

**MEMORANDUM SUBMITTED TO  
THE HOUSE OF REPRESENTATIVES  
COMMITTEE ON HEALTHCARE  
SERVICES' PUBLIC HEARING  
ON THE AMENDMENT OF THE  
NATIONAL TOBACCO CONTROL  
ACT, 2015**

FRIDAY, NOVEMBER 22, 2024



## PREAMBLE

The enactment of the National Tobacco Control Act in 2015 marked a big milestone for public health in Nigeria. This legislation, which aligns with global public health goals, including the World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC), was developed to protect Nigerians from the harmful effects of tobacco, demonstrating a firm commitment to safeguarding the health and well-being of citizens. Over the years, efforts have been made to enforce and implement provisions of this law. As with any law, the National Tobacco Control Act is not immune to the need for refinement. Laws evolve over time, and amendments are often necessary to address emerging challenges and make them more robust. However, if amendments are not carefully crafted, they can unintentionally weaken the protections they aim to strengthen, rendering the law ineffective.

In light of this, Corporate Accountability and Public Participation Africa (CAPPA) submits this memorandum as part of its commitment to advocating for public health and **ensuring accountability in tobacco control policies** - with specific regard to the recent proposed amendments to the National Tobacco Control Act 2015. These amendments are contained in two separate Bills:

1. **HB 47, sponsored by Hon. Paschal Agbodike.**
2. **HB 1151, sponsored by Hon. Mansur Manu Soro, Hon. Usman Zannah, and Hon. Aliyu**

CAPPA recognises that tobacco consumption is a major public health challenge in Nigeria, contributing to preventable deaths and diseases and imposing economic burdens on families and the healthcare system. CAPPA also observes that Emerging tobacco and nicotine products, such as vapes, also identified as e-cigarettes or electronic nicotine delivery systems (ENDS), heated tobacco products (HTPs), and flavoured nicotine pouches, pose significant public health risks.

Marketed as “safer alternatives,” these products often exploit regulatory gaps to appeal to younger populations, creating a new generation of nicotine addiction. Evidence suggests these products are not risk-free, with studies linking them to long-term health disasters. As such, it is imperative to reinforce the National Tobacco Control Act 2015 by establishing stringent regulatory measures to control the marketing, sale, and use of these emerging products, ensuring they are subjected to the same rigorous oversight as conventional tobacco products. This will safeguard public health and prevent the exploitation of vulnerable populations by the tobacco industry.

## REVIEW OF PROPOSED BILLS TO AMEND THE NATIONAL TOBACCO CONTROL ACT 2015

### HIGHLIGHTS OF HB 1151

The HB 1151, titled AN ACT TO AMEND NATIONAL TOBACCO SMOKING (CONTROL) ACT 2015 TO IMPOSE STIFFER PENALTIES FOR SMOKING OF TOBACCO IN PUBLIC PLACES AND FOR RELATED MATTERS proceeds with the following changes:

- **Amendment of Section 4:** Increases penalties for individuals smoking in public places, imposing fines between 10,000 and 50,000 or imprisonment of up to one year, or both.
- **Amendment of Section 5, Subsection 1:** Strengthens penalties for individuals or entities advertising, selling, or offering tobacco products for sale violating the Act. Imposes a fine of at least 500,000 or imprisonment of up to one year for individuals. For corporate entities, fines can reach 1,000,000 or imprisonment of responsible officers for up to two years, or both.
- **Amendment of Section 5, Subsection 2:** Designates the Nigerian Police and the Nigeria Security and Civil Defence Corps as enforcement authorities responsible for ensuring compliance with the provisions of the Act.
- **Citation:** This amendment Bill is named the Nigerian Tobacco Smoking Control (Amendment) Bill 2024.

## KEY CONCERNS WITH HB 1151

The HB 1151, titled **AN ACT TO AMEND NATIONAL TOBACCO SMOKING (CONTROL) ACT 2015 TO IMPOSE STIFFER PENALTIES FOR SMOKING OF TOBACCO IN PUBLIC PLACES AND FOR RELATED MATTERS** proceeds with the following changes:

1. **Misrepresentation of Existing Legislation:** The proposed Amendment Bill (HB 1151) is fundamentally flawed. It seeks to amend an Act titled the National Tobacco Smoking Act of 2015—a legislation that does not exist, effectively leaving the Bill without a legal basis for proceeding. If the intended reference is the National Tobacco Control Act (NTCA) 2015, the Bill's incorrect title already demonstrates a lack of understanding of the legislation it aims to amend. This oversight complicates its interpretation. A legislative proposal that fails to identify its foundational Act accurately raises serious doubts about its intent, precision, and commitment to public health.
2. **Incorrectly Referenced Sections:** The sections cited for amendment in HB 1151 are inaccurately referenced, making it impossible to cross-examine them against the provisions of the National Tobacco Control Act 2015 (NTCA 2015). This drafting error underscores a worrying lack of knowledge of the Act the Bill seeks to amend.
3. **Narrow Focus on "Smoking":** The Bill's focus on "smoking", even as reflected in its title, shifts attention away from the broader issue of tobacco use. This shift would exclude smokeless and emerging tobacco products, such as vapes, heated tobacco products, and other electronic devices, from regulation. These products, which pose significant health risks, would escape the oversight that the current National Tobacco Control Act 2015 can provide. This strategic redirection is likely to undermine the intent of Nigeria's tobacco control legislation, which was designed to address all forms of tobacco use and protect public health. The Bill's emphasis on smoking alone creates a loophole that the tobacco and vaping industries could exploit, leaving Nigerians vulnerable to the harms of these increasingly popular but equally dangerous products.

## MAJOR HIGHLIGHTS OF HB.47

The HB 47, titled **AN ACT TO AMEND THE NATIONAL TOBACCO CONTROL ACT, 2015 TO CURE CERTAIN DEFECTS IN THE ACT, ENSURE ITS EFFECTIVE IMPLEMENTATION IN NIGERIA AND ADDRESS THE LACUNA THAT MAY BE EASILY EXPLOITED BY THE TOBACCO INDUSTRY IN NIGERIA**, proposes the following changes, including amendments of **Section 2, 8, 9, 11, 12, 14, 16, 17, 18, 20, 22, 28, 29, 39, 42 in the Principal Act.**

1. **Amendment of Section 2:** The proposed HB 47 seeks to amend Section 2 of the National Tobacco Control Act (NTCA) 2015 by expanding the National Tobacco Control Committee to include representatives from the Nigeria Police Force, Nigeria Security and Civil Defence Corps, and the Ministries of Youth Development and Tourism. Additionally, the Bill introduces a new subsection (5) that imposes stricter qualifications for the Chairperson of the Committee, requiring at least 10 years of experience as a Medical Doctor or Legal Practitioner.

**Under Section 2, subsection 1(h) of the current NTCA 2015**, the Secretary to the National Tobacco Control Committee is a distinct appointee whose appointment is determined by the terms and conditions defined by the Committee. However, HB 47 proposes revising this provision, **requiring the Chairperson of the Committee to serve as its Secretary simultaneously. This consolidation of roles marks a departure from the original framework of the NTCA 2015, which maintained a clear separation of responsibilities between the Chairperson and Secretary.**

2. **Amendment of Section 8:** The proposed amendment to Section 8 of the National Tobacco Control Act (NTCA) 2015 in HB 47 aims to establish a more predictable and sustainable funding mechanism for tobacco control initiatives. Under the current NTCA 2015, the **Tobacco Control Fund** exists but lacks specifically earmarked financial sources, relying primarily on general budgetary allocations and donations, which are often unpredictable and insufficient. **HB 47 addresses this limitation by introducing additional funding streams through a new Subsection 2 (d), (e), and (f):**

- (d) Allocates 40% of all taxes, levies, and excise duties collected from the manufacture, importation, and distribution of tobacco products.
- (e) Includes revenue generated from application fees, fines, and penalties for violations of the Act.
- (f) Adds proceeds from the sale of properties forfeited to the government as a consequence of violations of the Act.

Additionally, HB 47 introduces, under Section 8, **a new Subsection (3)** that outlines how the Tobacco Control Fund will be administered. **Subsection 3(a)** specifies that the **Fund** will be used for the general administration of the Act, while **Subsection 3(b)** stipulates that it will also be used to cover the expenses of the National Tobacco Control Committee.

The new amendments to Section 8 address a critical gap by providing a predictable and sustainable funding stream. **While the NTCA 2015 already enables resource allocation for tobacco control, HB 47's proposal improves this by tying funding to tobacco industry activities. However, for this provision to achieve its intended impact, robust mechanisms for transparency and accountability must be established. Clear guidelines on fund allocation, regular audits, and public reporting will be critical to preventing mismanagement and ensuring these funds are used exclusively to advance tobacco control objectives and public health initiatives. Moreover, ensuring that administrative costs do not disproportionately consume the resources of the Fund will be key to its long-term sustainability and effectiveness.**

3. **Amendment of Section 9:** This amendment to Section 9 of the **National Tobacco Control Act (NTCA) 2015** in **HB 47** introduces sweeping changes to strengthen smoke-free policies by deleting existing provisions that previously allowed exceptions.

- **Deletion of Exceptions in Subsection 1(a) and 1(b):** Under the current National Tobacco Control Act (NTCA) 2015, Section 9, Subsection 1(a) prohibits smoking in certain public places “except in a room exclusively occupied by the smoker.” Similarly, Subsection 1(b) prohibits smoking in vehicles used for public transportation “except in a vehicle exclusively occupied by the smoker.”

The proposed amendments in HB 47 delete the phrases “except in a room exclusively occupied by the smoker” and “except in a vehicle exclusively occupied by the smoker.” **These deletions remove exceptions that previously permitted smoking in semi-private spaces, such as rooms or vehicles solely occupied by the smoker. By eliminating these allowances, the amendments aim to prioritize public health and address the harms of second-harm smoke by ensuring that the no-smoking prohibition applies consistently across all public spaces without exceptions.**

- **Deletion of Subsection 1(d) in Section 9:** Under the current **National Tobacco Control Act (NTCA) 2015**, Subsection 1(d) permits smoking in certain public spaces **“with the permit or approval of the Committee.”** This provision grants the National Tobacco Control Committee discretionary authority to approve smoking in specific circumstances, allowing for potential exceptions to the general smoking prohibition. The proposed amendment in **HB 47** eliminates this phrase, effectively removing the Committee’s power to grant such approvals. **By doing so, the amendment ensures uniform enforcement of smoking prohibitions, eliminating subjectivity in considerations. This change strengthens the regulatory framework by removing loopholes that could undermine the consistent application of smoke-free policies across public spaces.**
- **Deletion of Subsections 2, 3, and 4:** The proposed amendment in **HB 47** seeks to delete subsections 2, 3, and 4 of Section 9 in the National Tobacco Control Act (NTCA) 2015, presenting a departure from the existing provisions governing designated smoking areas. Under the current NTCA 2015, these subsections permit the designation of smoking areas under specific conditions.

**Subsection 2** allows premises owners to allocate up to 10 percent of their space for smoking, provided these areas are physically separated and equipped with adequate ventilation to prevent smoke from infiltrating non-smoking areas. **Subsection 3** outlines technical requirements for such designated smoking areas, mandating ventilation systems to minimize second-hand smoke exposure. **Subsection 4** places responsibility on premises owners to maintain compliance, including displaying appropriate signage and enforcing smoking restrictions.

**HB 47** proposes to delete these subsections entirely, effectively abolishing the concept of designated smoking areas (DSAs). This amendment shifts from the compromise approach of the NTCA 2015, which sought to balance smokers’ rights with public health concerns, to a more decisive policy that prioritizes health over exceptions. By eliminating these provisions, **HB 47** removes all allowances for smoking in public spaces, ensuring that shared environments are entirely smoke-free.

While the elimination of designated smoking areas (DSAs) may raise questions about where long-term smokers can legally smoke, these restrictions may aim to serve a broader societal goal that discourages smoking by de-normalizing it in all public and shared environments. The collective right to health and safety must take precedence over individual preferences to smoke, particularly given the proven harms of second-hand smoke. However, beyond the move to eliminate DSAs, emphasis should also shift toward offering robust government-funded cessation programs across the country. Widespread public education campaigns must also be prioritized to align the enforcement and aspiration of smoke-free spaces with a practical approach to reducing tobacco use.

- **New Additions to Section 9:** HB 47 proposes further amendment of Subsection 5 to include new paragraphs (h), (i), (j) prohibiting smoking in:
  - (h) any service area
  - (i) anywhere within 30 meters of any childcare facility, healthcare facility, or educational institution
  - (j) anywhere within 30 meters of any playground, amusement park, plaza, stadium, arena, any kind of performance space, or any public gathering space.

The new additions significantly enhance protections for vulnerable populations, such as children and patients, by creating broader smoke-free zones around where people gather or receive care.

**However, the 30-meter restriction on smoking around childcare facilities contrasts with a resolution passed by the Nigerian Senate in February 2018, which sought to ban the sale and advertisement of tobacco products within 100 meters of schools. The resolution, sponsored by Senator Oluremi Tinubu, aimed to protect children and youth from tobacco exposure by prohibiting tobacco-related activities within a 100-meter perimeter of educational institutions.**

**The discrepancy between the 30-meter restriction proposed in HB 47 and the 100-meter distance advocated in the Senate resolution may dilute the consistency and effectiveness of tobacco control measures. Aligning the distance parameters in HB 47 with the Senate's 100-meter resolution is imperative.**

- 4. Amendment of Section 12:** The proposed amendments to Section 12 in HB 47 aim to strengthen the advertising, promotion, and sponsorship (TAPS) provisions of the National Tobacco Control Act (NTCA) 2015. These changes **specifically introduce a new subsection (1)(d), delete subsection 2(b), and revise subsection 4(a)**, addressing critical gaps in the existing legislation.

Under the current NTCA 2015, Section 12 prohibits tobacco advertising, promotion, and sponsorship within Nigeria but includes certain exceptions. Subsection 2(b), for example, allows communication targeted at consenting adults over the age of 18, which creates a loophole for direct marketing by the tobacco industry. Moreover, the Act does not explicitly regulate cross-border advertising, leaving the door open for international tobacco marketing campaigns to reach Nigerian audiences, particularly through digital platforms and international broadcasts. Subsection 4(a) regulates the dissemination of health information regarding tobacco products but lacks alignment with government standards, potentially leading to inconsistencies.

The amendments proposed in HB 47 address these deficiencies. The introduction of subsection (1)(d) explicitly bans in-country, local, and cross-border advertisement, promotion, and sponsorship of tobacco products. **This provision modernizes the Act by closing a significant loophole and ensuring that tobacco-related advertising originating from outside Nigeria cannot target domestic audiences. This aligns Nigeria's regulatory framework with international best practices, particularly the WHO Framework Convention on Tobacco Control (FCTC), which advocates for comprehensive bans on all forms of TAPS.**

The **deletion of subsection 2(b)** eliminates the provision allowing communication targeted at consenting adults. **This change strengthens enforcement by removing subjective allowances for private or direct advertising, which the tobacco industry could exploit to reach younger audiences under the pretext of adult communication. The deletion simplifies enforcement and ensures that the ban on TAPS is more robust and unambiguous.** The **revision to subsection 4(a)** inserts the phrase "as may be prescribed by the Ministry" after the word "information", ensuring that all health-related messaging regarding tobacco products aligns with standards set by the Ministry of Health. **This amendment reinforces the Ministry's authority, providing clarity and consistency in how public health information is disseminated.**

However, while these amendments make substantial progress, they fail to address the growing challenge posed by emerging tobacco and nicotine products. These products are aggressively marketed, often through digital platforms such as X, Facebook, and TikTok, amongst others, and present a significant public health risk. Without explicitly classifying these emerging products under the ban on TAPS, the amendments risk leaving a critical gap that the tobacco industry could exploit. Including specific provisions to regulate these products would ensure that the ban on TAPS is truly comprehensive and future-proof against industry tactics.

5. **Amendment of Section 14:** The proposed amendment in HB 47 substitutes the word “Section” with “Part” in Section 14(1). This change expands the scope of enforcement to include all provisions under the Part of the legislation related to packaging and labelling, ensuring that violations of any related requirement—not just those explicitly mentioned in Section 13—are subject to penalties. Additionally, the amendment introduces a new paragraph (e) in Subsection 2, which specifies that “Non-compliance with Section 13 of this Act shall lead to suspension or revocation of license and a fine of N5,000,000.”

**This addition establishes clear penalties for breaches of packaging and labelling requirements. The inclusion of a monetary fine and the potential loss of business licenses provides a strong deterrent against non-compliance, holding manufacturers and distributors accountable for adhering to the law.**

6. **Amendment of Section 16, Product Sale Penalties:** The amendments to Section 16 in HB 47 introduce deletions that alter the existing framework governing the sale of tobacco products, as established in the NTCA 2015. HB 47 **proposes the deletion of Subsection (1)**, which offered an introductory preamble, perhaps to reduce verbosity. In addition to this deletion, **the phrase “the applicable penalties for the violation of the provisions of this Part” has been removed from Subsection (2)(a)**. In the NTCA 2015, this phrase ties violations of sales restrictions, such as the sale of tobacco products to minors, the sale of single-stick cigarettes, and internet sales, to specific penalties outlined within Part VI of the legislation. By deleting this phrase from **Subsection (2)(a)**, **the amendment** creates ambiguity as well as weakens the enforceability of these critical protections and leaves room for non-compliance without meaningful consequences.

**Furthermore, Subsection (2)(b), which outlines penalties for violations of Sections 15(1), (3), (5), and (7)—explicitly prohibiting the sale of tobacco products in single sticks—has also been removed.** This provision in the NTCA 2015 serves as a vital deterrent against the affordability and accessibility of tobacco, particularly for minors and vulnerable groups. Its removal undermines efforts to limit casual and impulsive tobacco use, effectively making tobacco products more accessible to vulnerable groups.

## RECOMMENDATIONS

1. Throw out HB 1151 or harmonize it with HB 47.
2. **Reintroduce Subsection (2)(b) under Section 16:** The removal of the prohibition on single-stick sales undermines efforts to reduce tobacco affordability and accessibility, particularly for minors and low-income individuals. Subsection (2)(b) should be reintroduced and reinforced with stricter penalties for violations. Additionally, regulatory agencies should focus on monitoring informal markets where single-stick sales are prevalent.

- 3. Review and Expand the Scope of HB.47 to Cover Emerging Tobacco Products:** To ensure comprehensive tobacco control, HB 47 should explicitly classify and regulate emerging tobacco and nicotine products under advertising, promotion, and sponsorship bans (TAPS) and sales restrictions. This would prevent the tobacco industry from exploiting regulatory gaps to market these products, particularly to youth.
- 4. Instead of 30-Meter, reinforce the 100-meter Senate Resolution on Distance Restrictions on Tobacco Sales Around Schools:** The introduction of a 30-meter restriction on smoking around childcare facilities, educational institutions, and public gathering spaces falls short of the 100-meter restriction previously recommended in the 2018 Senate resolution on tobacco sales around schools. HB 47 should harmonize its provisions with this resolution by extending the distance restriction to 100 meters for all sensitive locations, including schools, childcare centres, healthcare facilities, and parks. This would enhance protections for vulnerable populations, particularly children.
- 5. Address Loopholes in Advertising and Cross-Border Marketing:** While HB 47 makes strides in banning cross-border advertising, the amendments must include stricter provisions to address digital marketing and e-commerce platforms. Specific measures should prohibit online advertisements and promotions that reach Nigerian audiences, regardless of origin. Requiring digital platforms such as Twitter, Facebook, TikTok, and Instagram, among others, to enforce strict age verification mechanisms for any tobacco-related content. Imposing penalties on platforms and intermediaries that facilitate violations of advertising and sponsorship bans would strengthen this new proposal for restrictions on the cross-border marketing of tobacco products.
- 6. Reject the Chairman-Secretary Merger and Retain the Existing Governance Structure in Section 2, Subsection 1(h):** The proposed amendment in HB 47, requiring the Chairperson of the National Tobacco Control Committee to also serve as its Secretary, should be rejected. This change undermines governance by concentrating power and overburdening the Chairperson, compromising accountability and operational efficiency. The current NTCA 2015 structure, which assigns the Secretary as a separate appointee, ensures a clear division of responsibilities. This arrangement should be maintained, as it balances strategic leadership and administrative coordination, essential for effective Committee operations.

**We further recommend that the Secretary of the Committee be appointed from the Tobacco Control Unit or the Non-Communicable Diseases (NCDs) Control Programme under the Federal Ministry of Health and Social Welfare. These units possess the expertise and institutional knowledge to support the Committee's technical and administrative functions effectively, ensuring evidence-based implementation of tobacco control policies.**

- 7. Increase Budgetary Allocation and Expand Funding Streams to the Tobacco Control Fund:** The Tobacco Control Fund (TCF) is a critical component of Nigeria's tobacco control framework, providing the resources necessary for effective implementation, enforcement, and public awareness campaigns. However, the current funding streams and budgetary allocation are insufficient to meet the growing demands of tobacco control, particularly with the rise of emerging products like e-cigarettes and heated tobacco products. Increasing budgetary allocation and expanding allocation streams to the Fund is essential to ensure sustainability and impact.



## CONCLUSION

The proposed Bill - HB 47 represents a commendable effort to strengthen Nigeria's tobacco control framework but to ensure the Bill achieves its intended objectives, it is essential that the recommendations outlined be taken seriously. **Restoring deleted provisions on penalties and sales restrictions, harmonizing protections for sensitive locations, and maintaining the original governance structure of the National Tobacco Control Committee will significantly enhance the effectiveness of the legislation. Moreover, appointing the Secretary from the Tobacco Control Unit or Non-Communicable Diseases (NCDs) Control Programme will ensure the Committee benefits from technical expertise critical to its success.**

With these adjustments, HB 47 has the potential to advance tobacco control in Nigeria meaningfully, protect vulnerable populations, and uphold public health priorities. We urge policymakers to carefully consider these recommendations to create a robust and enforceable law that serves the best interests of all Nigerians.

## ABOUT CAPPAA

Corporate Accountability and Public Participation Africa (CAPPAA) is a pan-African nongovernmental organisation that advances human rights, challenges corporate abuse of natural resources, and builds community power for inclusive development and participatory governance.

CAPPAA is passionately devoted to nurturing movements of African communities and a new generation of leaders working shoulder to shoulder to demand democratic management and governance of natural resources, accountability from power structures, inclusive participation in development processes, and an end to all forms of corporate and state abuses.

CAPPAA envisions a continent whose development path is designed, modelled, and executed by Africans—respecting and guaranteeing human rights, enabling social justice, and ensuring harmony with the environment. CAPPAA works across four thematic areas: Public Services, Environment and Climate, Democracy Outreach, and Public Health.

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