

## I. General provisions

### OFFICE OF THE HEAD OF STATE

**21261**      *LAW 28/2005 of 26 December, on health measures against tobacco abuse and for the regulation of the sale, supply, consumption, and advertising of tobacco products.*

JUAN CARLOS I  
KING OF SPAIN

To all those who see and understand these presents.

Be aware: That Parliament has approved, and I have given assent, to the following Law:

#### PREAMBLE

##### I

In Spain, as in other developed countries, smoking is the biggest single cause of avoidable mortality and morbidity. The scientific evidence relating to the health risks associated with tobacco consumption for people's health is conclusive.

It is estimated, according to data from the World Health Organisation (WHO), that tobacco consumption is responsible for 90 per cent of lung cancer mortality, 95 per cent of deaths caused by chronic obstructive pulmonary disease, 50 per cent of cardio-vascular mortality, and 30 per cent of all cancer deaths. In Spain, the number of people who die every year as a result of tobacco consumption represents 16 per cent of all deaths in the population aged over 35. In addition, there is scientific evidence that ambient tobacco smoke (passive or involuntary consumption of tobacco) is the cause of mortality, illness and disability. The WHO International Cancer Research Agency has established that exposure to air contaminated with tobacco smoke is carcinogenic in human beings.

Tobacco consumption, as a determining factor in various diseases, and as a known cause of death and of significant social and health problems, constitutes one of the main problems facing public health; this gives rise to the need to implement measures aimed at preventing its abuse, limiting the offer and the demand, and regulating its advertising, promotion, and sponsorship.

These measures must be in complete harmony with the activities provided for in the European Strategy for Tobacco Control 2002 for the European Region and with the WHO Framework Convention on Tobacco Control, agreed in Geneva on 21 May 2003 and ratified by Spain on 30 December 2004.

Furthermore, the European Union has viewed the tobacco abuse phenomenon with concern, and it has sought to combat it through different regulations, of which the most significant was the approval of Directive 2003/33/EC of the European Parliament and of the Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products, which Directive is incorporated into our national law by way of this Act.

Article 43 of the Spanish Constitution recognizes the right to the protection of health, and section 2 thereof makes it the responsibility of the public authorities to organize and safeguard public health by way of preventive measures. In order to contribute to the effectiveness of this right, the General Health Act 14/1986 of 25 April laid down a duty on the Public Health Authorities to direct their activities primarily towards the promotion of health and the prevention

of disease, to avoid activities and products which may, either directly or indirectly, have negative health consequences, and to regulate the advertising and commercial propaganda relating thereto.

Within the framework of existing legislation on general aspects concerning tobacco, it may be observed that it is disjointed and unsystematic. In this regard, and without intending to be exhaustive, we may cite Royal Decree 192/1988 of 4 March, and the subsequent amendment thereto under Royal Decree 1293/1999 of 23 July, on restrictions on the sale and use of tobacco for the protection of public health, Royal Decree 510/1992 of 14 May regulating the labelling of tobacco products and laying down certain restrictions in commercial aircraft, Royal Decree 1185/1994 of 3 June on the labelling of tobacco products other than cigarettes and prohibiting certain forms of tobacco for oral use and updating the system of penalties with regard to tobacco, Royal Decree 1079/2002 of 18 October, regulating the maximum contents of nicotine, tar, and carbon monoxide in cigarettes, the labelling of tobacco products, as well as measures relating to the ingredients and names of tobacco products, and Royal Decree 2198/2004 of 25 November, which determines those groups to which the cohesion policies are directed for the purposes of their funding by the health cohesion Fund during financial year 2004. Current legislation also tackles the regulation of the advertising aspects of the tobacco phenomenon, although only television advertising is banned. The current regulation is basically contained in the General Advertising Act 34/1988 of 11 November, and the General Advertising Act 25/1994 of 12 July, which incorporates Directive 89/552/EEC on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities into Spanish Law, as well as Law 22/1999 of 7 June which amends the said Act.

At a regional level, in accordance with the powers each region had in public health matters, the need was soon felt to tackle the regulation of these matters, and it is enough to cite as an example Law 20/1985 of 25 July, of the Autonomous Region of Catalonia, on prevention and assistance with regard to substances that can create an addiction. Today it can be said that practically all autonomous regions have enacted legislation, either through specific rules regarding tobacco, such as Galicia by way of Decree 75/2001 of 22 March, on the health control of the advertising, promotion, supply, sale, and consumption of tobacco products, and Navarre with the enactment of Law 6/2003 of 14 February of the Autonomous Region of Navarre, on the prevention of tobacco consumption, the protection of breathing clean air, and the promotion of health with regard to tobacco, or through the framework of broader regulations, which are generally linked to drug-dependency phenomena and other situations of addiction, in the case of the other autonomous regions: Andalusia, Aragon, the Canary Islands, Cantabria, Castille La Mancha, Castille & Leon, Catalonia, Extremadura, Madrid, Murcia Region, Rioja, Valencia Region, and the Basque Country.

The said considerations make it necessary to introduce new measures in two different directions. On the one hand, measures which affect consumption and sales, with an increase in smoke-free zones, a curbing of the availability and accessibility of tobacco products, especially by the young, and a guarantee that the right of the non-smoking population to breathe air that is not contaminated by tobacco smoke will prevail over smokers' rights. It is pertinent and necessary to introduce new measures on the sale and consumption of tobacco to correct the limitations and defects in existing legislation which the passage of time, the progressive scientific evidence, and the greater social awareness and proliferation and diversification of sales and promotional strategies for tobacco products have brought to light.

On the other hand, the measures concerning the advertising and promotion of tobacco products, whether directly or indirectly, and the sponsorship of various activities, have a proven influence on personal conduct and social habits, which makes them a clear factor for inducing and promoting consumption, especially amongst children and young people, and so it is necessary to impose restrictions on all kinds of advertising and advertising media, including in print, on radio and television, electronically, or at the cinema.

The introduction of the proposed measures is also necessary in order to provide support and regulatory backing to the educational, preventive, and welfare activities carried out in the State as a whole. In addition, from this perspective, it is also clear that there is a need for a legal framework that facilitates the existence and effectiveness of these measures, especially amongst children and young people, to which sector of the population the regulation of tobacco products is principally aimed.

Whilst the establishment of smoke-free zones is a priority health-protection measure for the population in general, it is so to a greater extent in the case of minors. The importance of the exemplary role of education and health professionals in their task of educating, raising awareness, prevention, and in promoting tobacco-free lifestyles, should be emphasized.

With the same objective, the ban on direct and indirect tobacco advertising and on tobacco sponsorship represents one of the main protection measures, aimed at childhood and young people, and makes the responsibility of the public authorities evident, by restricting the access and availability of a product, that creates addiction, disability, disease, and death.

Furthermore, it is impossible not to be aware that the smoking phenomenon does not manifest itself in the same way in men and women. Clear differences have been seen in the causes that lead to the commencement of consumption, in consumption patterns themselves, in the way the addiction is maintained, in the response to treatments, in the difficulty faced in giving up, and in the incidence of starting smoking again, and the bigger negative impact on women's health is evident.

It is for this reason that it is necessary to take gender into account in each and every one of the strategies developed to tackle smoking, with the aim of eliminating those factors which give rise to a situation where the opportunity to enjoy good health, make oneself disabled, or die from preventable causes is not equal.

Furthermore, the interaction with the special physiology women have and with reproductive processes adds specific risks for them. It has been known for decades that nicotine and carbon monoxide during pregnancy are responsible for a higher predisposition to miscarriage and perinatal mortality, as well as lower birthweight in new-born babies. Exposure of a pregnant woman to tobacco smoke in the air as a passive smoker is harmful to the foetus.

For all the above, and taking into account the regulation and the legal rank of the provisions referred to, it has been considered appropriate to promulgate general legislation in order to systematize the regulation and that is of a suitable rank for the aim that is pursued, and so the form of a law has been chosen.

## II

The Act is set forth in five chapters, which refer respectively to the regulation of the general provisions, the restrictions on sales, supply and consumption of tobacco products, the regulation of their advertising, promotion and sponsorship, measures for the control of tobacco abuse, for the promotion of health, and the encouragement of giving up smoking, as well as the system of offences and penalties.

Chapter I contains the general provisions, specifies the aim, and clarifies, by way of definitions, the fundamental concepts contained in the Act.

Chapter II regulates the restrictions on sales, supply, and consumption of tobacco products. With regard to the restrictions on sales and supply, the Act, in perfect harmony with the regulations governing the tobacco market, provides that the retail sale and supply of tobacco products may only be carried out through the network of State Tobacco and Postage Stamp Outlets or through vending machines with the appropriate administrative authorizations, and therefore this is expressly prohibited at any other place or by any other means.

Furthermore, the sale or supply of tobacco products to persons aged under eighteen is prohibited, as well as any other product imitating them or which encourages smoking. Likewise, the sale of tobacco by persons aged under eighteen is prohibited. In any event, the sale and supply is prohibited in certain places, such as centres and facilities belonging to the Public Authorities and any public law bodies, health centres, social services centres and their related offices, teaching centres, cultural centres, sports centres and facilities, care and leisure centres for minors, and at any place, centre, or establishment where consumption is prohibited.

With regard to restrictions on consumption, the Act distinguishes between places where there is a complete ban on smoking, and places where smoking is banned, although it is permissible to set aside smoking areas, provided that certain requirements are met, such as adequate signing, physical separation from the rest of the establishment, and the provision of independent ventilation systems.

Chapter III incorporates Directive 2003/33/EC of the European Parliament and of the Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products into our law.

The Act does not, however, merely transpose the Community regulations, it also regulates the ban on the free or promotional distribution of products, goods, or services, or any other activity which has the aim or effect, whether directly or indirectly, principally or secondarily, of promoting a tobacco product, as well as all types of advertising, promotion, and sponsorship of tobacco products through all media, including the services of the information society, although there are certain exceptions.

This chapter concludes with rules regarding common denominations, which expression is used to identify the names, brands, symbols, or any other distinctive signs which may be used for tobacco products and, simultaneously, for other goods or services and which have been marketed or offered by the same company or group of companies prior to the entry into force of the Act.

Chapter IV introduces smoking prevention measures and boosts education measures promoting health and health-related information.

It also features the promotion of giving-up programmes within the welfare network of the National Health Service.

The Smoking Prevention Watchdog is created, as well as the necessary co-ordination measures within the Inter-territorial Council of the National Health Service in order to ensure better compliance with the Act.

The Act is completed with a precise system of offences and penalties in chapter V, in which, as well as specifying the corresponding types of conduct which are contrary to the Act and assigning the appropriate penalty to them, it identifies who is responsible, including in the event of offences committed by minors, and the powers to impose penalties are clearly defined.

All of these measures, contained within the context of public health policies which the Public Authorities are under a duty to promote, may be complemented by programmes for the prevention and control of tobacco abuse.

## CHAPTER I

### **General provisions**

Article 1. Aim.

It is the aim of this Act:

a) To lay down, in general terms, the restrictions, provided that the transactions are retail transactions, on the sale, supply, and consumption of tobacco products, as well as to regulate the advertising, promotion, and sponsorship of the said products, for the protection of the health of the population.

b) To promote the necessary mechanisms for the prevention and control of tobacco abuse.

## Article 2. Definitions.

For the purposes of this Act, the following terms shall have the following definitions:

a) Tobacco products: any products intended to be smoked, sniffed, sucked or chewed that are made in whole or in part from tobacco.

b) Advertising: all forms of communication, recommendation, or commercial action which have the aim or effect, whether directly or indirectly, of promoting a tobacco product or the use of tobacco, including advertising which, whilst not directly mentioning a tobacco product, seeks to evade the advertising ban using names, brands, symbols, or other distinctive elements of tobacco products.

c) Sponsorship: any type of contribution, whether public or private, to an event, activity, or individual, which has the aim or effect, whether directly or indirectly, of promoting a tobacco product or the use of tobacco.

d) Promotion: anything that stimulates the demand for tobacco products, such as advertising, publicity, and special events, amongst others, designed to attract attention and stimulate the interest of the consumers.

## CHAPTER II

### **Restrictions on the sale, supply, and consumption of tobacco products**

#### Article 3. The sale and supply of tobacco products.

1. The retail sale and supply of tobacco products may only be carried out through the network of State Tobacco and Postage Stamp Outlets or through vending machines, located at establishments holding the appropriate administrative authorizations, for sale by way of machines, and any other place or means is expressly prohibited.

2. The sale or supply of tobacco products, or any other product imitating them or which encourages smoking, to persons aged under eighteen is prohibited. In particular, the sale of sweets, snacks, toys and other objects which resemble tobacco products and which might be attractive for minors is prohibited. Likewise, the sale of tobacco by anyone under the age of eighteen is prohibited.

The packaging of tobacco products shall bear an express reference to the prohibition on their sale to minors.

3. Signs shall be put up in a visible place in all establishments where the sale and supply of tobacco products is authorized, in accordance with the characteristics as set forth in the regional regulations in their respective territorial jurisdiction, informing, in Spanish and in the official regional languages, of the prohibition on the sale of tobacco products to persons aged under eighteen, and warning of the health risks deriving from the use of tobacco. These establishments shall require all persons, unless it is obvious they are of legal age, to prove their age by way of an official document.

4. The marketing, sale and supply of cigarettes and small cigars that do not have an outer wrapper of natural tobacco in single units or in packs of less than 20 units is prohibited.

5. The delivery, supply or distribution of samples of any tobacco product, within the course of a commercial or business activity, whether free of charge or not, and the sale of tobacco products at a discount, are prohibited.

Delivery, supply, or distribution of samples is deemed to occur in the course of a commercial or business activity where it is carried out directly by the manufacturer, producer, distributor, importer or vendor.

6. The sale and supply of tobacco products by any method other than by a direct personal sale or through a vending machine which complies with those conditions laid down in the following Article are prohibited. The retail sale or supply of tobacco products in an indirect or non-personal manner, by way of distance sales or similar procedures, is expressly prohibited.

#### Article 4. Sale and supply through vending machines.

The sale and supply through vending machines shall be carried out subject to the following conditions:

a) Use: Persons aged under eighteen are prohibited from using vending machines selling tobacco products.

b) Placement: Tobacco vending machines may only be placed in the inside of premises, centres, or establishments where smoking is not prohibited, as well as in those places referred to at sections b), c), and d) of Article 8.1, in such a place where their use may be directly and permanently subject to surveillance by the owner of the premises or his employees. They may not be situated in annexes or entrance lobby areas, such as windbreaks, porches, porticos, the corridors of shopping centres, foyers, landings, stairs, archways, or the like, which whilst they may be part of a building, do not constitute the inside as such.

c) Health warning: A clear and visible health warning shall be placed on the front surface of the machines, in Spanish and in the official regional languages of the Autonomous Regions, informing of the health risks deriving from the use of tobacco, especially for minors, in accordance with the characteristics as set forth in the regional regulations in their respective territorial jurisdiction.

d) Characteristics: In order to ensure these machines are used correctly, they shall be fitted with the appropriate technical mechanisms to prevent access by minors.

e) Incompatibility: These machines may not supply products other than tobacco products.

f) Registration: tobacco vending machines shall be registered in a special register held by the Tobacco Market Commissioner.

#### Article 5. Prohibition on the sale and supply of tobacco in certain places.

Without prejudice to the provisions contained in the foregoing Articles, the sale and supply of tobacco products in the following places is prohibited:

a) Centres and facilities belonging to the Public Authorities and public law bodies.

b) Health centres, or social services centres and facilities.

c) Teaching centres, irrespective of the age of the students and of the type of teaching given.

d) Cultural centres.

e) Sports centres and facilities.

f) Care and leisure centres for minors.

g) In any other place, centre, or establishment where consumption is prohibited, as well as in the open-air spaces set forth at Article 7.

h) Tobacco may not be sold in those places where it is permitted to set aside smoking areas, except as provided for at sections b), c), and d) of Article 8.1, where it may be sold through duly-authorized vending machines.

#### Article 6. Restrictions on the consumption of tobacco products.

Tobacco products may only be consumed in those places or spaces where it is not totally prohibited, or in smoking areas. In such regard, a distinction is made between those places in which there is a total ban on smoking, and other places where, notwithstanding such a prohibition, provision may be made for smoking areas where tobacco may be consumed.

#### Article 7. Total ban on smoking.

In addition to those places or spaces defined in the regulations of the regional government authorities, a total ban on smoking is hereby imposed at the following places:

- a) Public and private work centres, save in outdoor spaces.
- b) Centres and facilities belonging to the Public Authorities and public law bodies.
- c) Health centres, services, or establishments.
- d) Teaching and training centres, irrespective of the age of the students and of the type of teaching given.
- e) Sports facilities and places where public events are held, provided they are not held outdoors.
- f) Those areas for dealing directly with the public.
- g) Shopping centres, including department stores and malls, except in outdoor areas. In the bars, restaurants, and other premises serving food and drinks located in the inside thereof and separated from the other facilities, smoking shall be prohibited, irrespective of the surface area, unless smoking areas are set aside, in accordance with the provisions of this Act.
- h) Social care centres for persons aged under eighteen.
- i) Leisure or recreation centres to which persons aged under eighteen are allowed entry, except for outdoor areas.
- j) Cultural centres, reading rooms, exhibition halls, libraries, conference halls, and museums.
- k) Recreation halls or halls for public use in general, at those times or on those occasions when persons aged under eighteen are allowed entry.
- l) Areas or premises where foodstuffs are cooked, transformed, prepared, eaten, or sold.
- m) Lifts and elevators.
- n) Telephone booths, cash dispenser foyers and other public areas with reduced dimensions.  
A public area with reduced dimensions means one that does not have an area of more than five square metres.
- ñ) Urban and inter-urban collective vehicles or modes of transport, company transport vehicles, taxis, ambulances, funicular railways and cable cars.
- o) In all areas of underground transport (carriages, platforms, corridors, stairs, stations, etc.), except for those areas which are completely outdoors.
- p) Railway and maritime transport, except for outdoor areas.
- q) Aircraft taking off from and landing at domestic airports, and on board all flights by Spanish airlines, including joint flights with airlines of other nationalities.
- r) Petrol stations and the like.
- s) Anywhere else where smoking is banned pursuant to a provision of this Act or any other regulation or by decision of the owner thereof.

## Article 8. Smoking areas.

1. Smoking is prohibited, although smoking areas may be set aside, at the following areas or places:

- a) Social care centres.
- b) Hotels, hostels and similar establishments.
- c) Bars, restaurants, and other enclosed establishments serving food which have a useable surface area for use by customers or visitors equal to or in excess of one hundred square metres, unless they are located inside centres or premises where it is prohibited to smoke in accordance with the provisions of Article 7.
- d) Recreation halls, gaming establishments, or establishments for public use in general, at those times or on those occasions when persons aged under eighteen are not allowed, except for outdoor areas.
- e) Theatres, cinemas, and other public events that take place indoors. In these cases, the smoking area shall be located outside the theatre halls.
- f) Airports.
- g) Bus stations.
- h) Maritime and railway transport stations.
- i) Any other place where, even though there is no ban on smoking, the owner has decided not to allow smoking.
- j) Any place or space permitted by the regulations of the regional government authorities further to those provided for at Article 7.

2. Smoking areas may only be designated in those places referred to in the previous section, provided they comply, at least, with the following conditions:

- a) They shall be properly and visibly signed, in Spanish and in the official regional language, in accordance with the requirements of the corresponding regional regulations.
- b) They shall be physically separated from the other parts of the centre or entity and completely partitioned, and shall not be circulating areas where non-smokers must necessarily pass, unless they are employees or workers of the former and are aged sixteen or over.
- c) They shall have an independent ventilation system or other devices or mechanisms which ensure that the smoke is eliminated.
- d) In all cases, the area of the designated zone must be less than 10 per cent of the total area used by the customers or visitors of the centre or establishment, except in those cases provided for at paragraphs b), c), and d) above, where it will be possible to set aside a maximum of 30 per cent of the common areas for smokers. Under no circumstances may the total surface area set aside for smoking areas set aside in each one of the spaces or places referred to at section 1 of this Article exceed three hundred square metres.

In those places set forth under letter b) of section 1 of this Article, up to 30 per cent of rooms may be set aside for smoking guests.

e) In those establishments where two activities of those listed in this Article are carried out, in separate spaces, the useable surface area shall be calculated independently for each one of them, and common areas and passageways shall be excluded from the calculation, where tobacco consumption shall not be allowed under any circumstances.

In all cases where it is not possible to equip these zones with the necessary requirements, the ban on smoking will be maintained in the whole area.

3. Persons aged under sixteen shall not be allowed in the smoking areas of the establishments referred to in this Article.



## CHAPTER III

### **Regulation of advertising, promotion, and sponsorship of tobacco products**

Article 9. Restrictions on the advertising, promotion, and sponsorship of tobacco products.

1. Tobacco products sponsorship is prohibited, as well as all kinds of advertising and promotion of the said products through all media and formats, including vending machines and in the services of the information society, with the following exceptions:

a) Publications aimed exclusively at professionals involved in the tobacco trade.

b) Presentations of tobacco products to professionals in the sector within the framework of the Tobacco Market and Tax Provisions Act 13/1998 of 4 May, as well as the promotion of the said products in State Tobacco and Postage Stamp Outlets, provided that this activity is not aimed at minors and does not involve the distribution free of charge of tobacco or goods and services related to tobacco products or with the smoking habit, or which are linked to names, brands, symbols, or any other distinctive signs which are used for tobacco products. In any event, the value or price of the said goods or services may not be in excess of five per cent of the price of the tobacco products it is intended to promote.

Under no circumstances may the said activities be carried out in the shop windows or extend to the outside of the said establishments, or be aimed towards the outside.

c) Publications containing tobacco-products advertising which are published or printed in countries which do not form a part of the European Union, provided that the said publications are not aimed primarily at the Community market, unless they are primarily aimed at minors.

2. The free or promotional distribution of products, goods, or services, or any other activity, which has the aim or effect, whether directly or indirectly, principally or secondarily, of promoting a tobacco product, outside of the network of State Tobacco and Postage Stamp Outlets, is prohibited.

Article 10. Rules applicable to common denominations.

The use of names, brands, symbols, or any other distinctive signs that are used for the identification in the trade of tobacco products and simultaneously other goods and services that are marketed or offered by one company or group of companies is prohibited.

To this effect, companies shall be deemed to belong to the same group where they constitute a unity of decision-making, because one of them, whether directly or indirectly, exercises or may exercise control over the rest, or because the said control corresponds to one or various physical persons who act systematically in tandem. It shall be deemed that there is unity of decision-making in all cases when any of the situations provided for at section 1 of Article 42 of the Commercial Code and at Article 4 of the Securities Market Act 24/1988 of 28 July occurs.

## CHAPTER IV

### **Measures for the prevention of tobacco abuse, the promotion of health, and the encouragement of giving up smoking**

Article 11. Activities and programmes.

The competent Public Authorities shall promote health education, health information, and tobacco-abuse prevention activities and programmes, directly and with the co-operation of scientific associations, social workers, and non-governmental organizations.

Article 12. With regard to programmes for giving up smoking.

The competent Public Authorities shall promote the development of health programmes aimed at giving up smoking as part of the health welfare network, especially in primary care. Likewise, programmes for giving up smoking shall be promoted at teaching institutions, health centres, work centres, and sports and leisure areas. The creation of units for giving up smoking shall be boosted and promoted at the Inter-territorial Council of the National Health Service.

Article 13. Implementation of measures.

For the implementation of the measures referred to in this chapter, special attention shall be paid to the gender aspect and social inequalities. Likewise, the competent Public Authorities shall promote the necessary measures in order to protect the health and the education of minors, with the aim of preventing and avoiding consumption from starting and helping them to overcome their dependence. The start-up of action programmes as part of paediatric child care shall be boosted, with specific information for smoking parents and campaigns concerning the harm that exposure to smoke causes to minors.

Article 14. Criteria and protocols for the prevention and control of tobacco abuse units.

The Ministry of Health and Consumer Affairs shall lay down, in co-operation with the Autonomous Regions and the corresponding scientific associations, the defining criteria and protocols for the prevention and control of tobacco abuse units.

Article 15. Co-operation with the public authorities.

In accordance with the aims of this Act, the Government, in co-operation with the Autonomous Regions, and within the Inter-territorial Council of the National Health Service, shall put forward the initiatives, programmes, and activities to be pursued to ensure this Act is properly complied with, and shall co-ordinate the inter-sectoral and inter-territorial activities.

Article 16. With regard to the Tobacco Prevention Watchdog.

The Tobacco Prevention Watchdog shall be created within the Ministry of Health and Consumer Affairs, and in co-operation with the Autonomous Regions, scientific associations, consumer associations, and non-governmental organizations. Its functions shall be, amongst others:

- 1) To put forward the initiatives, programmes, and activities to be performed in order to attain the objectives of the Act.
- 2) To set the targets for the reduction in the prevalence of tobacco abuse.
- 3) To draw up an annual report on the situation, application, results, and compliance of this Act.

Article 17. With regard to the use of the fines imposed.

The competent Authorities may use the amounts collected by way of fines imposed pursuant to this Act, either in whole or in part, for the pursuit of programmes for research, education, prevention, or control of tobacco abuse, and the encouragement of giving up smoking.

## CHAPTER V

### Offences and Fines

#### Article 18. General provisions.

1. The authority to impose a fine provided for in this Act shall, to the extent this Act is silent, be governed by the provisions of the Public Administration and Common Administrative Procedure Act 30/1992 of 26 November, and the General Health Act 14/1986 of 25 April, all of which is without prejudice to any civil, criminal or other liability that might arise.

2. In any penalty proceedings involving serious or very serious offences, and in accordance with the provisions contained in the Public Administration and Common Administrative Procedure Act 30/1992 of 26 November and its implementing legislation, and without prejudice to the provisions of the rules of the Autonomous Regions, such provisional measures as are provided for in the said legislation may be ordered as may be deemed necessary to ensure the effectiveness of any decision that is finally made, the success of the proceedings, the avoidance of the effects of any offence being sustained, and the requirements of the general public interest. In particular, the following may be ordered:

- a) In the case of very serious offences, the temporary suspension of the activities of the offender and, if pertinent, the provisional closure of his establishments.
- b) The sealing-off, deposit or seizure of tobacco products.
- c) The sealing-off, deposit or seizure of any records, computer formats and files and documents in general, as well as computer apparatus and equipment of any kind.
- d) To warn the public of any possible illegal conduct and of the opening of any penalty proceedings, and of any steps taken to put an end thereto.

All guarantees, regulations, and procedures laid down by law for the protection of personal and family privacy, personal data, freedom of expression, and freedom of information shall be observed in the course of the implementation and enforcement of such measures, where these might be prejudiced.

In cases of urgency and in order to immediately protect any interests involved, the provisional measures contained in this Article may be taken prior to the commencement of any penalty proceedings. Any measure must be confirmed, modified or lifted by the order to commence any penalty proceedings, which must be issued no later than 15 days after the said measures have been ordered and this may be the subject of an appeal. In any case, the said measures shall cease to have effect if penalty proceedings are not commenced within the said time limit, or should the said measures not be expressly dealt with in an order to commence proceedings. The administrative body with jurisdiction to deal with any penalty proceedings may impose a coercive fine in an amount not in excess of 6,000 euros for each day that elapses without the provisional measures that have been ordered being complied with.

3. Very serious offences shall be statute-barred after three years have elapsed; serious offences shall become statute-barred after two years, and minor offences after six months. Fines imposed for very serious offences shall become statute-barred after three years; fines for serious offences after two years, and for minor offences after one year.

## Article 19. Offences.

1. Offences arising from a failure to comply with the provisions of this Act are classified as minor, serious, and very serious.

2. The following are deemed to be minor offences:

- a) Smoking in those places where there is a total ban, or outside the areas set aside for this purpose.
- b) Any failure to possess or to display in a visible place in the establishments where the sale of tobacco products is authorized the signs advising of the prohibition on selling tobacco to persons aged under 18 and warning of the health risks arising from tobacco consumption.
- c) Should any vending machines not display the compulsory health warning or fail to comply with the characteristics as provided for by law.
- d) Not to inform at the entrance of establishments whether or not smoking is prohibited, as well as of the existence of areas set aside for smokers and non-smokers, or any failure to comply with the rest of the formal duties contained in this Act.
- e) Not to duly sign areas set aside for smoking.
- f) The sale or marketing of tobacco products by minors.

3. The following are deemed to be serious offences:

- a) To set aside smoking areas in establishments or places where it is not permitted to do so, or where the said areas do not comply with the requirements for separation from other areas, ventilation, and surface area laid down by law.
- b) To allow smoking in those places where there is a total ban, or outside the areas set aside for this purpose.
- c) The commission of three offences as provided for at section 2.a) of this Article.
- d) The marketing, sale, and supply of cigarettes and small cigars that do not have an outer wrapper of natural tobacco in retail packaging units of less than 20 units, and well as in individual units.
- e) The sale and supply of cigars and small cigars that have an outer wrapper of natural tobacco in individual units in those places where this is not permitted.
- f) The supply or distribution of samples of any tobacco product, whether for free or otherwise.
- g) The installation or placement of vending machines for tobacco products in places where they are expressly prohibited.
- h) The supply or dispensing of products other than tobacco through tobacco vending machines.
- i) The sale and supply of tobacco products by distance sales or any like manner, except for sales by way of vending machines.
- j) The free or promotional distribution, outside the network of State Tobacco and Postage Stamp Outlets, of products, goods or services with the purpose or direct or indirect effect of promoting a tobacco product.
- k) The sale of tobacco products at a discount.
- l) The sale or supply to persons aged under 18 of tobacco products or of products that imitate tobacco products and encourage smoking, as well as sweets, snacks, toys and other objects which resemble tobacco products and which might be attractive for minors.
- m) To allow persons aged under 18 to use tobacco vending machines.
- n) Failure of the vending machines to be fitted with the appropriate activation or starting device by the owner of the establishment.

ñ) The free or promotional distribution of products, goods, or services with the direct or indirect aim or effect of promoting a tobacco product to persons aged under 18.

o) The marketing of goods or services using names, brands, symbols, or other distinctive signs which are already used for a tobacco product under conditions other than those allowed under Article 10 and the second temporary provision.

p) The marketing of tobacco products using the name, brand, symbol, or any other distinctive sign of any other goods or services under conditions other than as allowed under this Act.

q) The sale, assignment, or supply of tobacco products in breach of the other prohibitions or restrictions laid down in this Act.

r) The free distribution at the State Tobacco and Postage Stamp Outlets of goods and services related exclusively to tobacco products or with the smoking habit or which are associated with names, brands, symbols, or any other distinctive signs which are used for tobacco products.

4. The advertising, promotion, and sponsorship of tobacco products by any means, including the services of the information society, except for those cases provided for at Article 9.1, are deemed to be very serious offences.

#### Article 20. Penalties.

1. Minor offences as provided for at Article 19.2.a) shall be punishable by a fine of up to 30 euros where the offence is committed in isolation, and by a fine of between 30 and 600 euros in all other cases; serious offences by a fine of between 601 euros and 10,000 euros, and very serious offences between 10,001 euros and 600,000 euros.

2. The amount of the penalty imposed, within the limits as described, shall be graded taking into account the risk to health generated, the economic means of the offender, the social repercussions of the offence, the profit which the offender may have made by the conduct which is being punished, and any prior offences under this Act. Penalties shall be divided, within each category, into three levels, minimum, medium, and maximum. Penalties for conduct where the victim or injured party is a minor, and in cases where the offending conduct is habitual or is carried out in a consistent manner, shall be imposed at the maximum level, unless the circumstance of habitual conduct or consistency forms part of the offence. They shall be imposed at the minimum level when committed by a minor, without prejudice to the provisions of Article 21.8.

3. In any event, where the amount of the fine is less than the profit that has been obtained as a result of the offence committed, the penalty shall be increased up to double the amount of the profit obtained by the offender.

4. Where one single act or omission should constitute two or more offences, as provided for in this Act or any other law, only the offence resulting in the severest penalty shall be taken into consideration.

5. Where, in the view of the Public Authorities, the offence may constitute a serious or minor criminal offence, the administrative body shall refer the case to the Public Prosecutor's Office, and shall refrain from pursuing the case until such time as the judicial authority has made a decision. A criminal conviction shall exclude the imposition of an administrative penalty.

6. A prosecution for administrative liability shall be compatible with any civil action or action of any other sort for which liability may also arise.

7. The amounts of the fines shall be reviewed and updated from time to time by the Government by way of a royal decree.

## Article 21. Persons liable.

1. The person liable for the various offences shall be the perpetrator, which is understood to mean the physical or legal person committing the acts defined as offences.

2. In the case of the offences provided for at Article 19.2.b), d), e), and f) and 19.3.a), the owners of the establishments where the offence is committed shall be liable.

3. In the case of the offences provided for at Article 19.2.c) and 19.3.n) the manufacturer, importer, as the case may be, the distributor and operator of the machine shall be jointly and severally liable.

4. In the case of the offences provided for at Article 19.3.g) and h) the operator of the machine shall be liable.

5. In the case of Article 19 at sections 3.b) and 3.l) in the event of the sale of tobacco products to persons aged under 18, and Article 19.3.m), the owner of the premises, centre, or establishment where the offence is committed shall be liable, or in default of this, the employee of the said owner who was in charge of the establishment or centre at the time the offence was committed. Should the owner of the premises, centre, or establishment be a Public Authority, the said Authority shall be liable, without prejudice to the said Authority being able to pursue liability against the persons in charge and other staff at its service for the liability in which they have incurred.

6. In the case of the offence provided for at Article 19.3.l) relating to supply of tobacco products to persons aged under eighteen, the person who has carried out the supply to the minor shall be liable.

7. In the case of offences relating to advertising, in addition to the advertising company, the beneficiary of the advertising shall also be deemed to be jointly and severally liable, which shall be deemed to be the owner of the brand or product advertised, as well as the owner of the establishment or space where the advertising is visible.

8. Where liability is found to exist for an offence committed by a minor, then the parents, tutors, carers, and legal or *de facto* guardians shall be held to be jointly and severally liable with the said minor in this order, on account of a breach of the duty incumbent on said persons to prevent the administrative offence with which the minors have been charged. Joint and several liability shall refer to monetary liability for the fine imposed. With the prior consent of the said persons, and having heard the evidence of the minor, the economic sanction of the fine may be substituted for the educational measures as determined by the legislation of the autonomous region.

## Article 22. Powers to inspect and impose penalties.

1. The General Administration of the State shall exercise the functions of inspection and control, either *ex officio* or *ex parte*, as well as the commencement of penalty proceedings and the imposition of fines, within the scope of air, maritime, or land transport, where these are carried out within a framework that is supra-regional or international, as well as in all those premises, establishments, or means which, by nature of their characteristics, are outside the jurisdiction of the Autonomous Regions and Cities with their own Statute of Autonomy.

2. The competent bodies of the Autonomous Regions and Cities with their own Statute of Autonomy, as the case may be, shall perform the functions of control and inspection, either *ex officio* or *ex parte*, as well as the commencement of penalty proceedings and the imposition of penalties.

3. The powers to impose penalties of the bodies referred to in this Article shall be understood to be without prejudice to those corresponding to the Tobacco Market Commission pursuant to the Tobacco Market and Tax Provisions Act 13/1998 of 4 May.

4. In the case of offences committed by way of radio or television, the Autonomous Regions shall perform the control and inspection in order to ensure the provisions of this Act are complied with, and, as the case may be, shall pursue the corresponding penalty proceedings and shall impose the corresponding fines in relation to the television and radio broadcasting services the coverage area of which, whatever the broadcasting method used might be, does not exceed their respective territorial boundaries. They shall also have jurisdiction over the television and radio broadcasting services which they themselves provide directly or which are provided by entities to which they have conferred an enabling licence within the corresponding regional ambit.

The State, by way of the Ministry for Industry, Tourism, and Commerce, shall have jurisdiction in order to ensure compliance with the provisions of this Act for all other television and radio services. In these cases, the provisions contained at Chapter V of Law 25/1994 of 12 July, for the transposition into Spanish law of Directive 85/552/EEC on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities, shall not be applicable.

5. Any offences committed by way of the services or facilities of the information society shall be penalized by the authorities referred to at Article 43 of the Information Society Services and Electronic Commerce Act 34/2002 of 11 July.

#### Article 23. Exercise of individual and collective proceedings.

1. The holder of a legitimate right or interest that has been affected may seek observance and enforcement of the provisions of this law before administrative and jurisdictional bodies of any rank.

2. With regard to advertising, any natural or legal person who has been affected, and in general, the holders of a subjective right or legitimate interest, may apply for a cessation of the advertising contrary to this law, in the terms provided, as the case may be, pursuant to the General Advertising Act 34/1988 of 11 November, Law 25/1994 of 12 July, which incorporates Directive 89/552/EEC into Spanish Law, on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities, and the Information Society Services and Electronic Commerce Act 34/2002 of 11 July.

3. Where the illicit advertising should affect the collective or diffuse interests of consumers and users, a collective restraining action may be brought pursuant to the provisions referred to at section 2 of this Article.

First additional provision. Manual sale of cigars and small cigars with an outer wrapper of natural tobacco.

Notwithstanding the provisions of Article 3.1 and 5.g), with regard to sales made through the network of State Tobacco and Postage Stamp Outlets or through vending machines, the manual sale of cigars and small cigars with an outer wrapper of natural tobacco is allowed in those establishments referred to at letter c) of section 1 of Article 8, which have been granted administrative authorization by the Tobacco Market Commission.

Second additional provision. Special régime for small hostelry and restaurant establishments where smoking is allowed.

Those bars and restaurants where there is no legal ban on smoking, given that they are indoor establishments, serving food and/or drinks for consumption, with a useable surface

area open to customers and/or visitors of less than 100 square metres, shall be required to state, in the manner as indicated in the regional regulations, in Spanish and in the official regional language, the decision as to whether or not smoking is allowed inside. Likewise, the information that must be included in any advertising, propaganda, and any other means through which the establishment advertises or provides information shall be regulated at a regional level.

Third additional provision. Centres or facilities where there is a legal ban on smoking.

Those centres or facilities where there is a legal ban on smoking shall put up signs in a visible place at the entrance thereto informing of the prohibition on the consumption of tobacco, and of those places where, as the case may be, the smoking areas are located pursuant to Article 8.2.

Fourth additional provision. Special régime for the Autonomous Region of the Canary Islands.

The provisions of this Act are deemed to be without prejudice to the special conditions arising from the economic and fiscal régime of the Autonomous Region of the Canary Islands with regard to the commercial freedom of tobacco products in commercial establishments located in the Canary Islands archipelago, without this exception entailing any restriction in the application of the other provisions of this Act, in particular the provisions of sections a), b), c), d), e), and f) of Article 5, and in any event, those that have the aim of protecting minors.

Fifth additional provision. Duty free shops.

The so-called “duty free shops” authorized at ports and airports, referred to at section 1) of the seventh additional provision of the Tobacco Market and Tax Provisions Act 13/1998 of 4 May, may continue to perform their activity of selling tobacco, pursuant to the terms of the said provision.

Sixth additional provision. Special régime for prisons.

The provisions of Article 5.a) shall not be applicable to the Tobacco and Postage Stamp Outlets referred to at the seventh.2 additional provision of the Tobacco Market and Tax Provisions Act 13/1998 of 4 May.

It is permissible to set aside smoking areas in prisons.

Seventh additional provision. Rules on health and safety in the workplace.

The provisions of this Act shall be understood to be without prejudice to any other restrictions and prohibitions on tobacco consumption contained in health and safety at work regulations.

Eighth additional provision. Psychiatric centres, services, or establishments.



At psychiatric centres, services, or establishments, areas may be set aside for those patients for whom, on medical grounds, such a decision is taken.

Ninth additional provision. Private smoking clubs.

Private smoking clubs, legally constituted as such, shall be exempt from the application of this Act, with regard to the ban on smoking, advertising, promotion, and sponsorship, provided that this is carried out inside its premises and the addressees are solely and exclusively the members.

First temporary provision. Temporary régime governing certain outlets and vending machines.

1. Those State Tobacco and Postage Stamp Outlets in existence on the date this Act comes into force and which are affected by the restriction provided for at Article 5.g) may continue to sell tobacco products until the termination of the corresponding concession. The owners of the remaining outlets referred to at Article 5 shall have one year, as from the date on which this Act comes into force, to apply for a change of location pursuant to the provisions of Article 39 of Royal Decree 1199/1999 of 9 July, implementing the Tobacco Market and Tax Provisions Act 13/1998 of 4 May, and regulating the law on the concession of the network of State Tobacco and Postage Stamp Outlets. Upon the expiry of the said term, it shall not be possible to sell tobacco products in such places.

2. The manufacturers, owners, and concessionaires of tobacco vending machines shall have one year, as from the date on which this Act comes into force, to adapt the machines to the obligations and technological requirements laid down at Article 4.d). New machines must include the said requirements as from the date this Act comes into force.

Second temporary provision. Temporary provisions relating to common denominations.

The common denominations referred to at Article 10 and which have been marketed prior to the entry into force of this Act may continue to be used, although the names, brands, symbols, or distinctive signs must have a clearly different appearance from that used on the tobacco product and must not include any other distinctive sign which is already used for the said product.

As from the date on which this Act comes into force, no goods or services introduced into the market may use the names, brands, symbols, or distinctive signs already in use for a tobacco product.

Third temporary provision. Temporary provisions relating to the setting aside of smoking areas.

The requirements for the setting aside of smoking areas referred to at section 2 of Article 8, shall be applicable after eight months have elapsed, starting from the entry into force of this Act. During this period, at least, the areas for smokers and non-smokers shall be duly signed and partitioned.

Fourth temporary provision.

Packaging units which do not comply with the provisions of this Act may continue to be marketed for up to three months after the entry into force of this Act in the case of cigarettes, and for up to six months after the entry into force of this Act in the case of all other tobacco products.

Fifth temporary provision.

The ban on tobacco-products advertising or sponsorship in all media shall not affect, during a period of three years as from the entry into force of this Act, the advertising and sponsorship borne by the teams participating in motorsport competitions and sporting events with cross-border effects, on their clothing, complements, instruments, equipment, prototypes, and/or vehicles.

Sole repealing provision.                      Repeal of laws.

In addition to any legal provisions of an equal or lower status which contradict the provisions of this Act, the following are hereby repealed:

- a) Section 9 of Article 4 of the Tobacco Market and Tax Provisions Act 13/1998 of 4 May.
- b) Article 8.5 of the General Advertising Act 34/1988 of 11 November, with regard to tobacco advertising.
- c) Royal Decree 709/1982 of 5 March, regulating tobacco advertising and consumption.
- d) Royal Decree 192/1988 of 4 March, on restrictions on the sale and use of tobacco for the protection of people's health, in the wording given by Royal Decree 1293/1999 of 23 July.
- e) Article 32 of Royal Decree 1199/1999 of 9 July implementing the Tobacco Market and Tax Provisions Act 13/1998 of 4 May, and regulating the law on the concession of the network of State Tobacco and Postage Stamp Outlets.

First final provision.                      Constitutional basis.

1. This law is promulgated as a basic law pursuant to Articles 149.1.1, 16, 18, and 27 of the Constitution.

Article 10 is excepted from the above, which is promulgated pursuant to Article 149.1.9 of the Constitution.

2. The Autonomous Regions shall be responsible, within their respective territorial jurisdiction, for the enactment of the rules for the development and implementation of this Act.

Second final provision.                      Powers granted to the Government.

The Government shall issue, within the scope of its powers, such provisions as may be necessary for the implementation and application of this Act.

Third final provision.                      Entry into force.

This Act shall come into force on 1 January 2006, except for the rules contained at chapter III, and those under chapter V with regard to the imposition of penalties for the circumstances referred to under chapter III, which shall come into force of the date of their publication in the "Official State Gazette".

Therefore,

I order all Spaniards, private individuals and authorities, to obey and to ensure compliance with this Law.

Madrid, 26 December 2005.

JUAN CARLOS R.

The Prime Minister

JOSE LUIS RODRIGUEZ ZAPATERO