

CAYMAN ISLANDS



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**THE TOBACCO LAW, 2008**

**(LAW 18 OF 2008)**



**THE TOBACCO LAW, 2008**  
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CAYMAN ISLANDS

Law 18 of 2008.

I Assent

Stuart Jack

Governor.

23<sup>rd</sup> November, 2008.

**A LAW TO REGULATE THE LABELLING, PROMOTION, SALE AND  
DISTRIBUTION OF TOBACCO PRODUCTS; TO PROHIBIT THEIR  
USE IN CERTAIN PUBLIC PLACES; AND FOR INCIDENTAL AND  
CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

**PART 1 – INTRODUCTORY**

1. (1) This Law may be cited as the Tobacco Law, 2008.

Short title and  
commencement

(2) Subject to subsection (3) this Law shall come into force on such date as may be appointed by order made by the Governor and different dates may be appointed for different provisions of this Law.

(3) Section 11(2) shall come into force one year after the commencement of this Law.

2. In this Law, unless the context otherwise requires-

Definitions

“advertisement” means a commercial communication, other than as prescribed in section 11, through any medium or means that is intended to have or is likely to have the direct, indirect or incidental effect of creating an awareness of a tobacco product, brand element, manufacturer or seller or promoting the purchase or use

of a tobacco product or brand but does not include announcements in any telecommunication or written document that originates or is published outside the Islands and imported into the Islands;

“Authorised Officer” means an Environmental Health Officer appointed under section 3 of the Public Health Law (2002 Revision) and includes a police officer;

“bar” means any premises exclusively or mainly used for the sale and consumption of beverages, whether alcoholic or not, where the sale of food is limited to snacks that do not constitute a meal;

“brand element” includes the brand name, trade-mark, trade-name, distinguishing guise, logo, graphic arrangement, design, slogan, symbol, motto, selling message, recognisable colour or pattern of colours, or any other *indicia* of product identification identical or similar to, or identifiable with, those used for any brand of tobacco product;

“business licence” means a licence issued to a registrant by the Trade and Business Licensing Board;

“Certificate” means the Certificate of Registration issued under section 4;

“Chief Officer” means the Permanent Secretary of the Ministry of Health and Human Services, or his designate;

“cigar bar” means a licensed business that caters to patrons who smoke cigars on premises where there is installed a smoke ventilation system approved by the Planning Department;

“cigar store” means any premises exclusively or mainly used for the sale of tobacco products, other than a cigar bar;

“distribute” means to sell, give, supply, exchange, convey, consign, deliver, furnish or transfer possession for commercial purposes, or offer to do so, whether for a fee or other consideration or as a sample, gift, prize, or otherwise without charge;

“emission” means any substance or combination of substances that is produced as a result of a tobacco product being lighted;

“employer” means a person who employs one or more employees and includes a person who arranges with volunteers to undertake work;

“enclosed public place” means a public place that is fully or partially covered by a roof with at least 50% of its sides having walls, windows or other barriers such as blinds or curtains;

“Governor” means the Governor in Cabinet;

“health care facility” means premises at which health services are provided by a registered medical practitioner;

“hotel” means a boarding house, guest house, inn or hostel containing at least two rooms or apartments set apart exclusively for the sleeping accommodation of travellers;

“importer” means a person who receives or arranges for the receipt of tobacco products from another country for sale in the Islands;

“international no-smoking symbol” means a symbol consisting of a graphic representation of a burning cigarette enclosed in a red circle with a red stripe across it;

“minor” means a person under the age of eighteen;

“owner”, in relation to premises, means the proprietor of the premises and includes the manager, licensee and the person in charge of the premises;

“package” means the container, receptacle or wrapper in which a tobacco product is sold or displayed at retail, and includes a carton that contains the product packed in smaller quantities;

“precincts” means the immediate environs of a public place whether fenced or not;

“premises” means-

- (a) any building or part of a building;
- (b) any structure or part of a structure, whether moveable or not;
- (c) any installation whether on land or offshore;
- (d) any tent, marquee or stall; and
- (e) any vehicle;

“promotion”, in relation to a tobacco product, means the practice of fostering awareness of and positive attitudes towards a product, brand or manufacturer for the purpose of selling the product or encouraging its use, through various means including direct advertisement, discounts, incentives, rebates, free distribution,

publicising of brand elements through related events and products through a public medium of communication;

“public conveyance” means any vehicle available to the public, whether or not a fee is charged, as a means of transportation and includes a taxi;

“public place” means any place, including a workplace or public conveyance to which members of the public have access, whether or not a fee is charged for entry, and includes those places enumerated in the Schedule;

“registrant” means a person to whom a Certificate of Registration has been granted under section 4;

“registration” means registration with the Chief Officer under section 4 as a pre-requisite for obtaining a business licence;

“restaurant” means premises exclusively or mainly used for the sale and consumption of food and includes a café, coffee shop, bistro, fast food establishment or snack bar;

“retailer” means a person who imports, manufactures or sells tobacco products to the public, and is registered in accordance with this Law;

“sell” includes offer for sale, expose for sale and have in possession for sale;

“smoking” means inhaling or expelling the smoke of any tobacco product and includes the holding of any tobacco product that is alight;”

“telecommunications” means any form of transmission, emission or reception of signs, texts, messages and sounds or other intelligence of any nature by wire, radio, optical or electromagnetic means;

“tobacco product” means a product composed in whole or in part of tobacco, tobacco leaves or any extract of tobacco leaves and includes cigarette papers, tubes, filters and the package in which the product is sold;

“toxicity” means the quality, relative degree or specific degree of being toxic or poisonous;



“vending machine” means any machine which on insertion of any bank note, coin, metal or other material in it, dispenses tobacco or tobacco products automatically or with the help of the buyer;

“wholesale distributor” means a person who imports or manufactures, and sells or distributes tobacco products for subsequent retail, and is registered in accordance with this Law; and

“workplace” means the inside of any place, building, structure, vehicle or conveyance or any part of them that is covered by a roof where employees work or frequent during the course of their employment whether or not they are acting in the course of their employment at the time, but does not include a place that is primarily a private dwelling.

## PART II – Product Regulation and Licensing

3. (1) No person shall manufacture, package, sell, advertise or promote a tobacco product except in accordance with this Law. Restrictions on dealing with tobacco products

(2) No person shall import a tobacco product except in accordance with this Law, the Customs Law (2007 Revision) and the Customs Tariff Law (2002 Revision). (2007 Revision)  
(2002 Revision)

4. (1) Every person desirous of selling or importing tobacco products shall submit an application in the prescribed form accompanied by the prescribed fee, to the Chief Officer for registration as a dealer in tobacco products. Registration as a prerequisite for obtaining a licence to trade in tobacco products

(2) Upon receiving the application for registration, the Chief Officer shall, if satisfied that the applicant is a suitable person for registration under this Law, register the applicant as a retailer or wholesale distributor and issue him a Certificate of Registration, which Certificate shall entitle him to apply to the Trade and Business Licensing Board for a business licence to deal in tobacco products.

(3) Every person who, at the commencement of this Law, is a trader in tobacco products shall within twelve months of such commencement apply for registration.

- (4) The Certificate of Registration shall-
- (a) be in numerical sequence;
  - (b) be dated the day it was granted;
  - (c) describe the premises to which the registration applies; and

(d) be valid for a period that coincides with the termination of the business licence.

(5) The Chief Officer shall keep and maintain in the prescribed form and containing the prescribed particulars, a register of every application for, and every grant of, a Certificate of Registration.

(6) Registration shall not be granted to an applicant, the nature of whose business is-

- (a) a health care facility;
- (b) an educational or cultural institution; or
- (c) any other place as may be prescribed.

(7) Where an applicant for the renewal of his registration submits his application prior to the expiration of his registration, he shall be entitled to continue trading pending the outcome of that application.

Chief Officer to be provided with information on emissions

5. Every importer and wholesale distributor of a tobacco product shall provide the Chief Officer with information about the product and its emissions as prescribed.

### **PART III – Packaging and Labelling**

Display of messages regarding health

6. No person shall manufacture, sell or import a tobacco product unless the package in which it is contained displays, in the prescribed form and manner, the prescribed information with regard to-

- (a) the product and its emissions;
- (b) the health hazards and health effects arising from the use of the product or from its emissions; and
- (c) other health-related messages such as, *inter alia*, advice on how to stop smoking.

### **PART IV – Advertising and Promotion**

Prohibition against promotion of tobacco products

7. No person shall promote or cause to be promoted a brand element of a tobacco product-

- (a) through direct or indirect means, including through sponsorship of an organisation, event, service, physical establishment or vehicle of any kind; or
- (b) in a manner that allows a consumer or purchaser of such product to be deceived or misled concerning its character, properties, toxicity, composition, merit or safety.

8. Unless otherwise prescribed, no person shall sell, promote, distribute or cause to be sold, promoted or distributed, a product or brand element other than a tobacco product that bears-

Prohibition against promotion of product identical or similar to a tobacco product

- (a) the brand name, alone or in conjunction with any other word;
- (b) the trade mark;
- (c) the trade name; or
- (d) a distinguishing guise, such as-
  - (i) a logo;
  - (ii) a graphic arrangement;
  - (iii) a design;
  - (iv) a slogan;
  - (v) a symbol;
  - (vi) a motto;
  - (vii) a selling message;
  - (viii) a recognisable colour or pattern of colours; or
  - (ix) any other *indicia* of product identification,

identical or similar to, or identifiable with, those used for any brand of tobacco product.

9. No person shall, in the course of business-

Consideration as an inducement to purchase

- (a) offer or provide any consideration, direct or indirect, as an inducement to purchase a tobacco product, including-
  - (i) a gift to a purchaser or a third party;
  - (ii) a bonus;
  - (iii) a premium;
  - (iv) cash;
  - (v) a rebate; or
  - (vi) the right to participate in a game, lottery or contest; or
- (b) distribute a tobacco product without monetary consideration or in consideration of the purchase of a product or service or the performance of a service.

#### **PART V – Distribution, Display and Use**

10. (1) No person shall-

Sale of tobacco products

- (a) sell a tobacco product to a minor;
- (b) make available a tobacco product for consumption by a minor; or
- (c) hire or use a minor to sell or otherwise handle a tobacco product.

(2) No minor shall buy a tobacco product, whether for his own use or otherwise.

(3) It is not a defence to a prosecution for an offence against subsection (1) that the prospective purchaser appeared to be eighteen years of age or older.

(4) A person shall not be found to have contravened subsection (1) if it is established that-

- (a) he exercised due diligence by attempting to verify that the prospective purchaser was eighteen years of age or older, by requesting the production of a prescribed form of identification; and
- (b) he reasonably believed that the document of identification produced was authentic and that it was issued to the person producing it.

(5) No person shall sell cigarettes-

- (a) except in the full packages as prepared by the manufacturers thereof; and
- (b) other than on the premises to which the registration relates.

Display of tobacco products

11. (1) No retailer shall sell a tobacco product unless he does so at the request of the purchaser.

(2) Notwithstanding subsection (1), a retailer may post a sign indicating-

- (a) the availability of tobacco products for sale;
- (b) the specific products or brands available for sale; and
- (c) the prices of the products,

and the brand element may be visibly displayed, but only as prescribed.

(3) Unless otherwise prescribed, no person shall sell a tobacco product through the mail, the Internet or a vending machine.

(4) No person shall display a tobacco product at the point of sale or in a manner that permits the customer to handle the product prior to purchase except in the case of cigar bars and cigar stores.

(5) No person shall sell a tobacco product at retail unless a sign bearing the prescribed health warnings together with any other information that may be prescribed is posted at the place of sale.

(6) No person shall, at any place or premises in which tobacco products are sold at retail, display a sign respecting the legal age at which tobacco products may or may not be purchased, except in accordance with the regulations.

12. (1) Subject to subsections (2) and (3), no person shall smoke in or within ten feet of a public place. Use of tobacco products

(2) No person shall smoke in a public place, but this prohibition does not extend to-

- (a) rented condominium units;
- (b) hotel bedrooms; or
- (c) halls-of-residence sleeping rooms,

that are designated in some manner as smoking-allowed rooms by the establishment renting the rooms; and

- (d) outdoor bars and restaurants provided that-
  - (i) the ten-foot prohibition referred to in subsection (1) applies in respect of the entrance to the related facility; and
  - (ii) a no-smoking area is designated within that related facility.

(3) Smoking is permitted within a cigar bar, the owner of which shall within twelve months of the commencement of this Law install a smoke extractor/ventilator system in accordance with prescribed requirements.

(4) The management of all public places where smoking is prohibited shall post no-smoking signs as may be prescribed, which signs shall visibly bear the international no-smoking symbol clearly indicating that the establishment is smoke-free.

#### **PART VI - Enforcement**

13. Authorised Officers shall conduct routine inspections of registered business premises. Inspection of registered business premises

14. An Authorised Officer may at reasonable times, enter any public place or premises in which he believes on reasonable grounds that- Premises that Authorised Officers may enter

- (a) a tobacco product is used, manufactured, tested, stored, packaged, labelled or sold;
- (b) there is anything used in the manufacture, testing, packaging, labelling, promotion or sale of a tobacco product or thing; or
- (c) there is information relating to the manufacture, testing, packaging, labelling, promotion or sale of a tobacco product.

15. In carrying out an inspection, an Authorised Officer may- Powers of Authorised Officers

- (a) examine a tobacco product or thing referred to in section 14(b);

- (b) require anyone on the premises to produce for inspection, in the manner and form requested by the Authorised Officer, the tobacco product or thing;
- (c) open, or require anyone on the premises to open, any container or package found on the premises that the Authorised Officer believes on reasonable grounds contains a tobacco product or thing;
- (d) interview anyone dealing with the tobacco product, the owner of the premises, the employer, their agents, contractors, employees or other person using the premises;
- (e) take or require anyone on the premises to produce a sample of the tobacco product; and
- (f) require anyone found on the premises to produce for inspection or copying written or electronic information that is relevant to the administration or enforcement of this Law.

Use of computers and copying equipment

16. In carrying out an inspection an Authorised Officer may-

- (a) use or cause to be used a computer system on the premises to examine data contained in or available to the computer system that are relevant to the administration or enforcement of this Law;
- (b) reproduce the data in the form of a print-out or other intelligible output and take them for examination or copying; and
- (c) use or cause to be used copying equipment on the premises to make copies of data, records or documents.

Entry in a dwelling place

17. (1) An Authorised Officer may not enter a dwelling-place except with the consent of the occupant or under the authority of a warrant issued under subsection (2).

(2) On application, a magistrate or Justice of the Peace may issue a warrant authorising the Authorised Officer named in the warrant to enter and inspect a dwelling-place, subject to any conditions specified in the warrant if the magistrate or Justice of the Peace is satisfied by information on oath-

- (a) that the dwelling-place is a place used for the purpose of the manufacture or sale of tobacco products;
- (b) that entry to the dwelling place is necessary for the administration of this Law; and
- (c) that the occupant does not consent to the entry, or that entry has been refused or there are reasonable grounds for believing that it will be refused.

(3) An Authorised Officer, executing the warrant, other than a police officer, shall not use force unless-

- (a) he is accompanied by a police officer; and
- (b) the use of force is specifically authorised in the warrant.

18. (1) The owner of premises inspected by an Authorised Officer under this Law and every person on the premises shall-

Authorised Officers to be assisted and not obstructed

- (a) provide all reasonable assistance to enable the Authorised Officer to carry out his duties under this Law; and
- (b) furnish the Authorised Officer with the information that he reasonably requires for that purpose.

(2) No person shall obstruct or hinder, or knowingly make a false or misleading statement to, an Authorised Officer who is carrying out his duties under this Law.

19. (1) During an inspection under this Law, an Authorised Officer may seize and detain a tobacco product or thing by means of which or in relation to which he believes on reasonable grounds that this Law has been contravened and shall provide the owner with written notice of the seizure and detention and the grounds therefor.

Seizure

(2) The Authorised Officer may direct that any tobacco product or thing seized be kept or stored in the place where it was seized or that it be removed to another place.

(3) Unless permitted by an Authorised Officer, no person shall remove, alter or interfere in any way with a tobacco product or thing seized.

20. (1) A person from whom a tobacco product or thing was seized may, within ten days after the date of seizure, apply to a magistrate or Justice of the Peace for an order of restoration.

Application for restoration

(2) The magistrate or Justice of the Peace may order that the tobacco product or thing be restored immediately to the applicant if, on hearing the application, the magistrate or Justice of the Peace is satisfied-

- (a) that the applicant is entitled to possession of the tobacco product or thing seized; and
- (b) that the tobacco product or thing seized is not and will not be required as evidence in proceedings in respect of an offence under this Law.

(3) Where on hearing an application made under subsection (1) the magistrate or Justice of the Peace is satisfied that the applicant is entitled to the tobacco product or thing seized but is not satisfied with respect to the matters

mentioned in subsection (2)(b), the magistrate or Justice of the Peace may order that the product or thing seized be restored to the applicant-

- (a) on the expiration of one hundred and eighty days after the date of seizure if no proceedings in respect of an offence under this Law have been commenced before that time; or
- (b) on the final conclusion of any such proceedings, in any other case.

(4) The magistrate or Justice of the Peace may not make an order under this section for restoration of a tobacco product or thing if it has been forfeited by consent under section 21(3).

(5) Where the circumstances surrounding the seizure and detention of the tobacco product or thing by the Authorised Officer are determined by the court-

- (a) not to have met the requirements of this Law, it shall be returned immediately to the premises from which it was seized; or
- (b) to have met the requirements of this Law, it may be confiscated or destroyed or subject to other disposal as ordered by the court.

Forfeiture

21. (1) Where no application has been made under section 20(1) for the restoration of a tobacco product or thing seized under this Law within ten days after the date of seizure, or an application has been made but on the hearing of the application no order of restoration is made, the product or thing is forfeited to the Crown and may be disposed of as the court directs.

(2) Where a person has been convicted of an offence under this Law, any movable property seized under this Law by means of or in respect of which the offence was committed is forfeited to the Crown and may be disposed of as the court directs.

(3) Where an Authorised Officer has seized a tobacco product or thing and the owner or person in whose possession it was at the time of seizure consents in writing to its forfeiture, the product or thing is forfeited to the Crown and may be disposed of as the court directs.

## **PART VII – Offences and Penalties**

Offences and penalties

22. (1) A person who contravenes section 3, 5 or 6 is guilty of an offence and liable on summary conviction-

- (a) for a first offence, to a fine of fifteen thousand dollars; and
- (b) for a subsequent offence, to a fine of thirty thousand dollars and imprisonment for twelve months.



(2) A person who contravenes section 7 is guilty of an offence and liable on summary conviction-

- (a) for a first offence, to a fine of ten thousand dollars; and
- (b) for a subsequent offence, to a fine of twenty thousand dollars and imprisonment for six months.

(3) A person who contravenes section 8 or 9 is guilty of an offence and liable on summary conviction-

- (a) for a first offence to a fine of five thousand dollars; and
- (b) for a subsequent offence to a fine of twenty thousand dollars and imprisonment for twelve months.

(4) A person who contravenes section 10 or 11 is guilty of an offence and liable to a fine of-

- (a) in the case of an individual, for a first offence, to a fine of five thousand dollars and for a subsequent offence to a fine of fifteen thousand dollars and to imprisonment for nine months; and
- (b) in the case of a company, for a first offence, to a fine of ten thousand dollars and for a subsequent offence to a fine of thirty thousand dollars.

(5) The owner of any premises referred to in Part V who fails to enforce the smoke-free policy applicable to the facility under his responsibility, including the posting of prescribed signs, is guilty of an offence and liable on summary conviction-

- (a) for a first offence, to a fine of fifteen thousand dollars; and
- (b) for a subsequent offence, to a fine of thirty thousand dollars and imprisonment for twelve months.

(6) A person who contravenes section 12 is guilty of an offence and liable on summary conviction-

- (a) for a first offence, to a fine of two thousand dollars; and
- (b) for a subsequent offence, to a fine of ten thousand dollars.

(7) A person who contravenes section 18 is guilty of an offence and liable on summary conviction-

- (a) for a first offence, to a fine of-
  - (i) in the case of an individual, five thousand dollars;
  - (ii) in the case of a retail establishment, fifteen thousand dollars; and
  - (iii) in the case of a wholesale distributor, thirty thousand dollars; and
- (b) for a subsequent offence, to a fine of-

- (i) in the case of an individual, ten thousand dollars and imprisonment for six months;
- (ii) in the case of a corporate retail establishment, twenty-five thousand dollars; and
- (iii) in the case of a corporate wholesale distributor, fifty thousand dollars.

(8) Where a registrant is convicted of an offence under this Law, the Clerk of the court shall report such conviction to the Chief Officer and, if the registrant is so convicted on more than one occasion, the Chief Officer may revoke or refuse to renew his Certificate of Registration.

Vicarious liability of registrant

23. (1) Every registrant shall ensure that his servants, agents and other persons under his control comply with the provisions of this Law and where such person is guilty of an offence against this Law the registrant shall be taken also to have committed such offence and is liable to the same penalty as is prescribed for the principal offence whether or not he was present at the time of the commission of the offence.

(2) In this section “person under his control”, in relation to a registrant, includes-

- (a) a person to whom he has leased the registered premises or delegated control thereof; and
- (b) a servant, agent or person under the control of a person referred to in paragraph (a).

#### **PART VIII – General**

Appeals

24. A person aggrieved by or dissatisfied with the decision of the Chief Officer-

- (a) to refuse his application for registration; or
- (b) to revoke his certificate,

may within fourteen days of the communication of the decision to him, appeal to the Governor by notice in writing and the decision of the Governor shall be final and binding upon the appellant.

Power to make regulations

25. (1) The Governor may make regulations generally for administering this Law and for giving effect to its objects, purposes and intentions or with respect to any matter that by or under this Law may be or is to be prescribed.

(2) Without prejudice to the generality of the power conferred by subsection (1), regulations may be made under this section-

- (a) prescribing the location, content and format of the signs required to identify smoke free establishments;
- (b) respecting the content and format of information that must appear on packages and in leaflets;
- (c) respecting the information that may not appear on packages;
- (d) prescribing time schedules for the implementation of promotional restrictions;
- (e) prescribing the forms of identification to be tendered by a prospective purchaser of a tobacco product seeking to establish that he is not a minor;
- (f) prescribing the quantities of a tobacco product to be sold in a single package;
- (g) prescribing the required signage at point of sale;
- (h) respecting the powers and duties of an Authorised Officer;
- (i) respecting the taking of samples;
- (j) respecting the procedure to be followed by an Authorised Officer during an inspection;
- (k) respecting the procedure to be followed during an inspection for seizure; and
- (i) prescribing the conditions under which exemptions from section 8 may be granted.

26. The Tobacco Product and Intoxicating Liquor Advertising Law, (1998 Revision) is amended as follows:

Amendment of the Tobacco Product and Intoxicating Liquor Advertising Law (1998 Revision)

Section No.	Extent of amendment
1	Repeal and substitute the following:  “This Law may be cited as the Intoxicating Liquor Advertising Law (1998 Revision)”.
2	Delete the definitions of “health warning” and “tobacco products”.
3	Repeal.
4	Delete the words “tobacco product or”.
5	(a) in subsection (2)(a) delete the words “tobacco product or”; and

(b) delete subsection (2)(b).

6 Delete subsections (1) and (2) and renumber subsection (3) as section 6.

Power to amend the Schedule 27. The Governor may by Order amend the Schedule.

Binding of the Crown 28. This Law shall be binding on the Crown.

## **SCHEDULE**

(Sections 2 and 27)

### **PUBLIC PLACES**

For the purposes of this Law, public places include the following:

1. offices and office buildings including corridors, lounges, eating areas, reception areas, elevators, escalators, foyers, stairwells, exercise areas, restroom amenity areas, laundry rooms and laundromats;
2. common areas in apartment buildings, condominiums and retirement homes;
3. health care facilities and their precincts;
4. educational institutions at all levels and their precincts;
5. early childhood centres and their precincts;
6. gyms and other physical-fitness facilities;
7. beauty parlours, barber shops and laundromats;
8. parks;
9. factories and warehouses;
10. any means of transportation used for commercial, public or professional purposes and used by more than one person;
11. public transportation terminals;
12. public toilets;
13. retail establishments including shopping centres;
14. galleries, libraries and museums;
15. cinemas, theatres, and entertainment and games rooms;
16. concert and convention halls;
17. sports stadia;
18. bars and restaurants;
19. pool halls;
20. government owned facilities rented out for events; and

21. correctional facilities, except such areas of the grounds as the Director of Prisons may determine.

Passed in the Legislative Assembly this 15<sup>th</sup> day of October, 2008.

EDNA MOYLE

Speaker.

WENDY LAUER

Clerk of the Legislative Assembly.