

OFFICIAL STATE GAZETTE

No. 318

Friday 31 December 2010

Sec. I. Page 109188

I. GENERAL PROVISIONS

OFFICE OF THE HEAD OF STATE

20138 *Law 42/2010 of 30 December, amending Law 28/2005 of 26 December, on health measures to combat tobacco abuse and on the regulation of the sale, supply, consumption, and advertising of tobacco products.*

JUAN CARLOS I

KING OF SPAIN

To whom it may concern.

Be on notice: That Parliament has approved, and I now give my assent, to the following Law.

PREAMBLE

Law 28/2005 of 26 December, on health measures to combat tobacco abuse and on the regulation of the sale, supply, consumption, and advertising of tobacco products, represented an important milestone in our country's policy in the fight against tobacco abuse, with regard to the ban on smoking in public places and the measures aimed at encouraging people to give up smoking and eradicate the smoking habit in the medium and long term.

More than four years have elapsed since the Law was introduced, and it is evident, as may be seen from numerous surveys carried out in this regard, that it is necessary to make progress in protecting the health of the general public by extending the ban on smoking to enclosed and communal public places, whilst at the same time complying with the wishes of the general public, as has been evidenced by official surveys carried out recently.

Two groups of people will benefit from this measure especially. On the one hand, children, a particularly-sensitive population group which is exposed to tobacco smoke in enclosed public places. On the other hand, persons employed in the catering trade, who are clearly unprotected in comparison to all other employees, by being exposed to other people's tobacco smoke.

For all of the above, and in accordance with the line pursued by the European Union with regard to the prevention and control of tobacco abuse, with a specific strategy by the European Commission, which has the aim of extending the ban on smoking in enclosed places to all Member States in 2012, which position corroborates the ratification by Spain of the WHO Framework Convention on Tobacco Control in December 2004, this Law, which amends Law 28/2005, has the aim of proceeding with the restrictions aimed at increasing the places that are free from tobacco smoke.

Article One. *Amendment of Law 28/2005 of 26 December, on health measures to combat tobacco abuse and on the regulation of the sale, supply, consumption, and advertising of tobacco products.*

Law 28/2005 of 26 December, on health measures to combat tobacco abuse and on the regulation of the sale, supply, consumption, and advertising of tobacco products, shall be amended as follows:

One. A new sub-section e) is added to article 2, the content of which now becomes section 1 of this article, and a new section 2 is added, which shall be worded as follows:

“e) Areas open to the public: places to which the general public have access, or places for communal use by the public, irrespective of their public or private ownership. Vehicles for public or communal transport shall under all circumstances be deemed to be areas open to the public.

2. For the purposes of this Law, within the catering trade, outdoor area shall be deemed to mean any area that is not covered, or that is covered but is surrounded on its sides by no more than two walls, fences, or partitions.”

Two. A new section 7 is added to article 3, which shall be worded as follows:

“7. By way of a Royal Decree, the Government shall determine the contents and components of tobacco products, and in particular their addictive elements, as well as the labelling requirements that they must comply with.”

Three. The first paragraph of section b) of article 4 is amended, which shall be worded as follows:

“b) Location: Tobacco vending machines may only be located in the inside of newspaper kiosks situated on the public highway, and in premises that have the main activity of newsagents with direct access to the public highway, in convenience stores (as envisaged by article 5.4 of Law 1/2004 of 21 December, on Commercial Trading Hours) located at service stations, as well as at those premises envisaged at sub-sections k), t), and u) of article 7, in a location that allows the owner of the premises or his/her employees to keep a direct and permanent watch on their use.

In addition to sale by way of vending machines, the said premises may also sell cigars and small cigars with a natural outer layer by hand, provided that they are in possession of administrative authorization granted by the Tobacco Market Commission.”

Four. Sub-section g) of article 5 is amended, which shall be worded as follows:

“g) Any other place, centre, or establishment where consumption is banned, as well as in those outdoor areas listed at article 7, with the exception of the provisions of sub-section b) of article 4.”

Five. Sub-section h) of article 5 is deleted.

Six. Article 6 shall be worded as follows:

“Tobacco products may be consumed exclusively in those places or areas where there is no ban in place.”

Seven. Article 7 shall be worded as follows:

“Article 7. *Ban on smoking.*

In addition to those places or areas defined in the regulations of the Autonomous Regions, smoking is banned in:

- a) The workplace, be it public or private, with the exception of outdoor areas.
- b) Buildings and offices of the Public Authorities and Public-Law bodies.
- c) Health centres, services, or establishments, as well as any outdoor or covered areas within their grounds.
- d) Teaching and training centres, with the exception of the outdoor areas of universities or of establishments dedicated exclusively to adult tuition, provided that the said outdoor areas are not the immediate access to the buildings or the surrounding pavements.
- e) Sports installations and places where public shows are put on, provided that they are not outdoors.

- f) Areas set aside for attending to the public directly.
- g) Shopping centres, including large retail establishments and malls, with the exception of outdoor areas.
- h) Social care centres.
- i) Leisure or recreation centres, with the exception of outdoor areas.
- j) Cultural centres, reading rooms, exhibition halls, libraries, conference halls, and museums.
- k) Ballrooms, establishments for gambling or for general use by the public, with the exception of outdoor areas.
- l) Areas or establishments where food is cooked, transformed, prepared, eaten, or sold.
- m) Lifts and elevators.
- n) Telephone kiosks, cash-machine lobbies and other enclosed places open to the public of small dimensions. Places open to the public of small dimensions shall be deemed to mean those that have a surface area of less than five square metres.
- ñ) Bus stations, with the exception of any outdoor areas, urban and inter-urban communal vehicles or means of transport, company transport vehicles, taxis, ambulances, cable cars or cable railways.
- o) All areas of underground transport (carriages, platforms, corridors, stairs, stations, etc.), except for those areas which are completely outdoors.
- p) Stations, ports, and railway and maritime means of transport, with the exception of outdoor areas.
- q) Airports, with the exception of any outdoor areas, aircraft departing from or landing in Spain, and all flights by Spanish airlines, including flights shared with foreign carriers.
- r) Service stations and the like.
- s) Any other place where, by order of this Law or any other rule or by decision of the owner, smoking is banned.
- t) Hotels, hostels, and similar establishments, with the exception of outdoor areas. However, permanent rooms may be allocated to smokers, provided that they comply with the requirements laid down at article 8.
- u) Bars, restaurants, and any other enclosed catering establishments.
- v) Theatres, cinemas, and other public shows performed in enclosed places.
- w) Children's playgrounds and areas or zones set aside for children to play, which shall be deemed to mean defined outdoor areas containing apparatus or features specifically designed for children's recreation or enjoyment.
- x) Any other enclosed places for public or collective use."

Eight. Article 8 shall be worded as follows:

"In those places listed at sub-section t) of the previous article, up to 30% of permanent rooms may be set aside for smokers, provided that the following requirements are met:

- a) They must be in areas that are separate from the other rooms and have independent ventilation or other features for the removal of smoke.
- b) They must be distinguished by way of permanent signs.
- c) Customers must be informed in advance of the kind of room being offered.
- d) Employees must not be able to have access to such rooms whilst there is a customer inside, except in emergencies."

Nine. A new section 3 is added to article 9, which shall be worded as follows:

"3. The broadcasting of programmes or of images, by way of any means of communication, including the information society, in which the presenters, co-presenters, or guests:

- a) are seen to smoke, or
 - b) mention or show, whether directly or indirectly, brands, commercial names, logotypes, or any other identifying symbols or signs associated with tobacco products,
- is banned.

Ten. Article 12 shall be worded as follows:

“Article 12. *On programmes for encouraging people to give up smoking.*”

The competent Public Authorities shall promote the performance of health initiatives to encourage people to give up smoking through the health welfare network, in particular through primary care. Likewise, programmes for encouraging people to give up smoking shall be promoted at teaching institutions, health centres, employment centres, and in sporting and leisure facilities. The creation of units to encourage people to give up smoking shall be advanced and promoted within the Inter-territorial Council of the National Health Service, which shall also define those priority groups which are most vulnerable.

Access to treatments that help people to give up smoking, for which their success and cost-effectiveness has been backed up by scientific evidence, shall be advanced and promoted within the Inter-territorial Council of the National Health Service, and where appropriate, the incorporation of such treatments into the range of services offered by the National Health Service shall be assessed.”

Eleven. Article 13 shall be worded as follows:

“Article 13. *Adoption of measures.*”

When adopting the measures referred to in this chapter, particular attention shall be paid to issues of gender and social inequalities. Likewise, the competent Public Authorities shall promote such measures as may be necessary in order for the protection of health and the education of children, aimed at preventing and avoiding the acquisition of the smoking habit, and at helping smokers in giving up their addiction. Contents aimed at the prevention of tobacco abuse, and at increasing awareness, shall be introduced into the training plans for the teaching profession. The initiation of action programmes as part of children’s paediatric care shall be promoted, with specific information for parents who smoke, and campaigns focussing on the harm that exposure to smoke can cause to children.”

Twelve. Sub-section a) of section 2 of article 19 is amended, which shall be worded as follows:

“a) Smoking in those places where there is a ban in place or outside of the areas set aside for smokers.”

Thirteen. Sub-section d) of section 2 of article 19 shall be worded as follows:

“d) Not to notify the ban on smoking at the entrance to the establishments, or not to comply with any of the other formal requirements contained in this Law.”

Fourteen. Sub-section e) of section 2 of article 19 is deleted.

Fifteen. Sub-sections a) and b) of section 3 of article 19 are amended, and shall be worded as follows:

“a) To set aside smoking areas in establishments and locations where such areas are not permitted.

b) To allow smoking in those areas where smoking is banned.”

Sixteen. Section 1 of article 20 shall be worded as follows:

“1. Minor offences shall be punishable with a fine of between 30 and 600 euros, with the exception of smoking in places where smoking is banned as envisaged under article 19.2.a), which shall be punishable with a fine of up to 30 euros where the offending activity is carried out on an isolated basis; serious offences shall be

punishable with a fine of between 601 and 10,000 euros, and very serious offences, with a fine of between 10,001 and 600,000 euros.”

Seventeen. At section 2 of article 21, the reference to sub-section e) of article 19.2 is deleted.

Eighteen. The first additional provision is amended, which shall be worded as follows:

“Notwithstanding the provisions of articles 3.1 and 5.g), with reference to sale through the network of official tobacconist outlets and through vending machines, cigars and small cigars with a natural outer layer may be sold by hand at those establishments listed under sub-section u) of article 7, where they are in possession of administrative authorization granted by the Tobacco Market Commission.”

Nineteen. The second additional provision is deleted.

Twenty. The third additional provision is amended, which shall be worded as follows:

“Third additional provision. *Signs at those centres or offices where there is a ban on smoking, and in smoking areas.*

Signs shall be put up at the entrance of all centres or offices where smoking is banned by law, in a visible place, informing people of the ban on smoking, and where appropriate, indicating where smoking areas have been set aside. These signs shall be in Spanish and in the co-official language, in accordance with the requirements of the corresponding regional rules.”

Twenty-one. The second paragraph of the sixth additional provision is amended, which shall be worded as follows:

“In prisons, prisoners are allowed to smoke in the outdoor areas of the buildings in the open air, or in the enclosed rooms set aside for this purpose, which must be duly and visibly signed, and have independent ventilation or other devices for the removal of smoke.”

Twenty-two. The seventh additional provision is amended, which shall be worded as follows:

“Seventh additional provision. *Regulations governing health and safety at work.*

The provisions of this Law shall be deemed to be without prejudice to any other restrictions and bans on the consumption of tobacco contained in the regulations governing health and safety at work, the enforcement and control of which corresponds to the Works and Social Security Inspectorate.”

Twenty-three. The eighth additional provision is amended, which shall be worded as follows:

“Eighth additional provision. *Psychiatric centres or establishments.*

In medium- to long-term stay psychiatric establishments, patients are allowed to smoke in the outdoor areas of the buildings in the open air, or in an enclosed room set aside for this purpose, which must be duly and visibly signed, and have independent ventilation or other devices for the removal of smoke.”

Twenty-four. The ninth additional provision is amended, which shall be worded as follows:

“Ninth additional provision. *Private smoking clubs.*

The provisions of this Law, in respect of the ban on smoking, advertising, promotion, and sponsorship, shall not apply to private smoking clubs, legally incorporated as such, provided that smoking takes place inside the club premises, and as long as only members are present.

For the purposes of this Provision, in order to be considered as a private smoking club, the club must have legal personality, be a non-profit concern, and its activities or corporate purpose must not include the marketing or trading of any consumer goods or products.

Under no circumstances may children be allowed to enter private smoking clubs.”

Twenty-five. A tenth additional provision is added, which shall be worded as follows:

“Tenth additional provision. *Residential homes for the elderly or disabled persons.*

In residential homes for the elderly or disabled persons, a specific smoking area may be set aside, which shall be for the exclusive use of residents, and must be duly and visibly signed, and have independent ventilation or other devices for the removal of smoke. Smoking shall not be allowed in the rooms or in any other common areas at the said centres.”

Twenty-six. An eleventh additional provision is added, which shall be worded as follows:

“Eleventh additional provision. *Report before Parliament.*

The Minister for Health and Social Policy shall submit before Parliament, every two years over the first four years that this Law is in force, a report evaluating the impact of this reform on public health.”

Twenty-seven. Section 2 of the first final provision is amended, which shall be worded as follows:

“2. The Autonomous Regions shall be responsible for promulgating, within their corresponding territorial jurisdiction, the necessary implementing and enforcement provisions for this Law, including the corresponding health characteristics and warnings.”

First final provision. *Jurisdiction.*

This Law is promulgated as a basic Law pursuant to articles 149.1.1, 16, 18, and 27 of the Constitution.

Second final provision. *Entry into force.*

This Law shall enter into force on 2 January 2011.

Therefore,

I order all Spaniards, private individuals, and authorities, to obey this Law and to ensure that it is obeyed.

Madrid, 30 December 2010.

JUAN CARLOS R.

The Prime Minister,
JOSÉ LUIS RODRÍGUEZ ZAPATERO