

COUNTERFEIT AND FAKE DRUGS AND UNWHOLESOME PROCESSED FOODS (MISCELLANEOUS PROVISIONS) ACT Cap C.34 LFN 2004

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COUNTERFEIT AND FAKE DRUGS AND UNWHOLESOME PROCESSED FOODS (MISCELLANEOUS PROVISIONS) ACT

An Act to provide for the prohibition of sale and distribution of counterfeit, adulterated, banned or fake, substandard or expired drug or unwholesome processed food; and of sale, etc., of drugs or poisons in certain premises or places.

1. Prohibition of sale, etc., of counterfeit and fake drugs and unwholesome processed foods Notwithstanding anything to the contrary contained in any enactment or law, any person who-
 - (a) produces, imports, manufactures, sells, distributes or is in possession of; or
 - (b) sells or displays for the purpose of sale; or
 - (c) aids or abets any person to produce, import, manufacture, sell, distribute or display for the purpose of sale, any counterfeit, adulterated, banned or fake, substandard or expired drug or unwholesome processed food, in any form whatsoever, commits an offence under this Act and shall, accordingly, be punished as specified in this Act.
2. Prohibition of sale, etc., of drugs or poisons in certain premises or places
 - (1) Any person who-
 - (a) hawks or sells; or
 - (b) displays for the purpose of sale; or
 - (c) aids or abets any person to hawk, sell, display for the purpose of sale, any drug or poison in any place not duly licensed or registered by the appropriate authority, including any market, kiosk, motor park, road-side stall or in any bus, ferry or any other means of transportation, is guilty of an offence under this Act and shall, accordingly, be punished as specified in this Act.
 - (2) In this section, reference to the "appropriate authority" means reference to any person or body authorised to grant licenses or register premises for the sale and distribution of drugs or poisons.
3. Penalties
 - (1) Any person who commits an offence under-
 - (a) section 1 of this Act, is liable on conviction to a fine not exceeding N500,000 or imprisonment for a term of not less than five years or more than fifteen years or to both such fine and imprisonment;
 - (b) section 2 (1) of this Act, is liable on conviction to a fine not exceeding N500,000 or imprisonment for a term of not less than two years or to both such fine and imprisonment.

- (2) Where an offence under section 1 or 2 of this Act has been committed by a body corporate, every person who at the time of the commission of the offence was a proprietor, director, general manager, secretary or other similar officer, servant or agent of the body corporate (or a person purporting to act in any such capacity), he, as well as the body corporate, shall be deemed to be guilty of the offence and may be proceeded against and punished accordingly.

4. Trial of offences

The Federal High Court shall have exclusive jurisdiction to try offences under this Act.

5. Establishment of the Federal Task Force

For the purposes of this Act, there shall be constituted by the Minister, at the Federal level, a Federal Task Force which shall consist of-

- (a) a Chairman who shall be an officer of the Agency not below the rank of a Deputy Director, to be appointed by the Minister;
- (b) two officers of the Nigeria Police Force not below the rank of Chief Superintendent of Police, to be nominated by the Inspector-General of Police;
- (c) two inspectors not below the rank of Principal Pharmacist to be appointed by the Pharmacists Council of Nigeria;
- (d) two inspecting officers not below the rank of Principal Regulatory Officer, designated under subsection (1) (c) of section 9 of the Food and Drugs Act, to be appointed by the Minister; and
- (e) such other Regulatory Inspecting Officers co-opted by the Federal Task Force.

6. Functions of the Federal Task Force

- (1) The Federal Task Force shall be charged with the overall responsibility for enforcing the provisions of this Act which shall include-
 - (a) co-ordinating the activities of the State Task Forces;
 - (b) directing and monitoring the activities of the State Task Forces;
 - (c) paying unscheduled visits to all ports of entry and border posts;

- (d) powers to enter at any reasonable time, (if need be by force) any premises in which there is reason to believe that the provisions of this Act are being contravened and examining any article found therein;
 - (e) taking a sample or specimen of any article, and opening and examining, while on the premises, any container or package;
 - (f) examining any book, document or record found on the premises, which are reasonably believed to contain any information relevant to the enforcement of this Act and causing copies to be made thereof or extracts made there from; and
 - (g) seizing any counterfeit, adulterated, banned or fake drug or poison or unwholesome processed food product.
- (2) The Federal Task Force shall have power to seal up any premises used or being used in connection with any offence under this Act until such time as the drug or poison, as the case may be, in the premises has been removed by the Federal Task Force or until such reasonable time as the Minister may determine in the circumstances.

7. Establishment Of State Task Force

There shall also be constituted by the Minister, at State or group of States level, a State Task Force which shall consist of-

- (a) a Chairman who shall be appointed by the Minister;
- (b) three officers, one of whom shall be a member of the Nigeria Police Force not below the rank of Chief Superintendent of Police, to be nominated by the Inspector-General of Police, and the two remaining officers to be appointed by the Minister;
- (c) an inspector appointed by the Pharmacists Council of Nigeria; and
- (d) an inspecting officer, designated under the provisions of subsection (1) (c) of section 9 of the Food and Drugs Act, to be appointed by the Minister.

8. Functions of the State Task Force

- (1) The State Task Force shall, subject to the general control and supervision of the Federal Task Force, be charged with the overall responsibility of enforcing the provisions of this Act which shall include-

- (a) seizing any drug or poison which is displayed for the purpose of sale in any premises not duly licensed or registered for that purpose;
 - (b) powers to enter at any reasonable time, (if need be by force) any premises in which there is reason to believe that the provisions of this Act are being contravened, and examining any article found therein;
 - (c) taking a sample or specimen of any article and opening and examining, while on the premises, any container or package;
 - (d) examining any books, documents or records found on the premises, which are reasonably believed to contain any information relevant to the enforcement of this Act and causing copies to be made thereof or extracts made there from; and
 - (e) seizing any counterfeit, adulterated, banned or fake drug or poison or any unwholesome processed food products.
- (2) The State Task Force shall have power to seal up any premises used or being used in connection with any offence under this Act until such time as the drug, poison or unwholesome processed food product, as the case may be, in the premises has been removed by the State Task Force or until such reasonable time as the Minister may determine in the circumstances.

9. Establishment of the Nigeria Police Force Squad

- (1) There is hereby established at the Federal Level, for the purposes of this Act, a Nigeria Police Force Squad (in this Act referred to as "the Force Squad") which shall consist of-
- (a) a Deputy Superintendent of Police; and
 - (b) such number of police officers, to be appointed by the Inspector-General of Police.
- (2) The Force Squad is charged with the responsibility of-
- (a) assisting the members of the Federal Task Force in the lawful execution of their functions under this Act;
 - (b) arresting any person suspected of committing an offence under this Act;
 - (c) conducting investigation into matters arising under the Act.

10. Forfeiture of drugs or unwholesome processed food products, etc.

Any drug, poison or unwholesome processed food products seized by a Task Force established by this Act shall be forfeited to the Federal Government and shall be dealt with in such manner as the Minister may, from time to time, determine.

11. Obstructing members of the Task Force

(1) No person shall-

(a) obstruct or resist a member of a Task Force in the execution of his duties under this Act; or

(b) without the authority of a Task Force, remove, alter or interfere in any way with any drug, poison or unwholesome processed food product seized under this Act.

(2) A person who contravenes a provision of subsection (1) of this section is guilty of an offence and liable on conviction to a fine not exceeding N50,000 or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

12. Interpretation

In this Act, unless the context otherwise requires-

"Agency" means the National Agency for Food and Drug Administration and Control;

"Drug or drug product" includes a cosmetic product containing an active medicinal ingredient;

"Drug or drug product" is adulterated if-

(a) the methods used in, or the facilities or controls used for its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to ensure that the drug or drug product meets-

(i) the requirements of the Food and Drugs Act as to the safety and has the identity and strength; and

(ii) the quality and purity characteristics, which it purports or is represented to possess; or

- (b) it purports to be or is represented as a drug, the name of which is recognised in an official compendium and has its strength differing from, or its quality or purity falling below the standard set forth in the compendium;

"Fake drug" means-

- (a) any drug or drug product which is not what it purports to be; or
- (b) any drug or drug product which is so coloured, coated, powdered or polished that the damage is concealed or which is made to appear to be better or of greater therapeutic value than it really is, which is not labelled in the prescribed manner or which label or container or anything accompanying the drug bears any statement, design or device which makes a false claim for the drug or which is false or misleading; or
- (c) any drug or drug product the container of which is so made, formed or filled as to be misleading; or
- (d) any drug or drug product the label of which does not bear adequate directions for use and such adequate warning against use in those pathological conditions or by children where its use may be dangerous to health or against unsafe dosage or methods or duration of use; or
- (e) any drug or drug product which is not registered by the Agency in accordance with the provisions of the Food, Drugs and Related Products (Registration, etc.) Act;

"Law enforcement officer" means-

- (a) a police officer; or
- (b) an inspector appointed by the Pharmacists Board of Nigeria; or
- (c) an inspecting officer designated as such under the provisions of subsection (1) (c) of section 9 of the Food and Drugs Act;

"Minister" means the Minister charged with responsibility for matters relating to health;

"Task Force" the Federal Task Force or the State Task Force;

"Unwholesome processed food product" means any food product which-

- (a) consists in whole or in part, of any filthy, putrid or decomposed substance; or
- (b) has been prepared, packaged or stored under insanitary conditions where it may have been contaminated with filth or whereby it may have been rendered injurious to health; or
- (c) is packed in a container composed in whole or in part of any injurious or deleterious substance which may render the content injurious to health; or
- (d) bears or contains for the purposes of colouring only a colour other than one which is prescribed; or
- (e) contains any harmful or toxic substance which may render it injurious to health or has been mixed with some other substance so as to reduce its quality or strength.

13. Short title and commencement

This Act may be cited as the Counterfeit and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provisions) Act and shall come into force-

- (a) in the case of sections 6 to 13 of this Act, on 15 July 1988; and
- (b) in the case of any section not specified in paragraph (a) of this Act, on 10 May 1999.

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SUBSIDIARY LEGISLATION

No Subsidiary Legislation

