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NATIONAL TOBACCO CONTROL ACT, 2015



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NATIONAL TOBACCO CONTROL ACT, 2015

ACT No. 9

AN ACT TO REGULATE AND CONTROL THE PRODUCTION, MANUFACTURE, SALE,
ADVERTISING, PROMOTION AND SPONSORSHIP OF TOBACCO OR TOBACCO PRODUCTS
IN NIGERIA ; AND FOR RELATED MATTERS.

[26th Day of May, 2015]

Commence-
ment.

ENACTED by the National Assembly of the Federal Republic of Nigeria—

PART I—OBJECTIVES

1. The objectives of this Act are to—

Objectives.

(a) protect present and future generations of Nigerians and residents of Nigeria from the devastating health, social, economic, and environmental consequences of use of or exposure to tobacco or tobacco products and exposure to, tobacco or tobacco product smoke ;

(b) give effect to the obligations to protect citizens against tobacco or tobacco product-related harms in the promotion of health and other human rights that Nigeria as a party to the World Health Organisation (WHO) Framework Convention for Tobacco Control and other related treaties to which Nigeria is a party has agreed to undertake, including the—

- (i) Convention on the Rights of the Child,
- (ii) International Covenant on Economic, Social and Cultural Rights,
- (iii) International Covenant on Civil and Political Rights,
- (iv) Convention on the Elimination of all forms of Discrimination against Women,
- (v) African Charter on Human and Peoples' Rights,
- (vi) other relevant regional and international treaties,
- (vii) Constitution of the Federal Republic of Nigeria, and
- (viii) all other applicable legislations ;

(c) promote and protect Nigerians and residents' rights to health, life, physical integrity, safe and healthy workplaces, and other rights adversely impacted by tobacco or tobacco product smoke exposure ;

(d) provide equal protection for all workers in the tobacco or tobacco product industry, regardless of where they work, and all population groups ;

(e) discourage smoking initiation, encourage stoppage of tobacco or tobacco product smoking and reduce tobacco or tobacco product consumption through the measures provided in this Act, including through behavior and norm changes brought about by smoke-free environments ;

(f) inform consumers of the health consequences, addictive nature, and mortal threat posed by tobacco or tobacco product consumption and exposure to tobacco or tobacco product smoke ;

(g) build up and make knowledge available to consumers and the populace at large on the harmful effects, risks and specific harm of tobacco or tobacco product use and exposure to tobacco or tobacco product smoke ;

(h) discourage tobacco or tobacco product use and encourage cessation among users, including through product packaging and labeling ;

(i) prevent or substantially reduce the accessibility of tobacco or tobacco products to young people ;

(j) ensure tobacco or tobacco products are not designed in a way that makes them more addictive or attractive, especially to persons who are below 18 years of age, or in ways that may undercut any of the stated objectives of this Act ;

(k) ensure that any designated regulatory authority is adequately empowered to regulate tobacco or tobacco products and their testing and to require the disclosure of information about tobacco or tobacco products to the government in order to effectively exercise regulatory powers ;

(l) ensure tobacco or tobacco products, their packaging and labeling do not mislead consumers, promote tobacco or tobacco product use or use of the product, or undermine health warning requirements ; and

(m) fulfill the State's obligation under Article 5.3 of the WHO Framework Convention on Tobacco Control aimed at ensuring that tobacco or tobacco product control policies are implemented over and above any contrary interest of commercial and other vested interests of the tobacco industry on account of the inherent and irreconcilable conflict of interests between the goals of public health policies for tobacco or tobacco product control and the interests of the tobacco or tobacco product industry, arising from the deadly nature of tobacco or tobacco products.

PART II—NATIONAL TOBACCO CONTROL COMMITTEE AND THE TOBACCO CONTROL UNIT

Establishment
of National
Tobacco
Committee.

2.—(1) There is established the National Tobacco Control Committee (in this Act referred to as “the Committee”) which shall consist of—

(a) a person appointed, as Chairperson by the Minister, who shall be the Chief Executive of the Committee ;

(b) the Director of Public Health, of the Federal Ministry of Health ;

(c) the National Coordinator of National Tobacco Coordinating Desk of the Federal Ministry of Health ;

(d) a representative each of the following, not below the rank of a Director in the Public Service of the Federation—

- (i) Justice,
- (ii) Environment,
- (iii) Agriculture,
- (iv) Education,
- (v) Nigeria Customs Service,
- (vi) National Agency for Food and Drug Administration and Control,
- (vii) National Drug Law Enforcement Agency,
- (viii) Consumer Protection Council, and
- (ix) Standards Organization of Nigeria ;

(e) the Director National Centre for Disease Control ;

(f) a representative of any tobacco control civil society organization or group appointed by the Minister ;

(g) a representative of the Manufacturers Association of Nigeria ; and

(h) a person who is appointed on such terms and conditions as may be determined by the Committee, to serve as Secretary to the Committee.

(2) A member of the Committee shall not be affiliated in any manner whatsoever with the tobacco industry or subsidiaries, companies or entities of corporate bodies in the tobacco industry as may be specified in regulations or policy, including any person or entity working on behalf of or to further the interests of the tobacco industry.

(3) The Chairperson of the Committee shall, within 90 days of the constitution of the Committee, convene the first meeting of the Committee.

(4) A member of the Committee other than an ex officio member shall hold office for a period of 3 years, subject to re-appointment for a further term of 3 years.

3. A member of the Committee may—

(a) at any time, resign from office by notice in writing to the Minister ;

(b) be removed from office by the Minister if the member is—

(i) absent from 3 consecutive meetings of the Committee without any reasonable excuse or the permission of the Chairperson,

(ii) convicted of an offence involving dishonesty,

(iii) incapacitated by reason of physical or mental illness from performing his or her duties,

(iv) adjudged bankrupt, or

Cessation of
Membership
of
Committee.

(v) discovered to be directly or indirectly affiliated with the tobacco industry or any subsidiary company of the industry, including any person or entity working on behalf, of or to further the interests of, the tobacco industry.

Quorum and
Committee's
proceedings.

4.—(1) The quorum at a meeting of the Committee shall be one-third of total members including the Chairperson.

(2) The Chairperson shall preside at every meeting of the Committee provided that in the absence of the Chairperson the members present shall elect one of the members present at that meeting to preside over the meeting.

(3) Unless a unanimous decision is reached, a decision on all matters before the Committee shall be by a majority of the votes of the members present and in the case of equality of votes, the person presiding shall have the deciding vote.

(4) Subject to subsection (3) of this section, proceedings of the Committee shall not be invalidated by reason only of a vacancy among the members.

(5) The Committee shall meet not less than 4 times in every financial year and not more than 3 months shall elapse between the date of one meeting and the date of the next meeting.

(6) The Committee may invite any person to attend its meeting for the purpose of assisting or advising it on any particular matter and such person shall have no right to vote.

(7) Subject to the provisions of this Act and to any general or special direction in writing by the Minister, the Committee shall regulate its own proceedings.

Functions of
the
Committee.

5. The Committee shall—

(a) advise and make recommendations to the Minister, where necessary, on the development and implementation of tobacco control policies, strategies, plans, programmes and projects, in accordance with the WHO Framework Convention for Tobacco Control, its implementing guidelines and protocols ;

(b) administer and manage the Fund of the Committee ;

(c) screen or process application for licence to manufacture or import or distribute tobacco or tobacco product ;

(d) make regulations for the approval of the Minister ;

(e) coordinate, support or fund public sensitization campaigns on key provisions of the Act ;

(f) coordinate multi-stakeholder national youth smoking prevention programmes involving Ministries, Departments and Agencies (MDAs), faith based organizations, civil society organizations and other stakeholders ;

(g) develop strategies for the counseling and rehabilitation of smokers, particularly those eager to quit smoking ;

(h) work with the Federal Ministry of Agriculture and other relevant agencies on alternative cropping for tobacco farmers ; and

(i) perform such other functions as may, from time to time, be assigned to it by the Minister.

6.—(1) There is established in the Ministry, the Tobacco Control Unit (in this Act referred to as “the Unit”) charged with carrying out the plans, policies, projects and programmes of the Committee and the Ministry.

Tobacco
Control
Unit.

(2) The Unit shall comprise of a Chairperson and other staff appointed by the Minister on such terms and conditions as may be determined by the Minister.

7. The functions of the Unit are to—

Functions of
the Unit.

(a) implement the decisions of the Committee ;

(b) co-ordinate the activities of the Ministries, Departments and Agencies responsible for the implementation of this Act ;

(c) collate and furnish all required annual or other periodical reports required to be furnished under this Act ;

(d) coordinate all enforcement activities under this Act and ensure effective liaison with the police and relevant law enforcement agencies on any violation of the provisions of this Act ; and

(e) carry out such other duties and responsibilities as may be assigned by the Minister or the Committee.

PART III—TOBACCO CONTROL FUND

8. (1) There is established the Tobacco Control Fund (in this Act referred to as “the Fund”).

Funding of
Committee.

(2) The Fund shall consist of—

(a) monies as may be made available by the Federal Government from annual budgetary allocation approved by the National Assembly ;

(b) monies in form of subventions from any of the governments of the Federation to meet the stated objectives of this Act ; and

(c) gifts, donations and testamentary dispositions where the objectives of the entities making the gifts, donations or testamentary dispositions are not inconsistent with the objectives of this Act.

PART IV—REGULATION OF SMOKING

Prohibition
of smoking
in public
places.

9.—(1) Except as otherwise provided in this Act or any other law, no person shall smoke tobacco or tobacco products—

(a) in a residential house co-occupied by a person who is below 18 years of age, except in a room exclusively occupied by the smoker ;

(b) in an tricycle, vehicle, aircraft, sea vessel, railway coach, lift or any means of public transportation, except in a vehicle exclusively occupied by the smoker ;

Second
Schedule.

(c) indoor or any enclosed public place listed in the Second Schedule to this Act or any other public place prescribed by the Minister by regulation made under this Act provided the regulation is published in the *Official Gazette* ; and

(d) outdoor in a public place and in an area that smoking is prohibited by the owner, controller or occupant of such public place, who displays the prescribed warning sign, with the permit or approval of the Committee.

(2) Notwithstanding the provisions of subsection (1) of this section, where a person who owns, controls, or occupies any place specified in subsection (1) of this section provides sufficient number of rooms in which smoking is not permitted to accommodate all persons, he or she may designate any area or part of the public place as a designated smoking area.

(3) Without prejudice to the provisions of subsection (2), an owner, occupier or a person in charge of any place specified in subsection (1) may designate a section which shall not be more than 10% of the premises as Designated Smoking Area.

(4) This Designated Smoking Area in accordance with subsection (3), shall—

(a) have good ventilation ;

(b) be equipped with state of the art ventilation equipment ; and

(c) not compromise those in the Non-Smoking Area.

(5) In addition to any outdoor space that is designated as a non-smoking area by the person who owns, controls or occupies a public place, a person is not permitted to smoke in any outdoor space—

(a) within 5 meters of any doorway, operable window, or air intake mechanism of any public place or workplace ;

(b) within 5 meters of any waiting area or queue, including public transport stops ;

(c) anywhere on the premises of any child care facility or educational facility at any level of instruction ;

(d) anywhere on the premises of any health care facility ;

(e) a playground, amusement park, plaza, public park, or other public gathering space ;

(f) a stadium, arena, or any kind of performance space ;

(g) a space for the service or consumption of food or drink ; and

(h) any other outdoor public place or work space as may be prescribed by the Minister in regulations which shall be published in the Official Gazette.

10. A person who owns, controls or occupies a place or thing specified in section 9 of this Act shall—

Duties of persons who own or control public places.

(a) display in permanent form in a prominent area in the place or thing the “ No Smoking ” signage in the way and manner prescribed by this Act or any regulation made under this Act ;

(b) implement the provisions of this Act or any of its regulations as they relate to the prohibition of smoking ;

(c) take reasonable steps to discourage and stop any person from smoking where it is prohibited, including—

(i) asking the person not to smoke,

(ii) discontinuing service,

(iii) asking the person to leave the premise or public transport vehicle when it is safe to do so, and

(iv) contacting law enforcement or other appropriate authority where necessary; and

(d) investigate complaints and take any necessary action to ensure compliance.

11.—(1) A person who violates the provisions of section 9 of this Act commits an offence and is liable on conviction to a fine of not less than ₦50,000.00 or a term of imprisonment of not less than 6 months or both.

Penalties for non-compliance.

(2) A person who violates the provision of section 10 of this Act commits an offence and is liable on conviction to—

(a) in the case of an individual, a fine of not less than ₦100,000.00 or imprisonment for a term of not less than 2 years or both ; and

(b) in the case of a corporate entity, to a fine not exceeding ₦200,000.00.

(3) A person who smokes where smoking is prohibited, commits an offence and is liable on conviction to a fine of not less than ₦50,000.00 or a term of imprisonment of 6 months or both.

PART V—PROHIBITION OF TOBACCO ADVERTISING, PROMOTION AND SPONSORSHIP

Prohibition
on Tobacco.
Advertising.
Promotion
and
Sponsorship.

12.—(1) Except otherwise provided in this Act, no person shall—

(a) promote or advertise tobacco or tobacco products in any form ;

(b) sponsor or participate in any programme or event which is aimed at wholly or partially promoting or advertising tobacco or tobacco products ; or

(c) engage or participate in any tobacco advertising, promotion, or sponsorship as a media or event organizer, celebrity or other participant, as a recipient of any sponsorship contribution, or as an intermediary that facilitates any such contribution.

(2) The provisions of subsection (1) of this section does not apply to communication between—

(a) tobacco manufacturers and wholesalers or retailers and *vice versa* ;

(b) manufacturers, retailers of tobacco or tobacco products and any consenting person who is 18 years of age or above ; and

(c) manufacturers, distributors, sellers and tobacco plant farmers.

First
Schedule.

(3) Without limiting in any way the broad application of the provision of this section, the First Schedule to this Act provides examples of tobacco, advertising, promotion, and sponsorship that are prohibited under the Act.

(4) Where the items listed under this subsection may be deemed to have an incidental promotional effect, they shall not be considered tobacco advertisement, promotion, or sponsorship, subject to the provisions of subsections (1) and (2) of this section—

(a) a plain black-and-white only price list made available where tobacco products are legally sold, provided the list contains nothing more than the tobacco product brand name, package, quantity, price, and any government-required or authorised information ;

(b) depictions of tobacco products or tobacco use in media where the depiction is purely incidental or is justified by reasons of historical accuracy or legitimate journalistic or artistic expression, or where the depiction is required for educational purposes; provided no payment or other consideration was offered or made by a tobacco manufacturer, seller, or any person acting on their behalf ;

(c) genuine political, social, or scientific commentary about tobacco products or tobacco use; provided no payment or other consideration was offered or made by a tobacco manufacturer, seller, or any person acting on their behalf ;

(d) dissemination or reporting of information on tobacco companies' practices characterized as or likely to be perceived as socially responsible practices, such as sustainable environmental practices or good employment practices that do not involve contributions to other parties, provided the information is necessary for business administration or for required corporate reporting ;

(e) product information made accessible to persons within the tobacco trade who need the information for trading decisions, but only to the extent that access is limited to those persons ; and

(f) tobacco manufacturers' newsletters destined for and distributed only to the manufacturers' employees, contractors, suppliers, and other tobacco-related business partners, and only to the extent their distribution is limited to such persons.

(5) Regulations may require prescribed warnings and other requirements, conditions, or restrictions with respect to any of the items listed in subsection (4) of this section.

13.—(1) For the purpose of monitoring and ensuring compliance with the provisions of this Part, tobacco or tobacco product manufacturers, wholesale distributors and importers, and any other seller as may be prescribed in regulations, shall provide reports required under this subsection to the Minister on a periodic basis, which shall be at least annually, and upon request.

Required disclosures.

(2) The Minister may, by regulation which shall be published in the Official Gazette, prescribe the formats, contents, time and other requirement of the report referred to in subsection (1) of this section.

(3) Except as otherwise provided by this Act or any other law, the Minister may make information from the reports readily accessible to the public.

14.—(1) A person who violates any of the provisions of this section shall be subject to the penalties specified in subsection (2) of this section provided that the provision of the subsection shall not apply to the items listed in Section 12 (4) of this Act if the requirements of Section 12 (4) (a)-(f) are met.

Penalties for non-compliance.

(2) Any fine for a violation of this Part shall be applied against any—

(a) tobacco manufacturer or seller responsible for initiating tobacco advertising, promotion, or sponsorship, and shall attract a fine of not less than ₦5,000,000.00 and a term of imprisonment of not more than 2 years for the owner or chief executive officer of the tobacco manufacturing company ;

(b) person that produces or publishes advertising, promotion, or sponsorship content, and shall attract a fine of not less than ₦3,000,000.00 and a term of imprisonment of not more than 1 year ;

(c) person that disseminates tobacco advertising, promotion, or sponsorship content when it should reasonably have been aware of the content and when it was in a position to remove the content or disable access to it but failed to do so, and shall attract a fine of not less than ₦1,000,000.00 and a term of imprisonment of 1 year ; and

(d) person that engages or participates in tobacco advertising, promotion, or sponsorship as specified in section 12 (1) (c) of this Act, and shall attract a fine of not less than ₦3,000,000.00 and a term of imprisonment of not more than 1 year.

PART VI—TOBACCO PRODUCT SALES

Prohibition of sale or access to tobacco products to persons below 18 years of age.

15.—(1) A person shall not sell tobacco or tobacco products to a person who is below 18 years of age, or employ or use a person who is below 18 years of age to sell or trade in tobacco or tobacco products.

(2) Prior to any tobacco or tobacco product sale or trade, the seller or trader shall verify the age of the purchaser by checking any form of official identification prescribed by law.

(3) A retailer of tobacco or tobacco products shall display, in the prescribed form at every place of sales, signage stating that tobacco sales to persons who is below 18 years of age is prohibited.

(4) A person shall not sell or offer to sell or distribute tobacco or tobacco products through mail, internet or other online devices.

(5) No person shall sell smoked tobacco products except in a package which shall be intact and contain a minimum of 20 sticks.

(6) Smokeless tobacco product unit packages shall contain a minimum of 30 grams of smokeless tobacco.

(7) Any tobacco product unit package that does not meet the prescribed requirements shall be subject to confiscation and forfeiture.

Penalties for non-compliance.

16. (1) A person who violates any of the provisions of this Part is liable on conviction to the applicable penalties provided in subsection (2) of this section.

(2) The applicable penalties for the violation of the provisions of this Part are—

(a) where a person fails to post the prescribed signage—

(i) in the case of an individual, a fine of not less than ₦200,000.00 or a term of imprisonment of not less than 1 year or both, and

(ii) in the case of corporate entity, a fine of not less than ₦400,000.00 ; or

(b) where a person violates the provisions of Section 15 (1), (3), (5) and (7) —

(i) in the case of an individual, a fine less than ₦200,000.00 or a term of imprisonment of not less than 1 year or both, and

(ii) in the case of a corporate entity, a fine of not less than ₦400,000.00.

PART VII — REGULATION OF TOBACCO PRODUCTS, TOBACCO PRODUCT CONTENTS AND EMISSIONS DISCLOSURES

17.—(1) A person shall not manufacture, distribute or sell tobacco or tobacco product that does not conform to approved standard or quantity prescribed.

Regulation of standard of tobacco products.

(2) Any tobacco product that does not conform to approved standard or prescribed quantity shall be confiscated and destroyed by the relevant law enforcement agencies.

18.—(1) A person who manufactures or imports tobacco or tobacco products shall submit reports on tobacco or tobacco product contents and emissions as may be prescribed by the Standards Organisation of Nigeria.

Product content and emissions reporting.

(2) Except as otherwise provided by this Act or any other law, the Minister may make information from these reports not accessible to the public.

19.—(1) A person who violates any provision of this Part commits an offence and is liable on conviction to the applicable penalty provided in subsection (2) of this Section.

Penalties for non-compliance.

(2) Applicable fines and penalties for a violation of the provisions of this Part are—

(a) where the person is a manufacturer or importer—

(i) in the case of an individual, a fine of not less than ₦200,000.00 or term of imprisonment of not more than 1 year or both ; and

(ii) in the case of corporate entity, a fine of not less than ₦4,000,000.00;

(b) any other seller of tobacco or tobacco products, to a fine of not less than ₦200,000.00 or a term of imprisonment of not more than one year imprisonment or both.

PART VIII—TOBACCO PRODUCT PACKAGING AND LABELING

20.—(1) Every tobacco or tobacco products package shall contain in writing and graphics, every health warning signs prescribed in this Act or any other law which shall cover not less than 50% of the total surface area of the package.

Health warnings and other information required on tobacco product packaging and labeling.

(2) The text of the health warnings and messages shall be in English language.

(3) For subsequent periods, which shall be no more than 24 months each, the Ministry shall prescribe a set of new warnings and messages that shall be used or authorise the use of warnings and messages from previous rotation periods.

(4) For a period of no longer than 150 days from the date new warnings and messages take effect to replace the warnings and messages from a previous period, a unit and outside packaging and labeling already in circulation with the old health warnings and messages may continue to be sold along with unit and outside packaging and labeling with the new warnings and messages.

(5) At the end of the 150 days, in addition to any penalty to which the responsible manufacturer or seller may be subject, any non-compliant packaging and labeling and any product contained therein found in the possession or under the control of a tobacco manufacturer or seller or any person acting on their behalf shall be subject to confiscation and destruction.

(6) In addition to the required health warnings and messages, the unit and outside packaging and labeling of all tobacco products shall provide the descriptive only information on constituents and emissions prescribed in regulations.

Prohibition
on
misleading
packaging,
labeling and
product
design.
regulation of
promotional
features.

21.—(1) The unit and outside packaging and labeling, and tobacco product itself, shall not promote the product by any means that are false, misleading, deceptive or likely to create an erroneous impression about the product's characteristics, health effects, hazards or emissions, including using any term, descriptor, trademark, figurative, color, or other sign of any kind that directly or indirectly creates or is likely to create the false impression that a particular tobacco product is less harmful than others.

(2) In this section, "prohibited terms" include, low tar, light, ultra-light or mild, extra, ultra, and other terms in any language that is likely to mislead consumers, including when used as part of a brand name or trademark.

(3) Quantitative information on emissions shall not be displayed anywhere on or inside the product's unit or outside packaging or labeling, or on the product itself, including when used as part of a brand name or trademark.

(a) the use of logos, colors, brand images, and other promotional items or features on, in, or as part of tobacco product packaging and labeling, and on or as part of the product itself, other than brand names and product names displayed in a standard color and font, as may be specified in regulations;

(b) any feature of the retail packaging designed to change after retail sale, including, but not limited to—

(i) heat activated inks ;

(ii) inks or embellishments designed to appear gradually over time, including on the product itself ;

(iii) inks that appear fluorescent in certain light, including on the product itself ;

(iv) panels designed to be scratched or rubbed to reveal an image or text ;

(v) removable or hidden tabs or panels ; or

(vi) fold-out tables or panels ; and

(c) any other misleading or promotional features of the packaging and labeling or product.

22. Except otherwise stated in this Act or any other law, a change in any regulation made under this Act relating to the standard, packaging and labelling of tobacco or tobacco related products shall take effect after 18 months from the date of publication of the regulations in the Official Gazette.

Date for compliance with new regulations.

23. Fulfilling the requirements of this Part does not remove or diminish any duty of a tobacco manufacturer or seller, including the duty to warn consumers about the health hazards arising from tobacco use and exposure to tobacco smoke.

Duties not diminished by compliance with this Part.

24.—(1) A person who violates any provision of this Part commits an offence and is liable to the penalties provided in sub-section (2) of this Section.

Penalties for non-compliance.

(2) The applicable penalties for violation of this Part are—

(a) against any tobacco manufacturer, importer, or wholesale distributor, a fine of not less than ₦5,000,000.00 and a term of imprisonment of not more than 2 years ; and

(b) against a retailer, a fine of not less than ₦200,000.00 and a term of imprisonment of not more than 1 year.

25.—(1) Interactions between government and the tobacco industry shall be conducted in a transparent manner.

Limitation on interactions between government and the tobacco industry.

(2) Where an interaction between government and the tobacco industry is necessary for effective regulation, and whenever there is an interaction of any kind or contact between the government and the tobacco industry, regardless of which party initiates it, the appropriate government authority shall ensure transparency of the interaction or the contact.

(3) Transparency shall require at a minimum---

(a) conducting any interaction between the government and the tobacco industry in public, such as through public hearings, unless doing so would jeopardize effective regulation or would not be legally possible, as in the case of inspections or investigations or litigation interactions :

(b) minutes or other documentation of all interactions, whether face-to-face or through some other means of communication, and contacts, that provide sufficient detail to identify, at a minimum---

(i) the parties involved,

(ii) matters discussed or considered,

(iii) any decisions taken,

(iv) any follow-up activity planned or anticipated,

(v) the date, location and method of the interaction or contact, and

(vi) any other detail as may be prescribed in the regulations or policies:

(c) forwarding all documentation to the Ministry within not more than 15 days and making all records of, and documents related to, interactions, communications, and contacts readily accessible to the public, unless the public disclosure would not be legally possible:

provided that timeliness of public accessibility shall be subject to ensuring effective regulation, such as in the case of ongoing investigations ; and

(d) any other transparency measure as may be prescribed in the regulations or policies.

(3) Any necessary interaction with the tobacco industry shall be carried out in a manner that avoids the creation of any perception of an unhealthy partnership or collaboration and, in the event such a perception is created, the government shall act promptly to correct it.

Awareness
raising and
public
education.

26. The Minister shall ensure that a responsible authority of government is made aware of, at a minimum, the addictive and harmful nature of tobacco or tobacco products, the need to protect tobacco control policies from the commercial and other vested interests of the tobacco or tobacco products industry, and of the strategies, tactics, and front groups and other surrogates used, openly or covertly, by the tobacco or tobacco products industry to undermine and subvert the development and implementation of effective tobacco or tobacco products control policies, including by making philanthropic contributions to public and private organizations.

27. No business in the tobacco industry shall—

(a) offer or make, and no government institution, body, board, commission, committee, work group, organ, or other government entity shall accept a voluntary contribution of any kind, financial or otherwise, from the tobacco industry provided that a contribution from the tobacco industry resulting from legal requirements or settlement of litigation shall not be considered a voluntary contribution ;

(b) offer or make to any public office holder, and no public office holder shall solicit or accept, a financial or other contribution of any kind, including any gift, favour, or perquisite ; or

(c) offer or make to any political party, candidate, or campaign, or any person or entity acting on their behalf, and no political party, candidate, campaign, or any person or entity acting on their behalf, shall solicit or accept, a financial or other contribution of any kind.

Prohibition
on voluntary
contributions
from the
tobacco
industry.

28.—(1) A person shall, prior to engaging any person to undertake any paid or voluntary work or service of any kind for the government, make appropriate disclosures about any existing or prior affiliation, as specified in sub-section (2) (a)-(c) of this section with the tobacco industry.

Prevention
and
management
of conflicts
of interest.

(2) A person shall not be hired, awarded a contract, or otherwise retained or engaged to work or serve in any capacity with responsibility for tobacco control policy where that person—

(a) is engaged in occupational activity with the tobacco industry, including serving as a member of a board of directors for a business in the tobacco industry ;

(b) has engaged in an occupational activity with the tobacco industry within the 24 months period prior to the month the disclosure was submitted ; or

(c) has or had, during the relevant period, any other tobacco-related conflict of interest.

(3) A public office holder who intends to engage in occupational activity, including serving as a member of a board of directors for a business in the tobacco industry, upon leaving government service or within 24 months after leaving government service, shall disclose such intent to the Ministry within 15 days of agreeing to undertake such activity.

(4) A person required to make disclosures under this section shall truthfully and fully disclose all information required within the time specified.

(5) A public office holder who engaged in significant activity in relation to tobacco control policy during the period of 24 months immediately prior to the termination of the public office holder's government service shall be prohibited from accepting occupational activity, including appointment to a board of directors with any business in the tobacco industry for a period of at least 24 months after leaving government service, and shall be bound by confidentiality with respect to any matter involving tobacco control policy development or implementation.

(6) The relevant authority or authorities in each government, institution, or body shall establish effective directives, policies, procedures, guidelines, or other measures necessary or appropriate for preventing and addressing any tobacco-related conflict of interest pursuant to this section and any regulations made under this Act.

PART X—LICENSING OF TOBACCO DEALER

Application
for licence.

29.—(1) No person shall manufacture, import or distribute tobacco or tobacco products except the person has obtained a licence or is authorised in writing by the Minister :

Provided that a person who has duly obtained a licence in accordance with the repealed Act is deemed to have obtained such licence under this Act.

(2) The Minister may by, regulation published in the Official Gazette, prescribe the method, conditions for grants and revocation and other requirements for licensing under this Act.

(3) The provision of this section does not apply to a retailer of tobacco or tobacco products.

Measures to
prevent
illicit trade in
tobacco
products.

30.—(1) The responsible authority shall, by regulations, prescribe appropriate measures to prevent illicit trade in tobacco products.

(2) A person who violates any of the provisions of regulations made under this Part shall be subject to any one or a combination of penalties provided in sub-section (3) of this section.

(3) Applicable fine for violation of regulations made under this Part are, in the case of—

(a) a tobacco manufacturer or importer, upon conviction, a fine of not less than ₦10,000,000.00 and a term of imprisonment of not more than 10 years or both ; and

(b) any other person, upon conviction to a fine of not less than ₦5,000,000.00 and a term of imprisonment of not more than 5 years or both.

PART XI—ENFORCEMENT

31.—(1) The police or any other law enforcement agency of government shall have the duty to inspect and investigate complaints and take appropriate enforcement action under the Act and in regulations made under this Act.

Investigation and enforcement.

(2) The Minister may designate authorised officers for the purpose of implementation and enforcement of the provisions of this Act.

32.—(1) The police or any authorised officer shall have powers to—

Powers of authorised officers.

(a) enter the premises of any public place, workplace, means of public transportation, and any business where tobacco is manufactured, tested, sold, transported, received, distributed, supplied, or otherwise found or is likely to be found ;

(b) enter such premises as provided in paragraph (a) of this sub-section, to conduct inspections or investigations at any time during business or operating hours or at any other reasonable or necessary time ;

(c) examine, open, and test any equipment, tool, material, package or anything the police or any authorised officer reasonably believes is used or capable of being used for the manufacture, packaging and labeling, storage, distribution, or advertising and promotion of tobacco products ;

(d) examine any manufacturing operation or process carried out on the premises ;

(e) examine and make copies of, or from any, book, document, note, file, including electronic files, or other records the police or the authorised officer reasonably believes might contain information relevant to determining compliance with the provisions of this Act and regulations and any other applicable law, including laws and regulations imposing duties or taxes ;

(f) interview any person the police or authorised officer believes may have information relevant to making a compliance determination ;

(g) open and take samples of tobacco products or components of products, their packaging and labeling and have them tested ;

(h) stop, search, and detain any aircraft, ship, vehicle or other means of transport or storage in which the police or the authorised officer reasonably believes tobacco products are or were contained or conveyed ;

(i) seize and detain, or order the storage without removal or alteration of any tobacco product or other thing the authorised officer reasonably believes does not comply with the provisions of this Act or regulations made under this Act and any other applicable law, including laws and regulations imposing duties or taxes ;

Provided that the police or authorised officer shall first provide the licensee or owner of the tobacco products or other things, or if the licensee or owner is unavailable, any other person on the premises where the tobacco products or other things are located, with written notice of the seizure and detention and the grounds for it and—

(i) where tobacco product or other thing so seized and detained is determined to meet legal requirements, the product shall be returned to the premises from which it was seized within 7 business days from the date it is determined to meet legal requirements, and

(ii) where any tobacco product or other thing is determined not to meet legal requirements, the product may be confiscated and destroyed or subject to other disposal, as ordered by the adjudicator of the case, subject to any appeal rights that may be applicable ; and

(j) take any other action reasonable or necessary for the effective and efficient administration of this Act.

(2) Inspection and investigation reports, and documents collected pursuant to inspections and investigations shall be made readily and publicly accessible once the inspection or investigation has been concluded, subject to exclusion of any information protected by law provided that an exclusion of information and the grounds for exclusion shall be explained in writing.

(3) The police or authorised officer may not enter a dwelling place except with the consent of the occupant or under the authority of a warrant issued under section 35 of this Act.

(4) A person shall not deny, obstruct or hinder, or knowingly make a false or misleading statement to the police or authorized officer who is carrying out duties under this Act.

Protection
of tobacco
control
policies, etc.

33.—(1) The Ministry shall have the authority to specify additional requirements and prohibitions to protect tobacco control policies from the commercial and other vested interests of the tobacco industry, and shall have authority to promulgate any regulation necessary or appropriate for achieving the objectives of this Part.

(2) The heads of government institutions, bodies, or other organs shall adopt and periodically monitor and evaluate policies, procedures, codes of conduct, directives, guidelines and standards to ensure proper administration of the provisions of this Part and regulations made under this Act.

Penalties.

34.—(1) A person who violates any of the provisions of this Part commits an offence and is liable on conviction to any one or combination of the penalties provided in subsection (2) of this section.

(2) The applicable fines for any violation of the provision of this Part are, in the case of—

(a) a political candidate, party, or campaign, a fine of not less than ₦10,000,000.00 and a term of imprisonment of not more than 10 years or both ;

(b) a business in the tobacco industry, a fine of not less than ₦10,000,000.00 and a term of imprisonment of not more than 12 years;

(c) a public office holder, a fine of no less than ₦500,000.00 and a term of imprisonment of not more than seven years ; and

(d) any other person, a fine of not less than ₦500,000.00 and a term of imprisonment of not more than 7 years or both.

35.—(1) Upon an ex-parte application, a Magistrate or Judge of the High Court, may issue a warrant authorising the officer named in the warrant to enter and inspect a dwelling place, subject to any condition specified in the warrant, if the Magistrate or Judge is satisfied by information on oath that—

Search
warrants
procurement.

(a) such a dwelling place is harbouring illegal or substandard tobacco or tobacco products ; or

(b) upon reasonable suspicion that, such a dwelling place has become a depot for harbouring illegal or substandard tobacco or tobacco products.

(2) The police or authorised officer executing the warrant shall not use force except the use of force is specifically authorised in the warrant or is necessary.

36. The High Court may order that the tobacco, tobacco product or thing be restored immediately to the applicant if, the court is satisfied that—

Restoration
order.

(a) the applicant is entitled to possession of the tobacco, tobacco product or thing seized ; and

(b) the tobacco, tobacco product or thing seized is not and will not be required as evidence in any proceeding in respect of an offence under this Act.

37. Where—

Forfeiture.

(a) no application has been made under this Act, or an application has been made but, on the hearing of such application, no order for restoration is made,

(b) a person has been convicted of an offence under this Act in respect of which tobacco, a tobacco product or thing has been seized, or

(c) an officer has seized tobacco, a tobacco-product or thing and the owner or the person in whose possession it was at the time of seizure consents in writing to its forfeiture,

the tobacco, tobacco product or-thing is forfeited to the Federal Government and may be destroyed or disposed of by the responsible authority.

PART XII—EDUCATION, COMMUNICATION, TRAINING
AND PUBLIC AWARENESS

Training and
public
awareness
campaign.

38.—(1) There shall be active promotion and strengthening of public awareness on the health consequences, addictive-nature and mortal threat posed by tobacco or tobacco products use and exposure to tobacco or tobacco products smoke and the harmful effects of tobacco or tobacco products growing and handling through a comprehensive Nationwide Education and Information Campaign organized through Ministries, Departments, and Agencies of government in collaboration with civil society organisation.

(2) A person or entity working on behalf of or furthering the interests of the tobacco industry shall not be involved in any manner in youth, public education, or other initiatives related to tobacco control or public health, including any funding of such activities.

(3) Application of revenues and fees from the tobacco industry mandated by law shall not be considered funding by the tobacco industry for the purposes of this section.

PART XIII—MISCELLANEOUS

Power to
make
Regulations.

39.—(1) In addition to any matter in this Act in which the Minister is authorised to make regulations under this Act, the Minister may make regulation prescribing any matter or thing that is necessary or appropriate to fulfil the objectives of this Act.

(2) Any regulation made by the Minister under this section or any other section of this Act shall be subject to the approval of both Houses of the National Assembly.

Evaluation.

40.—(1) The Minister shall establish appropriate mechanisms for the monitoring and evaluation of the provisions of this Act and ensure the overall effectiveness of the inspection and enforcement provisions provided for this under this Act.

(2) Evaluation shall include an assessment of the impact with respect to different population groups and vulnerable groups such as women, youth and low-income populations.

41. No person, business or entity, or any other person shall take any retaliatory action or discriminate against any employee, applicant, contractor, or other person on the ground that such person made a complaint, reported, disclosed, or opposed any conduct, activity, or practice that reasonably could be construed to be a violation of any provision of a policy or any provision of this Act or regulations made under this Act or against any agency or any person who brought a legal action, testified in any proceeding or hearing, or assisted or participated in any way in any investigation brought by virtue of the provisions of this Act.

Protection from retaliation.

42.—(1) A person who violates any provision of this Act for which no specific penalty is provided in this Act commits an offence and is liable to the applicable penalties specified in sub-section (2) of this section.

Application of penalties for non-compliance.

(2) The applicable penalties referred to in sub-section (1) of this section are—

(a) a warning, where the person is a first time offender and the violation is unintentional ;

(b) suspension of licence or operations for a specified period of time ; and

(c) in case of—

(i) individual, a maximum fine of ₦500,000.00 or a maximum imprisonment of 10 years, and

(ii) corporate entity, a maximum fine of ₦5,000,000.00.

(3) In the case of a violation by a corporation, partnership, firm or other entity, the managers, directors, officers, and their legal representatives as appropriate, shall bear responsibility for any penalty imposed, for any cost associated with any enforcement or corrective action, and for any term of imprisonment ordered, unless otherwise specified.

43. The Governments of the Federation and their Ministries, Departments and Agencies shall implement tax policies, strategies, programmes, or other fiscal measures which promotes the objectives of this Act and in accordance with Framework Convention for Tobacco Control, its implementing guidelines, and protocols.

Price and tax measures.

44.—(1) The Tobacco Smoking (Control) Act, Cap. T6 Laws of the Federation of Nigeria, 2004 is repealed.

Repeal.

45. In this Act—

Interpretation.

“Committee” means the National Tobacco Control Committee established under section 2 (1) of this Act :

“*conflict of interest*” means a conflict between the public duties and private interests of any person working in any capacity in, or on behalf of, government where that person has tobacco-related interests which could improperly influence or could reasonably be perceived as being capable of improperly influencing the performance of the person's official duties or responsibilities ;

“*cross-border*” with respect to tobacco advertising, promotion, and sponsorship, means an activity relating to the subject matter of this Act which originates within the territory of Nigeria and enters another territory or could be received in another territory, including by means such as placement on the internet or through broadcasts or other communications technologies, as well as that which originates outside Nigeria and enters or is designed to enter Nigeria ;

“*enclosed*” means any space covered by a roof or one or more walls or sides, regardless of the type of material used and regardless of whether the structure is permanent or temporary ;

“*government*” or “*government authority*” includes any person or entity working on behalf of or to further the interests of government ;

“*government*” includes governmental and semi- or quasi-governmental institutions, bodies, boards, commissions, committees, work groups, or entities, and reference to “government” also refers to the public office holders and other persons representing government ;

“*health warnings and messages*” means prescribed requirements by the Ministry to be displayed on tobacco packaging and labeling conveying the health consequences of tobacco use and exposure to tobacco smoke and any other message as may be prescribed by the Ministry ;

“*indoor*” same as enclosed ;

“*Minister*” means Minister of Health ;

“*Ministry*” means Federal Ministry of Health ;

“*occupational activity*” includes any kind of employment, contract, consulting, or other work, or service activity, whether it is gainful or not, and whether it is full-time, part-time, occasional, temporary, or permanent ;

“*open space*” or “*outdoor space*” means any space that is not enclosed;

“*outside packaging and labeling*”, with respect to tobacco products, means packaging and labeling used in the retail sale of the products ;

“*person*” means individual and corporate entity ;

“*person responsible for the premises*” means the owner, manager, or other person in charge of a public place, workplace, or means of public transport ;

“*public office holder*” includes any person or entity working on behalf of, or furthering the interests of, the office held by the person ;

“*public place*” means all public places listed in the Second Schedule and excludes the roads, streets, highways and all outdoors places within the 5 meter rule ;

“*public transport*” means any vehicle used for carriage of members of the public, usually for reward or commercial gain ;

“*publish*” means to make public to one or more persons by any means ;

“*relevant or related to tobacco control*” means any policy, law, regulation, programme, or initiative that affects or is likely to affect the development or implementation of tobacco control policy, such as tax, price, trade, and agricultural policies ;

“*responsible authority*” means the Ministry or Minister, as the case may be, Department or Agency of the Government charged with responsibility for the implementation and enforcement of the provision of this Act ;

“*responsible for tobacco control*”, “*responsibility for tobacco control*”, or “*role in tobacco control*” includes being involved in or contributing to, or being in a position to be involved in or contribute to tobacco control policies, or those relevant or related to tobacco control, within any branch of government at the national or sub-national levels ;

“*subsidiary*” means a business in the tobacco industry in which another tobacco corporation has a controlling share and includes any corporation organized and chartered under the laws of another State ;

“*seller*”, with regard to tobacco products, means any person that sells tobacco products at import, wholesale, export, or retail ;

“*smoking*” includes being in possession or control of a lit tobacco product regardless of whether the smoke is being actively inhaled or exhaled ;

“*tobacco advertising and promotion*” means any form of commercial communication, recommendation, or action with the aim, effect, or likely effect of promoting a tobacco product or tobacco use directly or indirectly ;

“*tobacco control*” means a range of supply, demand, and harm reduction strategies that aim to improve the health of a population by eliminating or reducing their consumption of tobacco products and exposure to tobacco smoke ;

“*tobacco control policy*” includes the formulation, development, implementation, administration, or enforcement of tobacco control policy, law, regulation, programme, or initiative, and any policy, law, programme, or initiative relevant or related to tobacco control ;

“tobacco industry” or *“business in the tobacco industry”* includes any person or entity working on behalf of, or furthering the interests of, the tobacco industry ;

“tobacco products” means products entirely or partly made of the leaf tobacco as raw material which are manufactured to be used for smoking, sucking, chewing or snuffing ;

“tobacco sponsorship” means any form of contribution to any event, activity, organisation, or individual that has the aim, effect, or likely effect of promoting a tobacco product or tobacco use directly or indirectly ; and

“workplace” means any place used by one or more persons during their paid or unpaid employment or work, including all associated or attached areas commonly used in or incidental to the course of work, as well as work vehicles.

Citation.

46. This Act may be cited as the National Tobacco Control Act, 2015.

FIRST SCHEDULE

LIST OF THE FORMS, MEDIA AND MEANS OF TOBACCO ADVERTISING, PROMOTION
AND SPONSORSHIP PROHIBITED UNDER THIS ACT.

1. Communication through audio, visual or audiovisual means, such as print (for example, newspapers, magazines, pamphlets, leaflets, flyers, letters, billboards, posters, signs), television and radio (including terrestrial and satellite), films, DVDs, videos and CDs, games (such as computer games, video games or online games), other digital communication platforms (such as the internet and mobile phones) and theatre or other live performance.

2. Brand-marking, including in entertainment venues and retail outlets and on vehicles and equipment, such as the use of words, designs, images, sounds and colours, including brand names, trademarks, logos, names of tobacco manufacturers or importers and colours or schemes of colours, in whole or part and any other indicia associated with tobacco products, manufacturers or importers.

3. Display or visibility, other than incidental transactions, of tobacco products at points of commercial display of tobacco products to an immediate sales of sale and any other.

4. Sales of tobacco products through vending machines and through the internet.

5. Use of a tobacco brand name, emblem, trademark, logo, trade insignia, or any other distinctive features, including colour combinations, is connected with a non-tobacco product or service in such a way that the tobacco product and the non-tobacco product or service are likely to be associated.

6. Use of a brand name, emblem, trademark, logo, trade insignia, or any other distinctive feature, including colour combinations, on a non-tobacco product or service, is connected with a tobacco product in a way that the tobacco product or company and the non-tobacco product or service are likely to be associated.

7. Product placement, such as the inclusion of, or reference to, a tobacco product, service or trademark in the context of communication in return for payment or other consideration.

8. Provision or offer of gifts or discounted products with the purchase of tobacco products, such as key rings, T-shirts, baseball hats, cigarette lighters, CDs, other trinkets or tobacco products.

9. Supply or offer of free samples of tobacco products including in conjunction with marketing surveys and taste testing.

10. Incentive promotions or loyalty schemes, such as redeemable coupons provided with purchase of tobacco products.

11. Competitions associated with tobacco products or brand names, whether requiring the purchase of a tobacco product or not.

12. Direct targeting of individuals with promotional, including informational material, such as direct mail, telemarketing, consumer surveys or research or person-to-person conversation.

13. Promotion of discounted products.

14. Sale or supply of toys or sweets or other non-tobacco products that resemble tobacco products.

15. Payments or other contributions to retailers to encourage or induce them to sell tobacco products, including retailer incentive programmes, such as rewards to retailers for achieving certain sales volumes.

16. Packaging and product design features as may be prohibited or restricted in regulations.

17. Payment or other consideration in exchange for the exclusive sale or prominent display of a particular product or particular manufacturer's product in a retail outlet or at a venue or an event.

18. Sale, supply, placement and display of products at educational establishments or at hospitality, sporting, entertainment, music, dance and social venues or events.

19. Provision of financial or other support to events, activities, individuals or groups, such as sporting or arts events, individual sports people or teams, individual artists or artistic groups, welfare and other public interest organisations, government institutions or organisations, politicians, and political candidates or political parties, whether or not in exchange for attribution, acknowledgement or publicity, including corporate social responsibility activities of any kind.

20. Provision of financial or other support to venue operators, such as pubs, clubs or other recreational venues, in exchange for building or renovating or decorating premises to promote tobacco products or the use or provision of awnings, sunshades and similar items.

21. Any other tobacco advertising, promotion, or sponsorship by any method or means.

2. Creche, primary school, secondary school.
3. College of education, monotechnic, polytechnic, universities and any other educational institution or training centre; except where designated smoking areas are provided.
4. Workshop, factory, offices, and other workplace; except where designated smoking areas are provided.
5. Theatre, cinema hall, arena, stadia and any other sporting, leisure or recreational facility except where designated smoking areas are provided.
6. Bus stop, vehicle park, seaport, airport, rail station; except where designated smoking areas are provided.
7. Cafeteria, restaurant, or any other place for public refreshment and hospitality; except where designated smoking areas are provided.
8. Playground, amusement park, leisure park or any other place where members of the public gather to engage in games and sporting activities.
9. Sales shop, shopping mall, market or any place where the members of the public gather to trade in goods or services.
10. Police station, prisons or any other place where prisoners or crime suspect are kept or held in custody.
11. Electricity station or any other place where electric power is generated or distributed.
12. Petrol station, gas station or any other place where inflammable substances are kept.
13. Any other public place that the Minister may prescribe.

I certify, in accordance with Section 2 (1) of the Acts Authentication Act, Cap. A2, Laws of the Federation of Nigeria 2004, that this is a true copy of the Bill passed by both Houses of the National Assembly.

SALISU ABUBAKAR MAIKASUWA, OON, mni
Clerk to the National Assembly
25th Day of May, 2015.

EXPLANATORY MEMORANDUM

This Act provides the legal framework for the protection of present and future generations of Nigerians from the devastating health, social, economic and environmental consequences of tobacco use and exposure to tobacco smoke ; and to give effect to the obligations to protect citizens against tobacco-related harms in the promotion of health and other human rights as contained in the WHO Framework Convention for Tobacco Control and other related treaties to which Nigeria is a Party.