

COUNTERFEIT AND FAKE MEDICAL PRODUCTS, UNWHOLESOME
PROCESSED FOOD AND OTHER RELATED PRODUCTS
(PROHIBITION AND CONTROL) BILL, 2017
ARRANGEMENT OF SECTIONS

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A BILL

FOR

AN ACT TO REPEAL THE COUNTERFEIT AND FAKE DRUGS AND UNWHOLESOME PROCESSED FOODS (MISCELLANEOUS PROVISIONS) ACT CAP C34, LAWS OF THE FEDERATION OF NIGERIA, 2004 AND TO MAKE COMPREHENSIVE PROVISIONS FOR THE PROHIBITION AND CONTROL OF COUNTERFEIT AND FAKE MEDICAL PRODUCTS UNWHOLESOME PROCESSED FOODS AND RELATED PRODUCTS, 2017

Sponsored by Hon. Chike John Okafor

[] Commencement

ENACTED by the National Assembly of the Federal Republic of Nigeria as follows-

PART I - OFFENCES AND PENALTIES

- 1 1.- (1) A person who-
- 2 (a) produces, imports, exports, manufactures, sells, transship,
- 3 transport;
- 4 (b) aids or abets another person to produce, import, export,
- 5 manufacture, sell, transship, transport;
- 6 (c) distributes, sells or displays for sale;
- 7 aids or abets another person to distribute, sell or display for sale;
- 8 (d) knowingly is in possession of, for the purpose of distribution or
- 9 sale; or
- 10 (e) prints, produces, sells, distributes or is in possession of labels,
- 11 wrappers, packaging materials, authenticity codes chemicals or equipment
- 12 for the purpose of manufacture, revalidation, warehousing, distribution, sale
- 13 or use of, a counterfeit, adulterated, banned or fake, substandard or expired
- 14 medical products, drugs or unwholesome processed foods or packaged
- 15 water, adulterated cosmetic or adulterated or mislabeled chemical in any
- 16 form whatsoever, commits an offence under this Act and shall, accordingly,
- 17

Prohibited activities relating to counterfeit and fake medical products unwholesome processed food and related products

1 be punished as specified in this Act.

2 2) A person who sell drugs and fails or neglects to make and keep
3 appropriate record of such 1 transaction commits an offence.

Prohibited activities
relating to the
hawking, sale or
display of drugs
and poisons on
line or in certain
premises or places

4 2.-(1) A person who-

5 (a) hawks or sells;

6 (b) displays for the purpose of sale; or

7 (c) aids or abets any person to hawk, sell or display for the purpose of
8 sale of a drug or poison on-line or in a place not duly licensed or registered by
9 the appropriate authority for the purpose of drugs or poisons distribution
10 including a market, kiosk, motor park, road-side stall, street, or in a bus, ferry or
11 other means of transportation, commits an offence. under this Act and shall,
12 accordingly, be punished as specified in this Act.

13 (2) In this section, "appropriate authority" means-
14 the Pharmacists Council of Nigeria.

Conspiracy to
commit offences
under section 1
or 2 of this Act

15 3. A person who -

16 (a) conspires with another person to commit an offence under sections
17 1 or 2 of this Act; or

18 (b) with intent to commit an offence under section 1 or 2 of this Act
19 agrees with another person to do an act or make an omission; commits an
20 offence.

Penalties for
offences under
sections 1, 2 and
3 of this Act

21 4.-(1) A person who commits an offence under -

22 (a) section 1(1) (a) or (c), (d) , (e) of this Act shall be liable on
23 conviction to-

24 (i) imprisonment for life, and payment of a fine not less than 5million
25 naira, and

26 (ii) payment of compensation to the victim or his next of kin or
27 personal representative of an amount not less than Ten Million Naira.

28 (b) section 1(1) (b), (d), (e) or (f) of this Act shall be liable on
29 conviction to-

30 (i) imprisonment for a term of twenty years in addition to payment of a

1 fine of an amount not less than Five Million Naira; and

2 (ii) payment of compensation to the victim or his next of kin or
3 personal representative in the event of death or grievous bodily harm, of an
4 amount not less than Five Million Naira.

5 (b) section 1 (2) of this Act, shall be liable on conviction to
6 imprisonment for a term of two years or to a fine of not less than One Million
7 Naira or to both imprisonment and fine;

8 (c) section 2 and 3 of this Act, shall be liable on conviction to
9 imprisonment for a term of three years and to a fine of not less than Two
10 Million Naira; and

11 (d) section 3 of this Act, shall be liable on conviction to
12 imprisonment for a term of not less than twelve months or to a fine of not less
13 than Two Hundred Thousand Naira.

14 (2) Without prejudice to section 6 of this Act, where a corporate
15 body commits an offence under sections 1, 2 or 3 of this Act, the court shall-

16 (a) order the corporate body to pay the prescribed fine; and

17 (b) seal the premises of the corporate body for a period not
18 exceeding the term of imprisonment prescribed for the relevant offence.

19 (3) where a person listed under paragraphs (a) to (e) of section 6 of
20 this Act who contravenes the provisions of-

21 (a) subsection (1) of section 1 of this Act shall on conviction and
22 with an order of the court, be permanently prohibited from directing,
23 engaging in the production, importation, exportation, manufacture,
24 distribution or sale of medical products either by itself or in association with
25 or on behalf of anybody corporate or individuals; or

26 (b) subsection (2) of section 1 and section 2 of this Act shall on
27 conviction and with an order of court, be prohibited from directing,
28 engaging in the production, importation, exportation, manufacture,
29 distribution or sale of medical products either by itself or in association with

1 or on behalf of anybody corporate or individuals for a period of not less than
2 five years.

3 (4) Where a person is charged with an offence but the evidence
4 establishes an attempt to commit the offence, he may be convicted of having
5 attempted to commit that offence, although the attempt is not separately
6 charged and is liable to the same punishment as prescribed for the offence
7 under this Act.

Duty of occupier
or manager to
report

8 5. An occupier or person responsible for the management of any
9 premises who knows or is likely to know that any counterfeit, expired medical
10 product, fake drugs, unwholesome processed food, adulterated, cosmetic or
11 adulterated or mislabeled chemical is being produced or stored within his
12 premises or even that the premise is not licensed, but fails, neglects or refuses to
13 report to the appropriate authority commits an offence and shall be liable on
14 conviction to imprisonment for a term of five years or to a Five Million Naira or
15 to both imprisonment and fine.

Offence by body
corporate

16 6. Where an offence under this Act is committed by a body corporate
17 or firm or other association of individuals-

18 (a) every proprietor, superintendent*director, manager, secretary or
19 other officer of the body corporate;

20 (b) every partner or officer of the firm;

21 (c) every trustee of the body concerned;

22 (d) every person concerned in the management of the affairs of the
23 association; or

24 (e) every person who was purporting to act in any capacity referred to
25 in paragraphs (a) to (d) of this section, is severally guilty of that offence and
26 liable to be proceeded against and punished for that offence in the same manner
27 as if he had himself committed the offence unless he proves that the act or
28 omission constituting the offence took place without his knowledge, consent or
29 connivance.

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PART II - ENFORCEMENT PROVISIONS

7. The National Agency for Food and Drug Administration and Control established under the National Agency for Food and Drug Administration and Control Act; CAPN.1 LFN 2004 shall be responsible for the enforcement of the provisions of this Act and shall for this purpose exercise any of its powers under the National Agency for Food and Drug Administration

National Agency for Food and Drug Administration and Control to enforce Act

8.-(1) A Committee to be known as the National Committee on Counterfeit and Fake Medical Products, Unwholesome processed Food and Related Products (in this Act referred to as "the National Committee") shall be constituted by the Minister.

National Committee on Counterfeit and Fake Medical Products, Unwholesome processed Food and Related Products

(2) The National Committee constituted under subsection 1 of this section shall consist of-

- (a) the Chairman of NAFDAC Council as the chairman
- (b) the Director-General of the Agency as Vice-Chairman of the Committee;
- (c) the Director of the Food and Drug Department of the Federal Ministry of Health or his representative not below the rank of Deputy-Director;
- (d) a representative of the Nigeria Police not below the rank of Assistant Commissioner of Police, to be appointed by the Inspector-General of Police;
- (e) a representative of the Nigeria Customs Service not below the rank of Assistant Comptroller of Custom to be appointed by the Comptroller-General of Customs;
- (f) a representative of the Nigeria Immigration Service not below the rank of Assistant-Comptroller of Immigration to be appointed by the Comptroller-General of Immigration;
- (g) The Head of the Inspectorate Department of the Pharmacists Council of Nigeria or his representative.

- 1 (h) the Head of Enforcement Directorate of the Agency;
- 2 (i) the Head of the Legal Directorate of the Agency;
- 3 (j) a representative of the Minister of Agriculture;
- 4 (k) a representative of the Minister of Environment;
- 5 (l) a representative of the Minister in charge of Trade, Investment and
- 6 Industry;
- 7 (m) a representative of the Association of Food, Beverage and
- 8 Tobacco Employers;
- 9 (n) a representative of the Federal Institute of Industrial Research;
- 10 (o) a representative of the Institute of Public Analysts of Nigeria;
- 11 (p) a representative of the Medical and Dental Council of Nigeria;
- 12 (q) a representative of the Nigeria Institute of Food Science and
- 13 Technology;
- 14 (r) a representative of the Veterinary Council of Nigeria;
- 15 (s) a representative of National Agricultural Quarantine Service;
- 16 (t) a member of the Overseas Representatives of Pharmaceutical
- 17 Manufacturers;
- 18 (u) a representative of Pharmaceutical Manufacturers Group of the
- 19 Manufacturers Association of Nigeria; and
- 20 (v) such other persons as may be co-opted by the Director General of
- 21 the Agency and approved by the Minister.

State Committee
on Counterfeit
and Medical
Products,
Unwholesome
Processed Food
and Related
Products

22 9.-(1) The State commissioner for health shall constitute for each
23 State of the Federation a State Committee on Counterfeit and Fake Medical
24 Products, Unwholesome Processed Food and Related Products (in this Act
25 referred to as the "State Committee").

26 (2) The State Committee constituted under subsection 1 of this
27 section shall consist of-

- 28 (a) the Head of the State Office of the Agency as Chairman;
- 29 (b) an officer of the Nigeria Police Force, not below the rank of Chief
- 30 Superintendent of Police, to be nominated by the Commissioner of Police;

- 1 (c) a representative of the State Commissioner of Health;
- 2 (d) a principal officer nominated by the State Office of the
- 3 Pharmacists Council of Nigeria; and
- 4 (e) the officer-in-charge of the State Command of the Nigerian
- 5 Customs Service.

6 10.-(1) A Committee constituted under this Act shall assist and
7 advise the Council of the Agency in the discharge of its functions under this
8 Act and shall-

- 9 (a) in the case of the National Committee-
 - 10 (i) meet at least twice yearly, and
 - 11 (ii) supervise the State Committees.
- 12 (b) in the case of a State Committee-
 - 13 (i) meet bi-monthly;
 - 14 (ii) assist and advise States or Zonal Offices of the agency; and
 - 15 (iii) work under the supervision of, and submit monthly reports to,
 - 16 the National Committee.

17 (2) The Agency shall be responsible for the administration of the
18 secretariats of the National and State Committees.

19 (3) The Members of the National and State Committees shall be
20 paid such allowances in line with relevant government guidelines".

21 11. The Agency shall have powers to-

- 22 (a) enter any premises at any reasonable time with reasonable force
23 and examine an article found in the premises if there is reason to believe that
24 the provisions of this Act or related legislation are being contravened;
- 25 (b) take samples or specimen of an article and, while on the
26 premises, open and examine any container or package;
- 27 (c) examine a book, document or record found on the premises,
28 which is reasonably believed to contain an information relevant to the
29 enforcement of this Act or related legislation and cause copies or extracts to
30 be made of or from them;

Operations of the
National and State
Committees on
Counterfeit and
Fake Medical
Products,
Unwholesome
processed food
and related
products

Powers of the
Agency

1 (d) seize a counterfeit medical product, a banned, fake, substandard or
2 an expired medical product including drugs, or an adulterated or a mislabeled
3 chemical product or packaged water, an adulterated cosmetic or a counterfeit
4 medical product or a drug or poison or an unwholesome processed food
5 product;

6 (e) seize a document, an item or article which is the subject matter or
7 constitutes evidence of an offence under this Act or related legislation;

8 (f) arrest a person suspected of committing an offence under this Act
9 or related legislation and detain the person on the premises of the Agency or
10 any other premises designated by it;

11 (g) seal any premises that is used or is being used in connection with
12 an offence under this Act until the medical product, processed food, packaged
13 water, cosmetic, chemical, drug or poison, as the case may be, on the premises
14 has been removed by the Agency or until such reasonable time as is necessary
15 for proper investigation and prosecution of suspects; and

16 (h) establish and maintain designated inspection points at all ports of
17 entry in Nigeria for the purpose of examining all products and premises
18 regulated and controlled by the Agency;

19 (i) The Agency shall destroy seized or confiscated counterfeit and
20 medical products.

21 12.-(1) There is established, a Nigeria Police Squad to assist the
22 Agency in the lawful execution of the Agency functions.

23 (2) The Squad which shall consist of-

24 (a) a Deputy Superintendent of Police; and

25 (b) such number of Police Officers, to be appointed by the Inspector-
26 General of Police.

27 (2) The Squad shall-

28 (a) assist the Agency in the lawful execution of the Agency's
29 functions under this Act;

30 (b) arrest and detain any person suspected of committing an offence

Nigeria Police
Squad to assist
the Agency

1 under this Act; and

2 (c) assist in conducting investigation into matters arising under the
3 Act.

4 13.-(1) A person shall not -

Agency not to
be obstructed

5 (a) obstruct or resist a member of the Agency or a person authorised
6 by it in the exercise of its powers under this Act; or

7 (b) without the authority of the Agency, remove, alter or interfere in
8 any way with a drug, poison, processed food product, medical product,
9 chemical, cosmetic, packaged water or any other thing seized under this Act.

10 (2) A person who contravenes the provision of this section commits
11 an offence and liable on conviction to a term of imprisonment of not less
12 than two years or to a fine of Two Million Naira or to both fine and
13 imprisonment.

14 PART III - FORFEITURE OF PROCEEDS AND DESTRUCTION OF
15 SEIZED PROPERTY

16 14.-(1) A property-

Property liable
to forfeiture and
destruction of
seized property

17 (a) whether real or personal, which is used for the commission of an
18 offence or represents the proceeds of an offence under this Act;

19 (b) within Nigeria, which represents the proceeds of an offence
20 under the laws of a foreign country within whose jurisdiction the offence or
21 activity would be punishable by imprisonment or fine and which would be
22 punishable by imprisonment or fine under this Act if the act or activity had
23 occurred within Nigeria;

24 (c) in the form of intellectual property, a book, record, research
25 material and data used or intended to be used in violation of this Act;

26 (d) in the form of money, negotiable instrument, security or other
27 thing of value furnished or intended to be furnished by a person in exchange
28 for an act to further the commission of an offence under this Act or all
29 proceeds traceable to the exchange, and any money, negotiable instrument

1 and security used or intended to be used to facilitate a violation of this Act; and
2 (e) in the form of real property, including a right, title and an interest
3 (including a leasehold interest) in the whole or part of a piece or parcel of land
4 and an improvement or appurtenances on or to the land, which is used or
5 intended to be used, in any manner or part to commit, or facilitate the
6 commission of an offence under this Act, is liable to forfeiture to the Federal
7 Government of Nigeria and no other property rights shall exist on it.

8 (2) Without prejudice to subsection (1) of this section, a means of
9 transportation or carriage, including an aircraft, a vehicle, and a vessel used or
10 intended for use to transport or in any manner, to facilitate or conceal an
11 offence under this Act is liable to forfeiture, but a means of transportation-

12 (a) used by a person as a common carrier in the transaction of business
13 shall not be forfeited under this section unless it is proved that the owner or
14 other person in charge of the means of transportation was a consenting party or
15 privy to a violation of this Act;

16 (b) shall not be forfeited under this section by reason of an act
17 established by the owner to have been committed by a person other than the
18 owner while the means of transportation was unlawfully in the possession of a
19 person, other than the owner, in violation of the criminal laws of Nigeria or a
20 part of Nigeria; and

21 (c) shall not be forfeited under this section to the extent of the interest
22 of an owner, by reason of an act established by that owner to have been
23 committed without the knowledge, consent or connivance of that owner.

24 (3) The Agency shall destroy an article or a property seized under
25 subsection (1) of this section, where-

26 (a) the court on the conviction of the person in respect of which the
27 article or property was seized orders its destruction;

28 (b) where a conviction is not recorded but the court, being satisfied
29 that the article or property is counterfeit, adulterated, fake or is an
30 unwholesome processed food, makes an order for its destruction; or

1 (c) the owner of the article or property consents to its seizure and
2 destruction.

3 15.-(1) A person who-

Laundering,
concealment and
related offences

4 (a) converts or transfers property, knowing the property to
5 represent proceeds of an offence under this Act; or

6 (b) conceals or disguises the true nature, source, location,
7 disposition or movement of the property or rights of ownership in respect of
8 property, knowing the property to represent proceeds of an offence under
9 this Act or related Acts,

10 commits an offence and shall be liable on conviction to imprisonment for a
11 term of five years or payment of a fine two times the value of the property or
12 to both the imprisonment and fine.

13 (2) A person who-

14 (a) whether by concealment, removal from jurisdiction, transfer to
15 nominees or otherwise retains property constituting the proceeds of an
16 offence under this Act on behalf of another person with knowledge that the
17 other person is engaged in or has benefitted from conduct constituting an
18 offence under this Act; or

19 (b) unlawfully acquires, is in possession of or uses property
20 constituting the proceeds of an offence under this Act knowing that the
21 property directly or indirectly represents proceeds of an offence;
22 commits an offence and shall be liable on conviction to imprisonment for a
23 term of five years or payment of a fine two times the value of the property or
24 to both the imprisonment and fine.

25 16. The Agency shall destroy an article or a property seized under
26 subsection (1) of this section, where-

Foreign properties
and assets

27 (1) Where a person is convicted of an offence under this Act, a
28 property or an asset in a foreign country belonging to the person which
29 constitutes proceeds of the offence shall, subject to appropriate treaty or an

1 arrangement with that foreign country, be forfeited to the Government of the
2 Federation.

3 (2) The Agency shall, through the Office of the Attorney-General of
4 the Federation, ensure that the forfeited asset or property is transferred and
5 vested in the Government of the Federation.

Disclosure of
assets and
properties by an
arrested person

6 17.-(1) Where a person is arrested for committing an offence under
7 this Act, the person shall make full disclosure of all his assets and properties by
8 completing the Declaration of Assets Form as specified in Form A set out in the
9 Schedule to this Act.

10 (2) The completed Declaration of Assets Form shall be investigated
11 by the Agency.

12 (3) A person who-

13 (a) knowingly fails to make full disclosure of his assets and
14 properties;

15 (b) knowingly makes a declaration that is false; or

16 (c) knowingly fails, neglects or refuses to make a declaration or
17 furnish an information required, in the Declaration of Assets Form commits an
18 offence under this Act and shall be liable on conviction to imprisonment for a
19 term of at least one year.

20 (4) Except for the purpose of prosecution for an offence under
21 subsection (3) of this section, evidence of a declaration by a suspect made
22 under this section is inadmissible in the trial of the suspect or proceedings for
23 the interim attachment of a property subject to forfeiture.

24 (5) The Director-General of the Agency may, subject to the approval
25 of the Minister, modify or alter the Declaration of Assets Form specified in
26 Form A set out in the Schedule to this Act as may be necessary in order to give
27 effect to the provisions of this Act.

Seizure of
property

28 18.-(1) An officer of the Agency may, in the course of investigation or
29 search, seize a property where the officer reasonably believes that the property
30 is liable to forfeiture under this Act.

1 (2) Where a person is arrested for an offence under this Act, the
2 Agency shall immediately trace and seize all the assets and properties of the
3 person used for or constituting proceeds of an offence under this Act.

4 (3) Whenever property is seized under this section, the Agency
may-

(a) place the property under seal; or

7 (b) remove the property to a place designated by the Agency.

8 (4) A property taken or detained under this section is deemed to be
9 in the custody of the Agency, subject only to an order of Court.

10 19.-(1) Where the Agency has seized an asset or a property under
11 section 18 of this Act, it shall, not more than one week after the seizure,
12 apply to the Court for an interim order of forfeiture of the property
13 concerned to the Government of the Federation and the Court shall, if
14 satisfied that there is prima facie evidence that the property concerned is
15 subject to forfeiture under this Act, make an interim order forfeiting the
16 property to the Government of the Federation.

Interim order
of forfeiture

17 (2) Where the Court declines to make an interim order of forfeiture
18 under subsection (1) of this section, the Court shall order the Agency to
19 forthwith return the property seized to the person from whose custody it was
20 removed.

21 20.-(1) A person convicted of an offence under this Act shall forfeit
22 to the Government of the Federation-

Forfeiture order
after conviction

23 (a) all the assets and properties which are the subject of an order of
24 attachment of Court made under section 19 of this Act;

25 (b) an asset or a property, not falling under paragraph (a) of this
26 subsection, proved to have been derived from the proceeds of an offence
27 under this Act, notwithstanding that the person convicted did not disclose
28 the asset or property in the Declaration of Assets Form specified in Form A
29 set out in the Schedule to this Act; and

30 (c) a property not falling under paragraph (a) of this subsection,

1 used in any manner to commit or to facilitate the commission of an offence
2 under this Act, notwithstanding that the person convicted did not disclose the
3 property in the Declaration of Assets Form specified in Form A set out in the
4 Schedule to this Act.

5 (2) The Court in imposing a sentence on a person under this section
6 shall, in addition to any other sentence imposed pursuant to any other
7 provisions in this Act, order that the person forfeit to the Government of the
8 Federation all properties described in subsection (1) of this section.

Final order

9 21. Where a person is convicted of an offence under this Act, the
10 Agency or an authorized officer may apply to the Court for an order of
11 forfeiture of the convicted person's assets and properties which constitutes
12 proceeds of an offence under this Act and are already subject to an interim order
13 made under this Act.

Final disposal
of forfeited
property

14 22.-(1) The Court shall forward to the Agency a copy of a final order
15 forfeiting the asset and property of a person convicted under this Act.

16 (2) On receipt of the final order pursuant to this section, the Agency
17 shall take steps to dispose of the property concerned by sale or otherwise and
18 where the property is sold or auctioned, a percentage of the net proceeds shall
19 be paid into the Asset Recovery Fund as specified under section 37 of this Act.

20 (3) Subject to Subsection (2) above, the remainder of the net proceeds
21 shall be paid into the Consolidated Revenue Fund of the Federation

22 (4) Where a part of the property included in a final order is money in a
23 bank account or in the possession of a person, the Agency shall cause a copy of
24 the order to be produced and served on the manager or a person in control of the
25 head office or branch of the bank concerned.

26 (5) The manager or person, on receiving a copy of an order under
27 subsection (3) of this section, shall forthwith pay over the money to the Agency
28 without any further assurances than this Act, and, subject to subsection (2) of
29 this section; the Agency shall pay the money received into the Consolidated
30 Revenue Fund of the Federation.

1 23.-(1) Where a property has been seized under this Act and the
2 property is abandoned by the owner or the Agency is yet to secure conviction
3 for the alleged offence, the Agency may, before the expiration of twelve
4 months from the date of the seizure, apply to the Court for an order of
 forfeiture of that property on the ground that the property constitutes
 proceeds of an offence under this Act.

Forfeiture of
property where
there is no
prosecution or
conviction for
an offence

7 (2) The Court to whom an application is made under subsection (1)
8 of this section shall direct a notice to be published in at least two national
9 daily newspapers calling on a person who claims to have an interest in the
10 property to appear before that Court on a date specified in the notice, to show
11 cause why the property should not be forfeited to the Government of the
12 Federation.

13 (3) Where the Court to which an application is made under
14 subsection (1) of this section is satisfied that-

15 (a) the property constitutes the proceeds of an offence under this
16 Act or is used to further the commission of the offence; and

17 (b) there is no purchaser in good faith for valuable consideration of
18 the property without notice, the Court shall make an order for the forfeiture
19 of the property.

20 (4) Where in respect of a property seized under section 18 of this
21 Act, prosecution is not commenced or an application is not made under
22 subsection (1) of this section after the expiration of twelve months from the
23 date of its seizure, the Agency shall release the property to the person from
24 whom it was seized.

25 24.-(1) A person who, without due authorization by the Agency,
26 deals with, sells or otherwise disposes of a property or an asset which is the
27 subject of an attachment, interim order or final order commits an offence and
28 shall liable on conviction to imprisonment for a term of five years without
29 option of a fine.

Offences in
relation to
forfeiture orders

30 (2) A manager or person in control of the head office or branch

1 office of a bank or other financial institution who fails to pay over to the
2 Agency on the service on him of the final order made under section 21 of this
3 Act commits an offence and shall be liable on conviction to imprisonment for a
4 term of three years, without the option of a fine.

Consequences
of an acquittal
in respect of
assets and
properties

5 25.-(1) Without prejudice to subsection (2) of this section and where
6 a person is discharged and acquitted by a Court of an offence under this Act, the
7 Court may revoke an interim order of attachment made pursuant to this Act or
8 make a final order, as the case may be.

9 (2) The Court may make an order in respect of property already
10 subject to an interim order where a discharge is merely given on technical
11 grounds.

12 (3) Where an interim order is revoked by a Court under subsection (1)
13 of this section, the Agency shall release to the person concerned all assets and
14 properties which are affected by an order of attachment.

Freezing order
on financial or
designated non
financial
institutions

15 26.-(1) Notwithstanding anything contained in any other enactment
16 or law, the Director - General or an officer authorized by him may, if satisfied
17 that the money in the account of a person constitutes proceeds of an offence
18 under this Act, apply to the Court ex-parte for power to issue or instruct a bank
19 examiner or such other appropriate regulatory authority to issue an order as
20 specified in Form B set out in the Schedule to this Act.

21 (2) An order issued under subsection (1) shall be addressed to the
22 manager of the financial institution or the person in control of the designated
23 non financial institution where the account is or believed by him to be or the
24 head office of the financial institution or the designated non financial
25 institution to freeze the account.

26 (3) The Agency, or an officer authorized by it may by an order issued
27 under subsection (1) of this section, or by a subsequent order, direct the
28 financial institution or designated non financial institution to-

29 (a) supply an information and produce books and documents relating
30 to the account; and

1 (b) stop all outward payments, operations or transactions
2 (including a bill of exchange) in respect of the account of the person.

3 (4) The manager or the person in control of the financial institution
4 or designated non financial institution shall on being served with the order
5 made pursuant to subsection (2) of this section shall take appropriate steps to
6 comply with the requirements of the order

7 (5) In this section-

8 (a) "bank" has the meaning given to it in the Banks and other
9 Financial Institutions Act;

10 (b) "Designated non-financial institutions" means dealers in
11 "jewellery, cars and luxury goods, chartered accountants, audit firms, tax
12 consultants, clearing and settlement companies, legal practitioners, hotels,
13 casinos, supermarkets or such other business as the Federal Ministry of
14 Trade and Investment or appropriate regulatory authorities may from time to
15 time designate; and

16 (c) "Financial Institution" means-

17 (i) any body or institution which carries on any banking business
18 or financial transactions whether lawfully or unlawfully as defined in the
19 Banks and other Financial Institutions Act;

20 (ii) banks, body, association or group of persons whether corporate
21 or incorporate which carries the business of investments and securities, a
22 discount house, insurance institutions, debt factorization and conversion
23 firms, bureau de Change, finance Company, Money brokerage firms whose
24 principal business includes factoring, project financing equipment leasing,
25 debt administration, fund management, private ledger services, investment
26 services, local purchase order financing, export finance, project
27 consultancy, pension funds management and other business as the Central
28 Bank or other appropriate regulatory authorities may from time to time
29 designate.

30 (d) Reference to an order issued Reference to an order issued,

1 includes a reference to an order, a direction or requirement addressed to the
2 manager of a bank or other officer of a bank which directs the manager or other
3 officer to stop all outward payments, operations or transactions in respect of an
4 account with that bank.

5 PART IV - PROCEEDINGS AND EVIDENCE

Jurisdiction and
special powers
of the Court

6 27.-(1) The Federal High Court shall have exclusive jurisdiction to try
7 any offence under this Act and deal with all matters arising from or relating to
8 the provisions of this Act.

9 (2) The Court has power, notwithstanding anything to the contrary in
10 any other Act to-

11 (a) ensure that all matters brought before the Court by the Agency
12 against a person, body or an authority shall be conducted with dispatch and
13 given accelerated hearing;

14 (b) adopt all lawful measures necessary to avoid unnecessary delays
15 and abuse in the conduct of matters brought by the Agency before it or against a
16 person, body or an authority.

17 (3) The Chief Judge of the Federal High Court may designate a Court
18 or Judge as he deems appropriate to hear and determine all cases under this Act
19 or other related offences under this Act.

Conduct of
Proceedings

20 29.-(1) Subject to the provisions of section 174 of the Constitution of
21 the Federal Republic of Nigeria 1999, a legal officer or legal practitioner
22 appointed by the Agency shall conduct criminal proceedings in respect of
23 offences under this Act or regulations made under this Act and related
24 legislation.

25 (2) In judicial proceedings for an offence under this Act or regulations
26 made under it, the provisions of the Administration of Criminal Justice Act,
27 2015 apply in respect of the matter.

Presumption of
source of proceeds

28 30. Where, in a case involving the proceeds of an offence under this
29 Act-

30 (a) the property or money was acquired during or within a reasonable

1 time after the commission of an offence; and

2 (b) there is no other source of the property or money other than the
3 offence, the Court shall, subject to any contrary evidence, presume that the
4 property or money constitutes the proceeds of that offence.

5 31. Subject to the provisions of the Constitution of the Federal
6 Republic of Nigeria, 1999, an application for stay of proceedings, in respect
7 of a criminal matter brought or commenced by the Agency before the Court,
8 shall not be entertained by any court until final judgment is delivered by the
9 Court in the criminal proceedings.

Appeals against
interlocutory
rulings

10 32.-(1) Notwithstanding a written law or rule of law to the contrary,
11 in any proceedings against a person for an offence under this Act-

Evidence of
accomplice and
agent provocateur

12 (a) a witness is not regarded as an accomplice by reason only that
13 the witness is in any manner concerned with the commission of the offence,
14 or that he had knowledge of the commission of the offence if, before the
15 completion of the act or acts constituting the offence, the witness had
16 reported his knowledge of his participation to the Agency;

17 (b) an agent provocateur, whether he is an officer of the Agency or
18 not, is not presumed to be unworthy of credit by reason only of his having
19 attempted to commit, or abet or having abetted or engaged in a criminal
20 conspiracy to commit the offence, if the main purpose of the attempt,
21 abetment or engagement was to secure evidence of the commission of the
22 offence against the person; and

23 (c) a statement, whether oral or written, made to an agent
24 provocateur by the person is admissible as evidence at his trial.

25 34.-(1) The Agency shall seek and receive information from a
26 person, authority, a corporation or company without let or hindrance in
27 respect of an offence under this act.

Power to receive
information
without hindrance

28 (2) An officer of the Agency shall not be compelled to disclose the
29 source of information or identity of an informant except by order of court.

Penalty for false information

1 35.-(1) A person who makes or causes another person to make to an
2 officer of the Agency in the course of the exercise by the officer of his duties, a
3 statement which to the knowledge of the person making the statement, or
4 causing the statement to be made-

5 (a) is false, or intended to mislead or is untrue in any material
6 particular; or

7 (b) is inconsistent with another statement previously made by the
8 person to another person who had authority or power under any law to receive,
9 or require to be made that other statement, notwithstanding that the person
10 making the statement is not under any legal or other obligation to tell the truth;
11 commits an offence and shall be liable on conviction to imprisonment for a
12 term of not less than one year or to a fine not less than Five Hundred Thousand
13 Naira or to both the fine and imprisonment.

14 (2) For the purposes of subsection (1) of this section, a statement
15 criminal, or a statement made by a person in the course of disciplinary
16 proceedings, whether the legal or disciplinary proceedings are against the
17 person making the statement or against another person, is deemed to be a
18 statement made to a person having authority or power under the law to receive
19 the statement so made.

20 PART V - ESTABLISHMENT OF SPECIAL ADMINISTRATIVE AND
21 INTERVENTION FUNDS

Special regulated products levy

22 36.-(1) There is established under this Act a Special Regulated
23 Products Levy Fund.

24 (2) The Agency shall collect a two percent levy ("the Levy") from
25 importers and manufacturers of Special Regulated Products and pay the
26 proceeds of the Levy collected into the Special Regulated Products Fund
27 established under sub-section (1) of this section.

28 (3) For the purpose of this Part, "Special Regulated Products" include
29 alcoholic beverage, tobacco and tobacco products, energy drinks, and any
30 health or health product as may be designated by the Minister and published in

1 the Official Gazette of the Federal Government.

2 (4) The Nigerian Customs service shall have the duty and
3 responsibility of collecting this Special regulatory Levy and disburse to the
4 relevant authorities in accordance with provision of sub-section (5) of this
5 Section 36.

6 (5) The monies accruing into the Special Regulated Products Levy
7 Fund established under sub-section (1) of this section shall be disbursed as
8 follows-

9 (a) thirty percent into the Consolidated Revenue Fund of the
10 Federation;

11 (b) forty percent to meet part of the running costs of the Agency for
12 the implementation and enforcement of the provisions of this Act and its
13 other statutory functions;

14 (c) sixteen percent to the Bank of the Industry as part of the Food
15 and Drug Intervention Fund for the establishment and development of the
16 food and drug Industries;

17 (d) three percent to the National Health Insurance Fund to meet
18 part of its running costs;

19 (e) two percent into research and development of Federal Institute
20 of Industrial Research for purposes of research in food;

21 (f) one percent to pharmacists Council of Nigeria to meet part of its
22 operational costs;

23 (g) one percent to Institute of Public Analysts of Nigeria to meet its
24 operational costs;

25 (h) three percent to Nigeria Institute of Food Science and
26 Technology for research and development;

27 (i) one percent to Veterinary Council of Nigeria to meet part of its
28 operational cost; and

29 (j) three percent into the Research and Development Account of
30 the National Institute for Pharmaceutical Research and Development for

1 purposes of research and development to implement policies, plans and
2 programmes under the National Health Policy.

3 (6) To provide accurate data and information to the Customs in
4 assessing and collecting the Levy imposed under subsection (1) of this section
5 from an importer or a manufacturer, the Agencies shall-

6 (i) examine all Special Regulated Products at all ports of entry,
7 manufacturing, establishments and points of sale; and

8 (ii) devise appropriate forms and documents necessary for aiding the
9 assessments and collection of the Levy.

Establishment
of an Asset
Recovery Fund

10 **37.-(1)** There is established for the Agency under this Act an Asset
11 Recovery Fund into which shall be paid a percentage of proceeds of assets
12 recovered from crimes committed under this Act.

13 (2) The percentage referred to in sub-section (1) of this section to be
14 paid to the Agency, shall be as may be determined by the President of the
15 Federal Republic of Nigeria from time to time.

16 (3) The Agency shall, subject to regulations made by the Minister
17 under section 38 of this Act, administer the monies in the Assets Recovery
18 Fund solely for the purpose of-

19 (a) strengthening the activities of the Agency; and

20 (b) exercising the other related powers of the Agency.

Power to make
Regulations

21 **38.-(1)** Subject to the other provisions of this Act, the council of the
22 Agency with the approval of the Minister may make regulations -

23 (a) for the disposal or sale of any property or assets forfeited pursuant to this
24 Act;

25 (b) to prescribe the obligation and responsibilities of retailers,
26 distributors or manufacturers in the eradication of counterfeit medical
27 products; and

28 (c) generally for purposes of this Act and its due administration.

29 (2) The Agency may prescribe, subject to the approval of the Minister,
30 payment of such monetary reward to a person who gives vital and genuine

1 information that leads to the arrest and prosecution of a person who has
2 committed an offence under the provisions of this Act and of the recovery of
3 an article or item connected with the commission of the offence.

4 39.-(1) The Counterfeit and Fake Drugs and Unwholesome
5 Processed Foods (Miscellaneous Provisions) Act CAP C34, LFN, 2004 is
6 hereby repealed.

Repeal of CAP
C 34, LFN 2004
and savings

7 (2) The repeal of the Act specified in subsection (1) of this section
8 shall not affect a thing done or purported to be done under the repealed Act.

9 40. In this Act, unless the context otherwise requires-
10 "adulterated" when used in relation to medical product, chemical or
11 cosmetic, refers to a situation when-

Interpretation

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

16 (i) the requirements of the Food and Drugs Act CAP. F32 LFN
17 2004 or any other standard prescribed by any other legislation as to safety,
18 identity and strength, and

19 (ii) the quality and purity characteristics, which it purports or it
20 represents to possess; or

21 (b) it purports to be or is represented as a product, the name of
22 which is recognized in an official compendium or in a legislation and has its
23 strength differing from, or its quality or purity falling below the standard set
24 forth in the compendium or legislation;

25 "Agency" means the National Agency for Food and Drug Administration
26 and Control Agency established under the National Agency for Food and
27 Drug Administration and Control Act;

28 "banned medical product" means a medical product prohibited under the
29 provisions of a legislation or notice issued by the Minister;

30 "chemical" means a substance or reagent that is produced or used in a

1 process to produce a chemical effect and it includes dusts, mixtures and
2 common materials such as paints, fuels, solvents and fertilizers;

3 "cosmetic" includes a substance or mixture intended to be rubbed, poured or
4 sprinkled or sprayed, introduced into or otherwise applied to the human body
5 or any part of it for cleansing, beautifying, promoting attractiveness, altering
6 the complexion, skin, hair or teeth and include deodorants and detergent
7 powder;

8 "Council" means the Governing Council of the Agency;

9 "counterfeit medical product" means a product whether branded or generic that
10 is falsely labeled with respect to identity or source and includes a medical
11 product without the correct active ingredients or with insufficient quantity of
12 active ingredients or with fake packaging;

13 "Court" means the Federal High Court;

14 "Director-General" means the Director General of the Agency;

15 "drug or drug product" includes cosmetic product containing an active
16 medicinal ingredient, packaging materials, labels, wrappers, containers,
17 instruments, apparatus, or equipments used in the manufacture, processing,
18 storing, dispensing or packaging of drugs;

19 "fake medical product" means-

20 (a) a medical product-

21 (i) which is not what it purports to be,

22 (ii) which is so coloured, coated, powdered or polished that the
23 damage is concealed,

24 (iii) which is made to appear to be better or of greater therapeutic
25 value than it really is,

26 (iv) which is not labeled in the prescribed manner or which label or
27 container or anything accompanying a drug bears any statement, design or
28 device which makes a false claim for a drug or which is false or misleading,

29 (v) the container of which is so made, formed or filled as to be
30 misleading; or

1 (b) a drug or drug product the label of which does not bear adequate
2 directions for use and such adequate warning against use in those
3 pathological conditions or by children where its use may be dangerous to
4 health or against unsafe dosage or method or duration of use;
5 "medical product" include drug, medical device and their accessories, active
6 pharmaceutical ingredient, recipients, biologics, vaccines, toxins, venoms,
7 blood and blood products and tissues;
8 "medical device" includes packaging material, label, wrapper, container,
9 instrument, apparatus, or equipment used in the manufacture, processing,
10 storing, dispensing or packaging of a medical product;
11 "market" includes a place of commercial activities where drugs and drug
12 products are sold, bought, displayed for sale or offered for sale; and this
13 includes cyber sale;
14 "Minister" means the Minister charged with the responsibility for matters
15 relating to health;
16 "National Committee" means the National Committee established under
17 section 8 of this Act;
18 "On line" includes the internet, web retailing, on-line market places or e.
19 commerce service provider;
20 "poison" includes the substances enumerated in the Poison and Pharmacy
21 Act, Cap 152 L & F 1958 which shall, whether natural or synthetic, be
22 deemed poisons whether mixed with other ingredients or not and whatever
23 restrictions placed on any particular poison shall apply to it whether it is
24 unmixed or is contained as an ingredient in some preparation, unless it is
25 contained in one of the preparations specifically exempted from such
26 provision;
27 "proceeds" means, subject to section 26 of this Act, property or money
28 derived or obtained directly or indirectly, from the commission of an offence
29 under this Act;
30 "property" means any property, whether real or personal which is capable of

1 being owned by a person;

2 "related legislations" include the-

3 (i) National Agency for Food and Drug Administration and Control
4 Act CAP. N1 LFN 2004 and related regulations;

5 (ii) Food Drugs and related Products(Registration Etc) Act, CAP F33
6 LFN 2004 and related regulations;

7 (iii) Marketing Breast Milk Substitute Act CAP M5 LFN 2004 or
8 regulations made there under;

9 (iv) Import Prohibition Act CAP I3 LFN 2004 and related regulations;

10 (v) section 1 (18) and (19), 2 and 3 of the Miscellaneous Offences Act
11 CAP M17 LFN 2004;

12 (vi) section 243 of the Criminal Code Act, CAP C38 LFN 2004; and

13 (vii) National Drug Formulary and Essential Drugs List Act CAP N29
14 LFN 2004 or regulations made there under.

15 "State Committee" means a State Committee established under section 9 of this
16 Act;

17 "substandard drug" means a drug which has in its preparation or manufacture
18 an ingredient that falls below the specification contained in the official
19 compendium, namely, the British Pharmacopoeia, British Pharmaceutical
20 Codex, United States Pharmacopoeia, European Pharmacopoeia or any
21 official compendium recognized by the Agency;

22 "the Act" means the National Agency for Food and Drug Administration and
23 Control Act, CAP N1 2004;

24 "unwholesome processed food product" means any food product which-

25 (a) consists in whole or in part, of any filthy, putrid or decomposed
26 substance;

27 (b) has been prepared, transported, marketed, packaged or stored
28 under unsanitary conditions where it may have been contaminated with filth or
29 whereby it may have been rendered injurious to health;

30 (c) is packed in a container composed in whole or in part of any

1 injurious or deleterious substance which may render the content injurious to
2 health;

3 (d) bears or contains for the purposes of colouring only a colour
4 other than one which is prescribed;

5 (e) contains any harmful or toxic substance which may render it
6 injurious to health or has been mixed with some other substance which may
7 render it injurious to health or has been mixed with some other substance so
8 as to reduce its quality or strength;

9 (f) the "best before" date, batch number, ingredients list,
10 information as prescribed by the Agency or date of expiry on the label of the
11 food article has been revalidated;

12 (g) is a food article beyond the shelf-life stated on the label,
13 packaging material or beyond the Best Before Date prescribed by the
14 National Agency for Food and Drug Administration and Control for that
15 food article;

16 (h) is labeled, presented or advertised in a manner that is false,
17 deceptive or misleading;

18 (i) has an expired best before date; or

19 (j) when imported does not leave sufficient time as prescribed by
20 the Agency for distribution before the best before date;

21 "victim" means a person who has suffered a disability or an adverse
22 consequence as a result of using or consuming a counterfeit medical
23 product, an adulterated, banned or fake, substandard or an expired medical
24 product or unwholesome processed foods or a packaged water, adulterated
25 cosmetic or adulterated or mislabeled chemical in any form.

26 41. This Act may be cited as the Counterfeit Medical Products, Short title
27 Fake Drugs and Unwholesome Processed Foods (Prohibition and Control)
28 Bill, 2017.

1 SCHEDULE

2 FORM A

3 (Sections 17, 20)

4 COUNTERFEIT AND FAKE MEDICAL PRODUCTS, UNWHOLESOME PROCESSED
5 FOOD AND RELATED PRODUCTS

6 (PROHIBITION AND CONTROL) BILL, 2017

7 DECLARATION OF ASSETS FORM

8 To be completed in TRIPLICATE and in BLOCK LETTERS or typed

9 All available information should be included

10 Important:

11 (A) It is an offence punishable by up to a maximum of 5 years imprisonment
12 under the Act to-

13 (i) knowingly fail to make full disclosure of your assets and liabilities

14 (ii) knowingly make a declaration that is false, or

15 (iii) fail, neglect or refuse to make a declaration or furnish any information
16 required

17 (B)

18 (i) Each item is to be completed. If it does not apply, the person affected must
19 write 'nil' or 'none' in the space. Where necessary, an extra sheet or sheets may
20 be used and attached to this form by the person affected.

21 (ii) The Form shall be addressed to the Director General or any other officer
22 authorized by him

23 I..... being accused of the offence.....

24 under the counterfeit and fake medical products, unwholesome products food

25 and related products (Prohibition and Control) Bill 2016 declare my assets as

26 follows-