

## **Law No. 2006-12 of May 15, concerning tobacco control**

In light of the Constitution of August 9, 1999;

In light of Law No. 2006-06 of April 15, authorizing the ratification of the Framework Convention on Tobacco Control of the World Health Organization;

In light of Ordinance No. 93-13 of March 2, 1993, establishing a code of public hygiene;

The National Assembly has deliberated upon and adopted, and

The President of the Republic promulgates this law whose content is as follows:

### **Chapter I: General provisions**

**Article 1:** The purpose of this law is to accomplish the following things:

- a) to protect the health of the public against the numerous debilitating or fatal illnesses caused by tobacco;
- b) to limit public access to tobacco and shield the public from inducements to use tobacco, and from the tobacco addiction that can result from this;
- c) to raise public awareness on the dangers of tobacco use and exposure to tobacco smoke.

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

- **Tobacco control:** a whole series of strategies to reduce the supply, demand and the harmful effects of tobacco, seeking to improve the health of the public by eliminating or reducing its consumption of tobacco products and the exposure of the latter to tobacco smoke.
- **Illegal trade:** any practice or behavior prohibited by law involving the production, distribution, shipment, display, receiving or possession of tobacco, including any practice or behavior intended to facilitate such activity.
  - **Tobacco products:** all products intended to be smoked, sniffed, sucked or chewed, as long as they are at least partially composed of tobacco.
  - **Promotion-advertising:** any form of communication, recommendation of action or commercial contribution having as its aim, effect, or likely effect to encourage, directly or indirectly, the use of tobacco or of a tobacco product.
  - **Distribution:** sale, giving away for free or any other kind of donation, including sampling of tobacco products.
  - **Public place:** any place, whether enclosed, covered, or not, to which the public has free access, either subject to invitation or payment for admission, including stores, restaurants, bars,

hotels, cinemas, night clubs, stadiums, laboratories, educational institutions, health care institutions, or any other facility providing accommodation for minors.

- **Minor:** any human being under eighteen years of age, unless the age of majority is attained sooner as a result of national legislation applicable to such person.
- **Public transport:** any means of transportation for people, including elevators to which they have access, whether free of charge or through payment.
- **Passive smoke:** the inhalation of tobacco smoke by non-smokers who are near smokers in the same place.
- **Emission:** any substance or combination of substances produced by lighting a tobacco product.

## **Chapter II: Content, labeling and packaging**

**Article 3:** Tobacco products to be manufactured and those intended for sale must be subject to be defined by regulatory enactment.

**Article 4:** It is prohibited to package a tobacco product in a manner not in compliance with this law and its regulations.

Packs or cartons and any kind of outer packaging of tobacco products for sale in Niger must display a health warning covering at least 30% of the surface of the front and back thereof. Such warnings may be shown in the form of drawings or pictograms.

The health warning is to be determined by administrative order of the Minister of Public Health.

**Article 5:** Packs or cartons or any other kind of outer packaging of tobacco products must compulsorily include statements concerning the composition of the product, the lot number, date of manufacture, the expiration date for use, the name and address of the manufacturer.

The manufacturer or importer is obliged to submit to the Ministry of Public Health in accordance with regulatory form and procedures, a prospectus including the information required by regulations on the product and its emissions, as well as on the dangers to health and the effects on health associated with the use of the product and its emissions.

Information concerning tobacco products must be objective, coherent, precise, clear, and up to date, and indicate the undesirable effects of their use.

The manner for the implementation of this article is to be set by administrative order of the Minister of Public Health.

**Article 6:** Any packaging or labeling of tobacco products that contributes to the promotion of a tobacco product by any means that are likely to give a false impression regarding the characteristics, health effects, risk or emission of the product, including descriptive terms, commercial brands, figurative signs or others that give the impression, directly or indirectly, that a tobacco product is less harmful than others, is hereby prohibited.

### **Chapter III: Promotion-Advertising-Underwriting-Sponsoring**

**Article 7:** Any kind of advertising, publicity or propaganda in favor of an institution, a service, an activity, a product or an article other than tobacco, that by its graphic appearance, its presentation, the use of a brand, an advertising emblem or any other distinctive sign calls to mind tobacco or a tobacco product, is hereby prohibited.

**Article 8:** Any operation of underwriting or sponsorship is prohibited that has as its purpose or effect the promotion, or direct or indirect advertising of a tobacco product.

The following is also prohibited:

- to manufacture, distribute or sell candies, toys or any other object that is shaped like, or calls to mind, a tobacco product;
- to provide tobacco products free of charge, or in exchange for a product or service or the provision of a service;
- to provide an accessory on which there appears an element of the brand of a tobacco product free of charge, or in exchange for the purchase of a product or the provision of a service;
- for the manufacturer, importer, or retailer to offer or give away, directly or indirectly, in exchange for the purchase of a tobacco product, particularly through a gift to the purchaser or a third party, a premium, a discount, or the right to participate in a drawing, a lottery or a contest.

### **Chapter IV: Access to tobacco products**

**Article 9:** It is prohibited to place points of sale for tobacco products inside educational institutions, healthcare institutions, athletic facilities, public, semi-public, or private offices.

**Article 10:** Points of sale for tobacco products and the characteristics of places intended to accommodate them are defined by joint administrative order of the Minister of Public Health and the Minister of Commerce.

Points of sale must be indicated by posters mentioning the dangers associated with the consumption of tobacco.

The form of the posters and the content of the message are determined by joint administrative order of the Minister of Public Health and the Minister of Commerce. Vendors of tobacco must register a declaration of existence before the administrative authority of their place of residence.

**Article 11:** Any form of free distribution of tobacco products to the public is hereby prohibited.

It is also prohibited to provide or allow the provision of tobacco products through a vending machine.

### **Chapter V: Protection against exposure to tobacco smoke**

**Article 12:** It is prohibited to smoke in all public places and indoor work places, except for those places reserved for smokers.

The conditions for the implementation of this article are to be set by a decree issued in the Council of Ministers.

**Article 13:** Smoking is prohibited on any means of public transportation.

### **Chapter VI: Penal provisions**

#### **Section 1: Investigation and verification of infractions of tobacco legislation**

**Article 14:** The health police created by Ordinance n°93-13 of March 2, 1993, establishing a Code of public hygiene is charged with investigating and verifying infractions of tobacco legislation as attested by arrest reports.

**Article 15:** Agents of the health police, either attired in their uniform or equipped with distinctive signs indicating their status, may go into industrial facilities, or any other establishment, to investigate infractions of tobacco legislation.

These agents must see to it that they are accompanied by an Officer of the judiciary police, or failing that, an agent of the judiciary police.

These visits are to be conducted in accordance with the Code of Penal Procedure.

**Article 16:** In the exercise of their duties, agents of the health police can, on the basis of Article 15, directly requisition police assistance.

**Article 17:** The agents of the health police can be requisitioned by the office of the prosecutor of the Republic, the examining magistrate and the officers of the judicial police to assist with enforcement.

**Article 18:** The agents of the health police are to remand to the custody of an officer of the judicial police any individuals that they catch in the act of committing an offense.

**Article 19:** The provisions of Articles 48 to 60 of the Code of Penal Procedure are to be applied in the case indicated in Article 18.

**Article 20:** The agents of the health police shall forward to their superiors the arrest reports attesting to the infractions indicated in Article 15.

Unless settlements are reached, these arrest reports are to be forwarded immediately to the office of the prosecutor of the Republic.

## **Section 2: Settlements**

**Article 21:** The Minister of Public Health, or the person delegated by him, is authorized to settle all infractions verified, except for those concerning products in violation of the rules set forth in Article 3.

**Article 22:** The right to settlement indicated in Article 21 is to be implemented as follows:

- for infractions of the provisions of Articles 3 or 5: ten million francs (10,000,000 FCFA) to one hundred million francs (100,000,000 FCFA);
- for infractions of the provisions of Articles 7 or 8: five million francs (5,000,000 FCFA) to fifty million francs (50,000,000 FCFA);
- for infractions of Article 9: one hundred thousand francs (100,000 FCFA);
- for infractions of the provisions of Articles 10 or 11: one hundred thousand francs (100,000 FCFA) to one million francs (1,000,000 FCFA);
- for infractions of the provisions of Articles 4 or 6: two million five hundred thousand francs (2 500,000 FCFA) to twenty five million francs (25,000,000 FCFA);
- for infractions of Articles 12 or 13: five thousand francs (5,000 FCFA).

**Article 23:** Upon acceptance of the settlement by the offender, the Minister of Public Health, or the person designated by him for such purpose, shall remit to the Treasurer General a notice of settlement indicating the debtor, the amount, and the date of the settlement.

Upon the lapse of a period of fifteen (15) days counting from the date of receipt of such notice, the Treasurer General shall report to the Minister of Public Health, or the person delegated by him, the clearance of the settlement, or the default thereof.

In the event of a refusal to accept the proposed settlement, the authorized agent shall call upon Law Enforcement Authorities and order the complete or partial seizure of the products put up for sale by the offender, who shall receive a notice of seizure.

The merchandise shall remain sequestered until the payment of the amount of the settlement.

If the offender has not paid the proposed settlement within seventy-two (72) hours, the merchandise is to be put up for sale; the proceeds of the sale shall revert to the offender, with the deduction of the settlement and the costs of the seizure and arranging the sale, for an amount up to a maximum of 20% of the proceeds of the sale, unless the Minister of Public Health or the person delegated by him or by the court orders it to be raised.

The scope and conditions concerning the delegation of authority with regard to the settlement are to be set by decree in the Council of Ministers pursuant to the proposal of the Minister of Public Health.

### **Section 3: Actions and prosecutions**

**Article 24:** Actions and prosecutions are to be conducted directly by the director of the health police, or his representative, before the appropriate venues, without impairment to the right of the Office of the Prosecutor of the Republic concerning these jurisdictions.

The director of the health police, or his representative, may present the case to the court and state his conclusions.

**Article 25:** Civil society associations whose institutional purpose is concerned with tobacco control, that have been duly recognized and operating for at least one (1) year at the time of the facts at issue are entitled to file civil actions for infractions of this law.

**Article 26:** Public civil actions concerning infractions of tobacco legislation are barred at the end of three (3) years if a more serious offense is involved, and at the end of one (1) year if a lesser offense is involved.

This period of prescription begins counting from the notification of the arrest report verifying the infraction.

**Article 27:** Subject to the amendments provided by this law, the procedure before the criminal courts enforcing common law is applicable to infractions of tobacco legislation.

**Article 28:** Judgments handed down in matters concerning tobacco legislation are to be reported to the director of the health police, or his representative.

The latter may, in consultation with the Office of the Prosecutor of the Republic, file appeals of judgments handed down in the first instance.

Litigants in civil suits may also file appeals of such judgments.

**Article 29:** The manufacturer and distributor of a tobacco product are civilly liable for damages caused by the consumption of such product.

The conditions for the implementation of this article are to be fixed by a decree issued in the Council of Ministers.

#### **Section 4: Sanctions**

**Article 30:** Any infraction of Articles 3 or the 1st item under Article 5, shall be punished by imprisonment of ten to thirty years, and a fine of fifty million francs (50,000,000 FCFA) to five hundred million francs (500,000,000 FCFA), or of one of these two punishments only.

Under no circumstances may guilty parties benefit from provisions concerning attenuating circumstances and reprieve.

Pursuant to Article 25 of the Penal Code they can be deprived of all or part of the rights mentioned in Article 21 of the aforesaid code.

The closing of the establishment or industrial facility can be ordered for a period of at least fifteen (15) days, and at most, thirty (30) days.

In the event of a new conviction, the permanent closing of the establishment or industrial facility will be ordered.

In addition to the penal sanctions indicated, products that are unsuitable for consumption shall be destroyed pursuant to the procedures in force.

**Article 31:** Any infraction of Articles 7 or 8 will be punished by imprisonment from five (5) years to less than ten (10) years, and a fine of five million (5,000,000 FCFA) to fifty million francs (50,000,000 FCFA), or one of these two punishments only.

**Article 32:** Any infraction of Article 9 is subject to a minimum prison sentence of one (1) year, and a fine of five hundred thousand francs (500,000 FCFA) to five million francs (5,000,000 FCFA), or of one of these two punishments only.

**Article 33:** Any violation of the provisions of Articles 10 or 11 shall be punished by a fine of five hundred thousand francs (500,000 FCFA) to five million francs (5,000,000 FCFA).

**Article 34:** Offenders guilty of violating the provisions of Articles 12 or 13 shall be punished by a fine of five thousand francs (5,000 FCFA).

**Article 35:** Any violation of Articles 4 or 6 will be punished by imprisonment from (1) year to five (5) years, and a fine of ten million francs (10,000,000 FCFA) to one hundred million francs, or of one of these two punishments only.

**Article 36:** In the event that a violation of this law is committed by a legal entity, the representative thereof, or any other person who has authorized or acquiesced in the offense shall be considered a co-violator of the violation, and will be susceptible to the punishment provided for the infraction in question, regardless of whether or not disciplinary action has been taken against the corporate entity.

**Article 37:** Each day in the course of which an infraction is committed or continues to occur shall be considered a separate infraction.

**Article 38:** The jurisdiction in question may in all cases order the posting of the judgment stating the conviction for infractions to the law on tobacco in places that it shall determine, or its insertion in whole or excerpted in one or several newspapers, all at the expense of the convicted offender.

It may also order the confiscation or destruction of the objects seized.

**Article 39:** In cases of repeat offenses, the punishments provided for under this law shall be doubled.

**Article 40:** The court concerned with the prosecution of an infraction to this law may, if it ascertains that the offender has derived financial advantage from the commission of the offense, may impose upon the offender, over and above the maximum punishment, a supplementary fine in the amount it deems equivalent to such advantage.

**Article 41:** Over and above any punishment provided for by this law, and bearing in mind the nature of the offense, the court may impose upon the offender all or part of the following penalties:

- suspension of any action or activity that could give rise to the continuation of the infraction or repeat offense;
- suspension of the sale of tobacco products, for a minimum period of one year, in the event of repeat offenses involving a violation of Articles 8, 10 or 11;
- the requirement of a security deposit or the posting of a sum of money in guarantee of compliance with the sentence handed down;
- compensation to the State, in whole or in part, for expenses incurred in the measures taken for the case resulting from the activities leading to conviction;
- to allocate a sum of money to support such research on tobacco products as they may deem appropriate.

**Article 42:** Proceeds from fines imposed in the application of this law are to be distributed as follows:

- 40% to the public Treasury;
- 35% to the local Community;
- 25% to the agents of the health police.



**Chapter VII: Transitory and final provisions**

**Article 43:** The terms for the implementation of this law are to be set by a decree issued in the Council of Ministers at the proposal of the Minister of Public Health.

**Article 44:** Any previous provisions contrary to this law are hereby rescinded, and it is to be published in the *Journal Officiel de la République du Niger*, and executed as a law of the State.

Done in Niamey, on May 15, 2006

Le President of the Republic

**MAMADOU TANDJA**

The Prime Minister

**HAMA AMADOU**

The Minister of Public Health

**ARY IBRAHIM**