

REPUBLIC OF SENEGAL

**MINISTRY OF HEALTH
AND SOCIAL ACTION**

Law concerning the manufacture, packaging, labeling, sale and use of tobacco

EXPLANATORY MEMORANDUM

Among the concerns of the World Health Organization and all of its states members, today, the regulation of the production, sale and consumption of tobacco and tobacco products figures prominently.

According to this organization, tobacco use constitutes a public health problem, and the consumption of tobacco is at present the primary cause of avoidable death, with five million deaths per year; if the projections of the WHO remain unchanged, starting in 2020, ten million people shall die annually as the result of tobacco use, seventy percent (70%) in developing countries.

Indeed, tobacco use is a risk factor in the emergence of cancers, the most frequent of which are cancer of the lung, the breast and the bladder. It is also the source of cardiovascular diseases such as hypertension, coronary insufficiency, myocardial infarction and stroke.

Furthermore, Pregnant women who smoke place the fetus at risk, being susceptible to premature delivery, repeated miscarriage, and the infants to low birth weight and mental defects. Similarly, tobacco use by parents causes respiratory infections, asthma and sudden infant death syndrome, cancers and the emergence in adulthood of ailments related to tobacco.

Beyond its effects on health, tobacco also has recognized socio-economic effects. Indeed, it not only affects those who use it, but also the smoker's family, surrounding people and society as a whole. Chronic disabilities prevent full performance of work and boost absenteeism.

This situation is all the more distressing since the phenomenon increasingly affects children and young people in school, college and athletic environments.

Aware of the harmful health effects of tobacco use and the financial burden that health care represents for a country's economy, lawmakers exhibited a firm will expressed by the vote for Law No. 81-58 of November 9, 1981 concerning the prohibition of advertising for tobacco and its use in certain public places. But this engagement, hailed at the time by the entire international community, has been challenged by the adoption of Law No. 85- 23 of February 25, 1985 amending the 1981 law.

However, through Law No. 2004 – 36 of December 14, 2004, Senegal renewed its commitment to tobacco control by ratifying the Framework Convention on Tobacco Control of the World Health Organization adopted at Geneva on May 21, 2003. This convention has as its purpose the protection “*of present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke.*” It offers “a framework for tobacco control measures to be implemented by the Parties at the national, regional and international levels in order to reduce continually and substantially the prevalence of tobacco use and exposure to tobacco smoke.”

Through this ratification, Senegal has assumed the obligation to incorporate the aforesaid Convention into domestic law with provisions that tend towards the following:

- To protect the public against exposure to tobacco smoke by prohibiting smoking in places that accommodate the public;
- To prohibit advertising, promotion and sponsorship of tobacco and its products;
- To require the packaging and external labeling of tobacco products to display the pertinent health warnings and not contribute anymore to their advertising or to their promotion;
- To strengthen the campaign against the illegal trade in tobacco products;

Such is the summary of this draft bill.

REPUBLIC OF SENEGAL

One People – One Purpose – One Faith

Law No. 2014-14
concerning the manufacture,
packaging, labeling, sale
and use of tobacco

After deliberating, the National Assembly has adopted at its session of Friday 14, 2014, the President of the Republic promulgates the law whose content is as follows:

Preliminary Chapter – Principles and definitions

Section 1 - Principles

Article One: The State formally prohibits any interference by the tobacco industry in national health policy.

Article 2: The State undertakes to implement policies, strategies, regulations, programs and all fiscal measures relating to taxes or prices with a view towards contributing to tobacco control.

Section 2 - Definitions

Article 3: For the purposes of this law, the following definitions shall apply:

Illegal trade: any practice or conduct prohibited by law involving the production, shipment, receipt, possession, display, distribution, sale or purchase, including therein any practice or conduct intended to facilitate such activity;

Marking: the combination of required information that must appear on all packs and cartons of tobacco products and all forms of external packaging of such products in order to determine their origin;

Packaging: packages containing tobacco products, in a particular quantity, intended for consumers.

Labeling: the combination of information, whether required or not – terms, statements, indications, trademarks, images or figurative signs, having to do with the tobacco product and appearing on all external packaging of the product.

Tobacco industry: the companies engaged in manufacturing and wholesale distribution of tobacco products, and the importers of such products

Distribution: sale or giving away wholly or partly free of charge, or any other kind of donation, including the sampling of tobacco products;

Emission: any substance or combination of substances produced by the combustion of a tobacco product;

Secondary smoke: smoke produced by the combustion of a cigarette or other tobacco product, to which is generally added the smoke exhaled by the smoker or smokers;

Smoking: holding or using a lit tobacco product, whether or not the smoke is actively inhaled or exhaled;

Smoking room: a closed and insulated room exclusively intended for the consumption of tobacco products and in which no provision of service is made. No tasks of upkeep or maintenance may be performed there without the air there having been refreshed, in the absence of any occupants, for at least one hour.

Public place: a place where everyone is allowed to be, without distinction, and for which, because of this characteristic, the law enforcement powers of the administrative authority are more extensive than in simple private properties;

Place open to the public: All buildings, places and premises in which people are admitted, whether free of charge, or on the basis of remuneration or membership of any kind, or in which meetings are held open to all comers or subject to invitation, whether paying or not. The public is considered to consist of all persons admitted to the establishment for any reason whatever, as well as personnel;

Work place: any place used by one or several persons in the course of their work, or paid or volunteer employment, including outbuildings used for such purpose;

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

Minor: any person of either sex who has not yet reached the age of 18;

Sponsorship: any form of contribution of any kind whatsoever, paid or not, direct or indirect, to any event or activity, and having as its purpose, effect or likely effect the direct or indirect promotion of a tobacco product or the use of tobacco;

Tobacco products: any products manufactured entirely or partially from leaf tobacco as its primary material, and intended to be smoked, sniffed, sucked, or chewed;

Advertising for tobacco and promotion of tobacco: any form of communication, recommendation of an action or commercial contribution having as its purpose, effect or likely effect the direct or indirect encouragement of the use of tobacco or a tobacco product;

Tobacco: an aromatic plant of the *solanaceae* family, tall and with large alternating leaves, containing a toxic alkaloid, nicotine. Its leaves are dried and prepared to manufacture products to be smoked, sniffed, sucked or chewed.

Public transportation: any means of transport for people, including elevators, to which one has access free of charge or in exchange for payment;

Chapter One. - Manufacture, packaging and labeling of tobacco products

Section I. - Composition

Article 4. - Tobacco products, regardless of what type they may be, must in their composition conform to the standards defined by the legal or regulatory provisions in force.

The government shall take measures concerning tests and the analysis of the composition and emissions of tobacco products, and shall establish an agency for the oversight of such standards.

Article 5. - Manufacturers as well as importers of tobacco are required to notify government authorities on an annual basis of any information concerning the composition and emissions of tobacco products.

Section 2. - **Packaging and labeling of tobacco products**

Article 6. - Each pack or carton of tobacco products and all forms of external packaging and labeling of such products must display, in indelible characters, health warnings in the form of text and color images describing the harmful effects of tobacco consumption, and covering at least 70% of the main surfaces (front and back) of the package of tobacco and tobacco products and external packaging.

The procedures for implementation of the provisions in the foregoing sub-paragraph are to be set by decree.

Article 7. - It is prohibited for manufacturers to print information concerning the ingredients and emissions of the tobacco on the different kinds of packaging and labeling of tobacco products.

Such information must be replaced by messages and images in color describing the harmfulness of the ingredients and emissions, as indicated in Article 6.

Article 8. - Any packaging or labeling of tobacco products that contributes to the promotion of a particular product by any means likely to give an erroneous impression regarding the characteristics, effects on health, risk or emissions of the product, including descriptive terms, trademarks, figurative signs or others that directly or indirectly give the erroneous impression that one tobacco product is less harmful than others is prohibited.

Packaging and labeling must not under any circumstances contain terms such as “low tar content,” “light,” “ultra-light,” or “mild,” in any language at all.

Chapter II. - **Advertising, promotion and sponsorship**

Section 1. - Advertising and promotion

Article 9. - Direct or indirect advertising and promotion of tobacco, its products and derivatives and of the companies that manufacture, sell, or distribute it is prohibited:

- by radio and TV broadcasts, by recordings, by expressions in the print press or media using information and communication technology;
- by projections or announcements in places of spectacles or other public places, or places open to the public;
- in posters, billboards, brochures or signs, whether illuminated or not;
- by signs and panels that do not have as their purpose the indication of tobacco shops;
- and by any other means of communication intended to be read, seen, or heard by more than one person at a time, as well as when individual transmissions are directed to several persons.

The conditions for the use of panels and signs indicating tobacco shops are to be set by regulatory provision.

Article 10. - Advertising and promotion of an item or product other than tobacco or tobacco products must not, by its vocabulary, graphic appearance, shape, color or in any other way, constitute indirect or disguised publicity or advertising, by calling to mind tobacco or tobacco products.

Article 11. - It is prohibited to offer, give away or distribute, for free or otherwise, objects bearing the name, the brand or the advertising emblem of a tobacco product.

Article 12. - It is prohibited to offer, give away or distribute, for free or otherwise, tobacco or tobacco products.

Article 13. - No kind of advertising for tobacco or tobacco products may be undertaken using articles of packaging or any other promotional materials.

Section 2. - Sponsorship

Article 14. - All operations of sponsorship are prohibited if it is their intent or effect to seek the promotion or direct or indirect advertisement of tobacco or a tobacco product.

The following is also prohibited to manufacturers, importers, distributors and retailers:

- to manufacture, distribute free of charge or sell candies, toys or any other object with the shape of a tobacco product or calling to mind a tobacco product.
- to provide a tobacco product in exchange for the purchase of a product or the provision of a service;
- to provide an accessory on which there appears an element of the brand of a tobacco product in exchange for the purchase of a product or the provision of a service;
- to offer or give directly or indirectly to a purchaser or to a third party something in exchange for the purchase of a tobacco product, such as a gift, premium, discount or the right to participate in a drawing, lottery or contest.

Article 15. - The following is prohibited:

- for any producer, manufacturer or retailer of tobacco or tobacco products to give its sponsorship to athletic or cultural events;
- for any organizer or participant in such events to accept such sponsorship;
- on the occasion of, or during a cultural or athletic event, to cause to appear, in any manner whatsoever, the name, brand or advertising emblem of a tobacco product or the name of a producer, manufacturer or retailer of tobacco or tobacco products.

Chapter III. - Access to tobacco products

Article 16. - It is prohibited to sell or offer tobacco and tobacco products in pre-school, school, vocational institutes, university institutions, as well as in

healthcare institutions, athletic and cultural infrastructures, and government offices.

It is also prohibited to sell tobacco and tobacco products in the immediate vicinity of such establishments, infrastructures and government offices, within a radius of two hundred (200) meters.

Article 17. - It is prohibited to sell or provide to minors or to have minors sell or have them provide tobacco or any tobacco product.

Chapter IV. - Protection against exposure to tobacco smoke

Article 18. - It is prohibited to smoke in public places or places open to the public, or places for common use, and in any place that constitutes a work place, as well as vehicles of public transportation, particularly:

- In any enclosed or covered place that accommodates the public or constitutes a work place;
- In vehicles of public transportation;
- In structures housing pre-school establishments, schools, vocational training centers, institutions of higher learning, and health care institutions, as well as facilities intended for hospitality or accommodation.
- In religious sites.

The ban on smoking must be indicated by prominently posted signs stating “Smoking prohibited,” or “Non-smoking area.”

Article 19. - An enclosed and insulated smoking room can be set up in the following places:

- Hotels, inns and guest houses
- Restaurants
- Airports

Smoking rooms must comply with the following requirements:

- They must be exclusively reserved for persons above the age of 18;
- They must have prominent signs stating, “Area reserved for smokers. Access prohibited for smokers under the age of 18” at the entrance of such spaces;

- They must be equipped with a device for extraction of the air by mechanical ventilation, permitting refreshment of a volume of air at least ten times the volume of the smoking room per hour. This device is to be entirely separate from the ventilation or climate control system of the building. The premises must be maintained under continuous negative pressure of at least five pascals with respect to the adjoining rooms;
- They must be fitted with an automatic closing door without the possibility of opening unintentionally;
- They must not constitute a passageway between other spaces;
- They must have a surface area equal to no more than 20% of the total surface area of the establishment, without exceeding 35 m².

The smoking room is to be an enclosed and insulated room, intended exclusively for the consumption of tobacco products and in which no service is to be provided. No tasks of upkeep or maintenance may be performed there without the air there having been refreshed, in the absence of any occupants, for at least one hour.

Chapter V. - Illicit trade in tobacco products and markings

Article 20. - The manufacture and sale of tobacco and tobacco products are subject to prior authorization, in accordance with conditions set by decree.

Article 21. - Tobacco products must be subject to markings pursuant to the conditions set by decree.

Chapter VI. Sanctions.

Article 22. - Anyone who manufactures tobacco products in violation of manufacturing standards shall be subject to a punishment of five to ten years imprisonment, and a fine of 50,000,000 to 500,000,000 FCFA, or to one of these two penalties.

Article 23. - Anyone who packages tobacco in violation of the prescribed packaging standards shall be subject to a punishment of one to three years imprisonment, and a fine of 10,000,000 to 100,000,000 FCFA, or to one of these two penalties.

Article 24. - Anyone who infringes provisions concerning advertising, underwriting, sponsorship, and promotion of tobacco and tobacco products

shall be subject to a punishment of one to three years imprisonment, and a fine of 50,000,000 to 200,000,000 FCFA, or to one of these two penalties.

The penalties are doubled when the targeted audience consists of minors.

Article 25. - Anyone who infringes provisions concerning access to tobacco products such as: placement at points of sale and their characteristics, the form of signs, message content, free distribution or in any other way, shall be subject to a punishment of a fine of 500,000 to 5,000,000 FCFA.

This punishment will be a fine of one million (1,000,000) to ten million (10,000,000) FCFA when the access is provided to minors.

These punishments are doubled in cases of repeat offenses, and the court may also order the destruction of the forbidden goods, accessories or products.

Article 26. - Anyone who violates the ban on smoking in public places or places open to the public shall be subject to a punishment of a fine of 50,000 to 100,000 FCFA. For the application of this paragraph, ordinary criminal court is competent.

The offense indicated in the following paragraph may give rise to immediate payment of a lump-sum fine of 5,000 FCFA delivered to the agent issuing the summons.

In the event of refusal to pay the fine, procedures pursuant to the provisions of Articles 519 and following of the Code of Penal Procedure are to be instituted. These provisions are to be modified as a matter of ordinary law by the effects of subsequent amendments of the aforementioned articles of the Code of Penal Procedure.

Operators or persons in charge of places in which smoking is prohibited, must take all measures to see to it that the law is obeyed, including the prominent posting of clear signs for enforcement as defined by ministerial order, subject to a fine of 150,000 to 300,000 FCFA.

Article 27. - Anyone who illicitly commercializes tobacco and tobacco products shall be subject to a punishment of five to ten years imprisonment, and a fine of 100,000,000 to 500,000,000 FCFA, or to one of these two penalties.

Article 28. - Anyone who fails to undertake required marking shall be subject to a punishment of 20, 000,000 to 40,000,000 FCFA.

Article 29. - In the cases indicated in Articles 22, 27 and 28, the court may, moreover, order the temporary closing of the establishment, as well as the destruction of the products that are not in compliance.

Article 30. - Corporate entities other than the State on whose account, or for whose benefit, an infraction indicated by this law has been committed by one of its agencies or representatives, are to be punished by a fine of an amount equal to five times that incurred by natural persons, without impairment to their conviction as perpetrators or accomplices of the same acts.

Corporate entities other than the State may, moreover, be sentenced to one or several of the following punishments:

- Dissolution, if they were created for the purpose of committing the incriminated acts;
- Definitive or temporary closing for a period ranging from six months to one year for the establishments, or for one of the company's establishments that served to commit the incriminated acts;
- Confiscation of the asset that served or was intended for the commission of the offense, or that is the product thereof;
- The posting of the judgment handed down, or dissemination thereof in the print press, or by any means of audiovisual communication, at the expense of the juridical person in question.

Article 31. - In all cases of conviction for violations of this law, jurisdictions are to order the confiscation of any goods, gains or revenues derived from the products resulting from such offense, for the benefit of the public treasury and, in addition to the maximum allowed, to impose a fine equal to the amount of such gains.

Article 32. - Natural persons guilty of violations of this law may also, depending on the nature of the aforesaid violations, incur the following supplementary penalties:

- Prohibition of any activity that might give rise to the continuation of the violation;

- The suspension of the sale of tobacco products for a period of six months to one year.

Article 33. - Associations in good standing and recognized for at least one year on the date of the facts in question, and whose statutory purpose has to do with tobacco control, may exercise the rights recognized for civil parties to take legal action.

Article 34. - Manufacturers, distributors or any other persons involved in the occurrence of damage caused by the consumption of tobacco products shall be liable for their part in the incriminated acts.

Chapter VII . – Final provisions

Article 35. - The procedures for the implementation of this law are to be set by regulatory provision.

Article 36. - All provisions at variance with this law are hereby rescinded, notably Law n°81 – 58 of November 9, 1981, concerning the prohibition of advertising for tobacco and its use in certain public places, as amended by Law n° 85 – 23 of February 25, 1985.

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

Done in Dakar, on **March 28, 2014**

[illegible signature]

Macky SALL

By the President of the Republic
The Prime Minister

[illegible signature]

Aminata TOURE