender.

Article 21: Places or spaces where smokers must be provided for in:

- maritime and rail transport;
- airports;
- bus terminals, river terminals, maritime and rail terminals;
- hotels, beverage shops, discothèques, nightclubs casinos, restaurants and supermarkets.

Spaces for smokers must be set apart by partitions or walls extending from floor to ceiling, so that they are completely closed off, and must be equipped with a ventilation system to ensure direct extraction of smoke to the outside. These areas are to be indicated by prominently displayed signs.

Chapter 5: Commercialization of tobacco

Article 22: All persons commercializing cigarettes and other tobacco derivative products must post a notice that is prominent and clearly visible, directly at the point of sale or in the immediate environment, specifying that the sale of cigarettes and other tobacco products to young people under the age of 18 is prohibited.

Article 23: It is prohibited to set up or operate a point of sale for tobacco and its derivative products:

- on the property and in the facilities of health care and social service establishments;
- on the property and within the premises or buildings serving for daycare centers, schools, grade schools, high schools, universities, vocational training institutes, adult learning centers or private institutions of instruction;
- on premises intended for sporting, cultural, artistic or leisure activities.

Competent authorities may, as needed, prohibit the operation of points of sale for tobacco and its derivative products in places other than those indicated above, through regulatory acts.

Chapter 6: Measures of prevention against the illegal trade

Article 24: Appropriate measures are to be taken to prevent, combat and suppress the illegal trade in tobacco products, including through oversight and regulation of the logistical chain of tobacco products and the materials used in the manufacture of tobacco products, such as cigarette papers, filters, or other items.

Such measures are also to be taken to make more effective the services of customs, police and other competent enforcement authorities charged with preventing, combating and suppressing all forms of the illegal trade in tobacco, tobacco products or materials used in the manufacture of tobacco products.

Article 25: It is prohibited to all juridical or natural persons, except those provided with a license or permit issued by the competent departments, to engage in any of the following activities:

- a) to manufacture tobacco products;
- b) to manufacture the materials used in the manufacture of tobacco products, such as cigarette papers, filters or other items;
- c) to import or export for a commercial purpose, or to sell wholesale, trade in, store or distribute tobacco, tobacco products or materials used in the manufacture of tobacco products, such as cigarette papers, filters or other items;
- d) to transport commercial quantities of tobacco, tobacco products or manufacturing materials used in the manufacture of tobacco products;
- e) to undertake the primary processing of tobacco.

Article 26: A system of follow-up and tracking is hereby established for tobacco products and materials used in the manufacture of tobacco products manufactured or imported within the national territory.

Article 27: Appropriate markings that are guaranteed and indelible must be placed on:

- a) cases, cartons and packs of cigarettes or other tobacco products containing more than one manufactured or imported unit within the national territory;
- b) all materials used in the manufacture of tobacco products manufactured or imported within the national territory.

Article 28: The appropriate markings applied in the application of Article 27 above must, when scanned, allow for the capture of the following information:

- a) the date and place of manufacture;
- b) the manufacturing unit;
- c) the machine used to manufacture the tobacco products;
- d) the production equipment;
- e) the name of the first buyer who is not affiliated with the manufacturer, the invoice/purchase order number and the statement of payment;
- f) the market in which the product is intended to be sold;
- g) the description of the product;
- h) the customs storage and shipment of the product, if applicable;
- i) the identity of all known subsequent buyers;
- j) the proposed itinerary, date of shipment, destination, point of departure and recipient.

Article 29: The information indicated in Article 28 above must be recorded using the appropriate technology at the time of first shipment by a manufacturer established within the national territory or at the time of importation of the products in question.

Duly registered information must be accessible through a link to the unique identifier that must be applied to the materials used in the manufacture of tobacco products, cases, cartons, packs of cigarettes and other tobacco derivative products.

Duly registered information must be accessible through a link to the unique identifier that must be applied to the materials used in the manufacture of tobacco products, cases, cartons, packs of cigarettes and other tobacco derivative products [*sic*].

Registered information as well as the unique codes making such information accessible must be compiled in an appropriate manner at a central point of the territory designated by a decree of President of the Republic issued by the Council of Ministers.

Information thus compiled must be transferred on a daily basis in an appropriate fashion to the central database through a link or interface.

Article 30: The sale of tobacco, tobacco products or materials used in the manufacture of tobacco products, such as cigarette papers, filters or other items, over the Internet, by means of telecommunications or by any other method of sale based on a new technology is prohibited throughout the entire national territory.

Article 31: A decree issued jointly by the Ministers of Health and of Commerce shall set the procedures for the implementation of the provisions of this chapter.

The Ministries of Health and of Commerce are authorized, each to the extent that it falls within its purview, to issue regulations concerning prevention of the illegal trade in tobacco products based on all applicable protocols and directives of the Framework Convention on Tobacco Control of the WHO.

They must also, on an ongoing basis, conduct campaigns to raise awareness of the regulations and the harmful effects of tobacco, in consultation with the Ministries of Education, Youth Affairs and Communication.

Chapter 7: Measures to protect tobacco oversight policies from commercial interests and other interests.

Article 32: The State shall see to it that activities or attempts by the tobacco industry do not undermine, compromise or destroy the credibility of national and international public health policy for tobacco control. It shall also act to prevent any action enabling commercial interests or other private interests of the tobacco industry to interfere with the development and implementation of the tobacco control policy.

Article 33: The State's relations with the tobacco industry must be guided by the following principles:

- tobacco products are deadly;
- any relationship between the State and/or its representatives with the tobacco industry and with those who undertake to promote its interests must be transparent and justified;
- the tobacco industry and those who undertake to promote its interests must conduct themselves in a responsible and transparent fashion.

Article 34: Any direct or indirect partnership, or any agreement that is impossible to implement or is lacking in binding character entered into with the tobacco industry and with those who undertake to promote its interests, is null and void.

Article 35: No public subsidy or any incentives can be granted or allowed for the growing, production or processing of tobacco or tobacco products.

Chapter 8: Measures to protect the environment and people's health

Article 36: Factories for the manufacture of cigarettes or tobacco derivative products must be set up within the so-called industrial zones.

Before such facilities are installed, they must first be subject to an environmental impact study. Regulatory texts shall determine, as needed, the time periods such factories shall be allowed for compliance with the new legislation.

Chapter 9: Fiscal provisions

Article 37: Tobacco, tobacco products and all other derivative products may not benefit from any tax exemptions.

Article 38: Tobacco and its derivative products are heavily taxed. The provisions pertaining thereto are set forth in the law of Finance.

Chapter 10: Penal provisions

Article 39: Violations of the provisions of this law may not be subject to any negotiation of penalties.

Article 40: Organizations or associations that have been regularly established for at least one year prior to the facts in question, and whose statutory purpose is concerned with tobacco control, the protection of health or the environment, the protection of women's rights, the rights of children, the rights of victims, or any other matter directly or indirectly pertaining to those mentioned above, may exercise the rights recognized for civil parties to file suit in response to violations of this law.

Article 41: Respect for the law does not under any circumstances release manufacturers or distributors from any legal liability for damages caused by their products or by exposure to tobacco smoke.

Article 42: Violators of this law shall be subject to the penalties and fines set forth below:

1) Failure to comply with requirements involving emissions and ingredients of products, as well as any other requirement concerning such products is punishable by imprisonment of from one to five years, and a fine of 10,000,000 to 500,000,000 FCFA.

This penalty can be combined with the confiscation and destruction of products that are not in compliance, revocation of the license, permit, installation permit, operating permit, or other equivalent sanction, the public disclosure of violations and imprisonment, in cases of intentional or deliberate violations.

2) Failure to comply with packaging and labeling rules is punishable by imprisonment of from one to three years, and a fine of 10,000,000 to 100,000,000 FCFA.

The court may, moreover, order the closing of the establishment, revocation of the license, permit, installation permit, operating permit, or other equivalent sanction, as well as the seizure and destruction of the products, for packaging and labeling of materials that are not in compliance with regulations. The court

may also impose, in addition to these penalties, a punishment of imprisonment in cases of intentional or deliberate violations.

3) Failure to comply with provisions concerning advertising, sponsorship, underwriting, and promotion is punishable by imprisonment of from one to three years, and a fine of 5,000,000 to 50,000,000 FCFA, or of only one of these two penalties. This punishment can be combined with the confiscation and destruction of any item or materials of advertising, promotion or sponsorship, as well as publication of the punishment regarding licensing and non-compliance.

These penalties may be doubled based on the importance of the role played by the institution in advertising, promotion or sponsorship.

4) Failure to comply with provisions concerning access to tobacco products (with regard to placement of points of sale and their characteristics, the form of notices and message content, distribution free of charge or by any other means) is punishable by a fine of 500,000 to 5,000,000 FCFA.

5) Failure to comply with provisions concerning the prohibition of smoking in public places, work places and public transport is punishable by a fine of:

a) 1,00,000 [*sic*, i.e., ‘100,000’] to 500,000 FCFA, in cases of infractions committed by an individual;

b) 1,000,000 to 5,000,000 FCFA in cases of infractions committed by a distributor;

c) 5,000,000 to 20,000,000 FCFA in cases of infractions committed by a wholesaler or manufacturer;

d) These penalties may be combined with cancellation of authorization, license or operating permit or other suitable penalty, in cases of infractions committed by a wholesaler or manufacturer.

6) Failure to comply with provisions concerning the sale of tobacco products or any derivative products to children is punishable by a fine of 5,000,000 to 50,000,000 FCFA.

7) Failure to comply with provisions concerning interference by the tobacco industry and its allies is punishable by a fine of 5,000,000 to 50,000,000 FCFA, and/or imprisonment of from 3 months to 2 years if the interference is accompanied by corruption.

The same penalty is applicable to any official or representative of the State who participates, authorizes or tolerates any illicit activity on the part of the tobacco industry.

8) The perpetrators and accomplices of any illegal trade in tobacco products and/or derivative products are liable to a term of imprisonment of from three (03) months to two (02) years, and/or a fine of 20,000,000 FCFA to 300,000,000 FCFA.

This penalty can be combined with the confiscation and destruction of tobacco products that are the result of illegal commercial activities, the revocation of the right to operate, and the disclosure of cases of non-compliance.

9) Any minor caught in the act of consumption of tobacco or a derivative product in the public thoroughfare or in any other place is liable to a penalty of eight (8) hours of work in community service.

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In cases of repeat offenses, this penalty shall be accompanied by a fine that the judge will impose upon the parents.

10) Any infraction not specified in this chapter is punishable pursuant to the laws in force.

Article 43: If a court engaged in the prosecution of an infraction of this law ascertains that the offender has derived financial advantages from the commission of the offense, it may impose upon him, instead of the maximum provided, a supplementary fine whose amount shall be two to five times greater than the amount of such financial benefit.

Article 44: In addition to the various penalties set forth in this law, and bearing in mind the nature of the offense, the court may impose upon the offender all or some of the following measures:

- a) the suspension of any action or activity that could be conducive to the continuation of the offense or its repetition;
- b) the suspension of the sale of tobacco products for a period of six months to one year;
- c) the limitation or cancellation of import or manufacturing licenses;
- d) payment to the State by any person guilty of the offense for all or part of the expenses incurred for measures associated with the implementation of legal requirements;
- e) Payment of any fine imposed by the employees of any company, regardless of the expenses incurred.

Article 45: Proceeds from the fines set forth for the implementation of this law are to be divided as follows:

- 40% to the Treasury;
- 35% to the local community in question;
- 25% to the National Commission for Tobacco Control.

Chapter 11: The National Commission for Tobacco Control

Article 46: A National Commission for Tobacco Control (*Commission Nationale de Lutte Contre le Tabagisme*) is hereby created. This Commission is under the authority of the Government. Its mission is as follows:

- to assist in the drafting and implementation of a national policy for tobacco control;
- to strengthen activities for providing information, education and communication on the harmful effects associated with the consumption of tobacco and the advantages of quitting tobacco;
- to draft and implement programs of training and applied research;
- to provide technical support for actors and institutions involved in tobacco control efforts;
- to identify and report infractions relating to the implementation of this law.

Article 47: The National Commission for Tobacco Control shall see to follow-up and evaluation of regional and international cooperation agreements signed by Gabon with respect to tobacco control.

Article 48: The financial resources of the National Commission for Tobacco Control are comprised of the following:

- State subsidies;
- gifts and bequests;
- its own resources;
- proceeds from fines, pursuant to Article 45 above;
- 2% of duties and taxes levied on revenues from the sale of tobacco and tobacco products.

The credits thus allocated are to be entered into the budget of the State.

Article 49: The composition and procedures for the operation of the National Commission for Tobacco Control are to be defined by decree issued by the Council of Ministers.

Chapter 12: Transitory and final provisions

Article 50: A period of twelve (12) months counting from the date of promulgation of this law is granted to producers, manufacturers and distributors of tobacco and tobacco products for them to enter into compliance with it.

Article 51: The State of Gabon shall cooperate with any State or international body engaged in tobacco control efforts.

Article 52: Decrees issued by the Council of Ministers shall set the procedures for the implementation of this law.

Article 53: This law, which supersedes any previous provisions to the contrary, is to be registered, published on an urgent basis and implemented as a Law of the State.

Done in Libreville, August 21, 2013

By the President of the Republic,

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Ali BONGO ONDIMBA

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Raymond NDONG SIMA

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