

## Act XLII of 1999

### on the protection of non-smokers and on certain rules of consuming and distributing tobacco products<sup>1</sup>

The Parliament,

- having regard to the unfavorable public health indicators of the population;
  - in order to restrict accessibility to tobacco products for minors by imposing partial limitation on the distribution of these products;
  - declaring its intention that non-smokers and persons in need of special protection due to their age or health condition should be protected against the adverse effects of passive smoking by regulating the consumption of tobacco products mainly in public areas;
  - having realized that legislation applicable to the protection of non-smokers must be regularly reviewed as the health-conscious lifestyle is becoming more popular, so the State can provide protection against the adverse effects of passive smoking in additional areas of the private sector;
  - while also respecting the rights to private life, strongly emphasizing that smoking must be refrained from, especially around minors, pregnant women, ill persons or persons, whose mobility is limited for any reason, even in scenes of private life, especially in enclosed rooms or closed passenger compartments of cars, as tobacco smoke is poisonous in every situation, it does not have a safe exposure limit;
  - assisting that the constitutional rights to health and healthy environment are achieved and protected;
  - taking into consideration the necessity of the cultural development of consumption of tobacco products and acknowledging the reasonable consumption habits by consulting the parties with conflicting interests;
- makes the following Act: <sup>2</sup>

#### *Interpretation provisions*

1. For the purposes of this Act,

a) <sup>3</sup> “*tobacco product*” means products that can be consumed and consist of tobacco (even in part), whether genetically modified or not;

b) <sup>4</sup> “*smoking*” means burning and heating tobacco products or herbal products for smoking;

c) <sup>5</sup> “*public institution*” means a facility or other instrument belonging to natural or artificial legal persons, or entities without legal personality performing public duties or providing services or benefits for public interest or for other reasons (hereinafter: services), which is used for the provision of the services or activities in this regard,

<sup>1</sup> Publication: 23 April 1999

<sup>2</sup> Established by: section 7 of Act XLI of 2011. Effective from: 9 May 2011.

<sup>3</sup> Established by: subsection 45 (7) of Act LXXVII of 2015. Effective from: 20 May 2016.

<sup>4</sup> Established by: section 30 of Act XXXIV of 2016. Effective from: 27 May 2016.

<sup>5</sup> Established by: subsection 2 (1) of Act XLI of 2011. Effective from: 1 January 2012.

whether access to the public is allowed entirely or subject to certain conditions;

d) <sup>6</sup> “*event*” means a meeting or event held for the purposes specified in section 2 of Act III of 1989 on the right of assembly, or for economic, cultural, (non-recreational) sport, religious or interest protection purposes, where at least three persons are present at the same time;

e) <sup>7</sup> “*enclosed room*” a facility or instrument physically separated from its environment by any kind of technical solution, where the continuous ventilation from the external environment is not provided for, or provided for by gaps, doors, windows or artificial ventilation systems covering not more than 1/2 of its roof or one of its sides;

f) <sup>8</sup> “*combined health warning*” means a health warning consisting of a combination of a text warning and a corresponding photograph or illustration, as provided for in a government regulation issued under the power delegated by this Act;

g) <sup>9</sup> “*social organization representing health protection interests*” means an association established under the Right of Assembly Act, if its objective specified in its articles of association is the reduction of smoking, it has been operating for this purpose for at least two years, moreover, a federation of such associations;

h) <sup>10</sup> “*outside packaging*” means any packaging in which tobacco or related products are placed on the market and which includes a unit packet or an aggregation of unit packets; excluding transparent packaging materials;

i) <sup>11</sup> “*institution providing accommodation services*” means accommodation and worker hostel specified by subsection 2 (22) of Act CLXIV of 2005 on trade, moreover, residential institution specified in point d) and other special social institution specified under point f) of section 57 (2) of Act III of 1993 on social administration and social benefits;

j) <sup>12</sup> “*health warning*” means a warning concerning the adverse effects on human health of a product or other undesired consequences of its consumption, as provided for in a government regulation issued under the power delegated by this Act;

k) <sup>13</sup> “*general warning*” means the sentence of “Smoking kills – quit now” indicated on the unit packet and outside packaging of tobacco for smoking;

l) <sup>14</sup> “*information message*” means the sentence of “Tobacco smoke contains over 70 substances known to cause cancer.” indicated on the unit packet and outside packaging of tobacco for smoking;

m) <sup>15</sup> “*unit packet*” means the smallest individual packaging of a tobacco or related product that is placed on the market;

<sup>6</sup> Amended by: section 80 of Act CXXXIII of 2013.

<sup>7</sup> Established by: subsection 30 (1) of Act CCXXIV of 2015. Effective from: 1 January 2016.

<sup>8</sup> Established by: subsection 45 (2) of Act LXXVII of 2015. Effective from: 20 May 2016.

<sup>9</sup> Inserted by: section 131 of Act CLXXV of 2011.

<sup>10</sup> Established by: subsection 45 (3) of Act LXXVII of 2015. Effective from: 20 May 2016.

<sup>11</sup> Inserted by: subsection 30 (2) of Act CCXXIV of 2015. Effective from: 1 January 2016.

<sup>12</sup> Inserted by: subsection 30 (3) of Act CCXXIV of 2015. Effective from: 20 May 2016.

<sup>13</sup> Inserted by: subsection 30 (3) of Act CCXXIV of 2015. Effective from: 20 May 2016.

<sup>14</sup> Inserted by: subsection 30 (3) of Act CCXXIV of 2015. Effective from: 20 May 2016.

<sup>15</sup> Inserted by: subsection 30 (3) of Act CCXXIV of 2015. Effective from: 20 May 2016.

n) <sup>16</sup> “*herbal product for smoking*” means a product based on plants, herbs or fruits which contains no tobacco and that can be consumed via a combustion process;

o) <sup>17</sup> “*cross-border distance sales*” means distance sales to consumers where, at the time the consumer orders the product from a retail outlet, the consumer is located in a Member State other than the Member State or the third country where that retail outlet is established. A retail outlet is deemed to be established in a Member State:

(oa) in the case of a natural person: if he or she has his or her place of business in that Member State;

(ob) in other cases: if the retail outlet has its statutory seat, central administration or place of business, including a branch, agency or any other establishment, in that Member State;

p) <sup>18</sup> “*electronic cigarette*” means a disposable electronic product or an electronic product refillable by refill containers and tank or by disposable cartridges, which product can be used for consumption of nicotine-containing vapor via a mouth piece, or any component of that product, including a cartridge, a tank and the device without cartridge or tank;

q) <sup>19</sup> “*refill container*” means a receptacle that contains a nicotine-containing liquid, which can be used to refill an electronic cigarette;

r) <sup>20</sup> “*electronic device for the imitation of smoking*”: means a disposable electronic product that enables the consumption of nicotine-free vapor via a mouth piece.

### ***Main rules concerning the consumption of tobacco products***

2. <sup>21</sup> (1) <sup>22</sup> Apart from places designated for smoking and with the exception specified in subsection (3), smoking and the use of electronic cigarettes and electronic device for the imitation of smoking are prohibited:

a) in rooms of public institutions that are open to the public;

b) on public transport vehicles;

c) in workplaces;

d) in public places of

da) underpasses open to pedestrians and other enclosed public spaces for passage, public playgrounds and within 5 meters of the outside boundary of playgrounds;

db) areas of railway operating facilities and parts of the railway track aiming to provide railway public transport, which are open to the public; stops, waiting areas and rooms established for the use of public transport vehicles or designated for this purpose, and in case of an open stop or waiting area, within 5 meters of the outside boundary of it; moreover, where the outside boundary of the area subject to the smoking restriction cannot be clearly established, smoking is prohibited within the

<sup>16</sup> Inserted by: subsection 30 (3) of Act CCXXIV of 2015. Effective from: 20 May 2016.

<sup>17</sup> Inserted by: subsection 30 (3) of Act CCXXIV of 2015. Effective from: 20 May 2016.

<sup>18</sup> Inserted by: subsection 30 (3) of Act CCXXIV of 2015. Effective from: 20 May 2016.

<sup>19</sup> Inserted by: subsection 30 (3) of Act CCXXIV of 2015. Effective from: 20 May 2016.

<sup>20</sup> Inserted by: subsection 30 (3) of Act CCXXIV of 2015. Effective from: 20 May 2016.

<sup>21</sup> Established by: subsection 10 (1) of Act CLXVI of 2011. Effective from: 1 January 2012.

<sup>22</sup> Established by: subsection 31 (1) of Act CCXXIV of 2015. Effective from: 20 May 2016.

area equivalent to a circle with 5 meters radius around the sign or other mark indicating the stop or waiting area;

*e)* within 10 meters of the public entrance of a healthcare institution falling under subsection 3 *f)* of Act CLIV of 1997 on healthcare (hereinafter: Healthcare Act).

(2) Apart from the exception prescribed by subsection (5), smoking areas cannot be designated

*a)* in enclosed rooms of public institutions;

*b)* in enclosed rooms of workplaces;

*c)* on public transport vehicles used in local public transport, local trains, buses operating in domestic distance travel according to a schedule, and passenger trains operating according to a schedule.

(3) Notwithstanding the provisions specified in subsection (1) *a)*, smoking is permitted without the need to designate a smoking area

*a)* <sup>23</sup>

*b)* in enclosed rooms of institutions providing accommodation services that has been specifically rented out and indicated as smoking rooms, provided that smoking is not prohibited under another provision of this Act or a fire prevention provision.

(4) In addition to the provisions prescribed by subsections (2) *a)* and *b)*, smoking areas may not be designated even in open areas

*a)* <sup>24</sup> in public education institutions;

*b)* in child welfare and child protection institutions;

*c)* <sup>25</sup>

(5) <sup>26</sup> In accordance with subsections (7) – (9), enclosed smoking areas may be designated

*a)* in cases specified by section 9;

*b)* in the institutions of the prison services and in police interrogation rooms, detention facilities and guarded accommodations for detainees, including those established for patients with mental disorders;

*c)* in psychiatric institutions for psychiatric patients, falling under subsection 188 *a)* of the Healthcare Act;

*d)* for employees, where the climate of the enclosed workplace is such that the corrected effective temperature exceeds 24 °C, as specified in a separate piece of legislation;

*e)* for employees of highly flammable and explosive, flammable and explosive or flammable workplaces or facilities, where taking into consideration of

*ea)* the rest breaks provided by the Labor Code;

*eb)* the fire protection rules; and

<sup>23</sup> Repealed by: subsection 25 (5) of Act CXXXIV of 2012. Ineffective from: 1 July 2013.

<sup>24</sup> Amended by: subsection 38 *a)* of Act CCXXIV of 2015.

<sup>25</sup> Repealed by: section 39 of Act CCXXIV of 2015. Ineffective from: 1 January 2016.

<sup>26</sup> Established by: subsection 1 (1) of Act XXVI of 2012. Effective from: 9 April 2012

*ec*) the characteristics of the performed activity; smoking areas in the open area cannot be, or can only be designated in a way that constitutes a significant risk to life, property or national economic interests.

(5a)<sup>27</sup> In an open area at a healthcare service provider falling under subsection 3 *f*) of the Healthcare Act, smoking area may only be designated within the area of the healthcare provider in a way that is sufficiently separated from and more than 10 meters away from the usual or necessary route of persons using the healthcare services.

(6) In relation to the designated smoking areas, the healthcare administrative authority verifies compliance with the provisions of this Act, and the fire protection authority verifies compliance with fire protection aspects.

(7)<sup>28</sup> Areas, rooms and public places affected by the restriction on smoking and on the use of electronic cigarettes and electronic devices for the imitation of smoking, moreover, those designated for smoking and for the use of electronic cigarettes and electronic devices for the imitation of smoking must be indicated by labels or other clear signage in a conspicuous way (or in case of prohibition due to fire prevention, standard prohibition signage must be used).

(8) If an enclosed smoking area is being designated under the provisions of this Act, the smoking area may not be designated in the same room with a non-smoking area. In case of an enclosed smoking area, the appropriate ventilation must be provided for by fitting windows and doors or other technical equipment, and it must be done in a way that tobacco smoke does not get into non-smoking rooms. For the purposes of this subsection, ventilation is appropriate in the room if

*a*) there is an operating mechanical ventilation equipment to provide for the extraction of used air; and

*b*) the smoking area is designated in a way and the ventilation of the room is designed in a way that tobacco smoke flows into the extraction ducts directly from the place where it is generated and there are no non-smoking areas in the direction of that flow.

(9)<sup>29</sup> In cases specified by subsections (5) *d*) and *e*), an enclosed smoking area may be designated only with the prior permission of the administrative healthcare authority. In its procedure commenced on an application, also including an on-site survey, the administrative healthcare authority permits the designation of the smoking area if it complies with the requirements prescribed by subsections (5) *d*) and *e*) as well as by subsections (7) and (8). The procedure of the healthcare administrative authority in relation to the designation of a smoking area is subject to the payment of the administrative service charge specified in the regulation issued by the minister responsible for healthcare with the agreement of the minister responsible for tax

<sup>27</sup> Inserted by: subsection 37 (2) of Act CCXXIV of 2015. Effective from: 7 January 2016.

<sup>28</sup> Established by: subsection 37 (3) of Act CCXXIV of 2015. Effective from: 20 May 2016.

<sup>29</sup> Inserted by: subsection 7 (2) of Act XXVI of 2012. Effective from: 9 April 2012

affairs.

**2/A.**<sup>30</sup> (1) In addition to those areas detailed in subsection 2 (1) *d*), the local authority may declare a public area to be a non-smoking area. Within the order of the local authority, the extent of the smoking restriction must be specified in detail and in a way that persons with a duty to designate smoking areas under this Act are able to discharge such duty. The provisions of subsection 2 (7) apply to the designation of a non-smoking area.

(2) In addition to the provisions specified in section 7, compliance with the restrictions on smoking prescribed by this Act and by the local authority order mentioned in subsection (1) may also be enforced by the public area inspection service (by taking into consideration the contents of the local authority order), and persons found to be in breach of the restriction on smoking may be levied a fine of HUF 30,000 on the spot.

(3) The spot fine under subsection (2) is the income of the local authority.

(4) The spot fine under subsection (2) and the health protection fine under section 7 may not be levied together for a breach of a smoking restriction committed by the same person on the same location and at the same time. If both the public area inspection service and the administrative healthcare authority commenced a procedure for a breach of a smoking restriction committed by the same person on the same location and at the same time, the procedure must be conducted by the authority with competence under subsection 21 (6) of Act CXL of 2004 on the rules of procedure and services of administrative authorities (hereinafter: Administrative Procedure Act).

**3.** (1)<sup>31</sup> A person acting within the duties of the public institution or a person professionally contributing to the operation of a public transport vehicle (hereinafter together: authorized person) must instruct the person breaching the restriction on smoking and on the use of electronic cigarettes and electronic devices for the imitation of smoking to immediately cease breaching the law. If such instruction is ineffective, the authorized person shall order the involved person to leave the public institution or the public transport vehicle, and shall commence the procedure specified in subsections 7 (1) – (2) and (13).

(2) On the request of the person specified in subsection (1), the person involved must prove his identity in a credible way after the requesting person proved his eligibility to act.

**4.** (1)<sup>32</sup> With the exceptions prescribed by subsections 2 (3) – (5), in cases specified by specified by subsections 2 (1) *a*) and *c*), non-enclosed smoking areas must be designated and maintained in accordance with the provisions of this Act and the fire protection rules, complying with the provisions of subsection 2 (7). Apart

<sup>30</sup> Established by: section 54 of Act CCXII of 2012. Effective from: 1 January 2013.

<sup>31</sup> Amended by: subsection 13 a) of Act XLI of 2011, subsection 38 b) of Act CCXXIV of 2015.

<sup>32</sup> Established by: subsection 55 (1) of Act CCXII of 2012. Effective from: 1 January 2013.

from public institutions providing entertainment or catering services, smoking area may not be designated within 5 meters from the entrance of the public institution. In case of public institutions providing entertainment or catering services, smoking area may be designated within 5 meters from the entrance if the conditions for designating an open smoking area over 5 meters away from the entrance are not present within the area of the institution.

(2)<sup>33</sup>

(3)<sup>34</sup> The operator may make a decision on the designation of a smoking area on public and private transport vehicles not specified in subsection 2 (2) c). The designation may not breach fire protection rules or transport safety interests.

(4) – (5)<sup>35</sup>

(6)<sup>36</sup> With the exception of public institutions detailed in subsection 2 (5) a)–c), the operator of the public institution may declare the institution to be a non-smoking institution. In this case, a smoking area may not be designated within the institution in an enclosed area either. The fact of being a non-smoking institution must be indicated by conspicuous and clear label or sign at every entrance of the institution in public use and in every room of the institution open to the public.

(7)<sup>37</sup>

(8)<sup>38</sup> In case of a multifunctional institution, where healthcare services are also provided in its area, subsection (1) appropriately applies, however, a smoking area may only be designated even in an open area, if it is at least 10 meters away from the usual or necessary route of persons using the healthcare services. Notwithstanding the provisions of subsection (1), a smoking area may not be designated in these institutions within 10 meters from the entrance open to the public.

(9)<sup>39</sup> The person specified in the internal policy of the public institution, or if there is no such person specified, the head or operator of the institution, the organizer of the event, the operator of the public transport vehicle, the head of the public education institution or the employer must provide for the conditions specified in subsections (1) – (8) and section 4/A.

**4/A.**<sup>40</sup> (1) The employer may declare the workplace (or in case of separate sites, each site separately) to be a non-smoking workplace in accordance with subsections (2) – (3). In this case, a smoking area may not be designated in the facilities or rooms exclusively managed by the employer. The fact of being a non-smoking workplace must be indicated by conspicuous and clear text or sign at every entrance of the institution open to persons and in every room, which are not exclusively used by employees, or in the corridors leading to these rooms, and it must be indicated in a

<sup>33</sup> Repealed by: subsection 18 (1) a) of Act XLI of 2011. Ineffective from: 1 January 2012.

<sup>34</sup> Established by: subsection 55 (2) of Act CCXII of 2012. Effective from: 1 January 2013.

<sup>35</sup> Repealed by: subsection 18 (1) a) of Act XLI of 2011. Ineffective from: 1 January 2012.

<sup>36</sup> Established by: subsection 55 (2) of Act CCXII of 2012. Effective from: 1 January 2013.

<sup>37</sup> Repealed by: subsection 18 (1) a) of Act XLI of 2011. Ineffective from: 1 January 2012.

<sup>38</sup> Established by: section 32 of Act CCXXIV of 2015. Effective from: 1 January 2016.

<sup>39</sup> Established by: subsection 5 (3) of Act XLI of 2011. Amended by: subsection 13 a) of Act XLI of 2011, subsection 38 a) of Act CCXXIV of 2015.

<sup>40</sup> Inserted by: section 38 of Act CLXXXI of 2005. Effective from: 1 September 2006.

way that is clearly visible to every person using the facilities.

(2) The decision on the declaration to be a non-smoking workplace made under subsection (1) may be made

*a)* in the collective agreement in case of employers with a collective agreement; or

*b)* on the initiative of the employees or with their agreement in case of employers not falling under point *a*).

(3) The union entitled to conclude a collective agreement on behalf of the employees, or if there is no such union at the employer, 50% of the employees employed at the relevant site at the time of concluding the agreement may initiate the decision under subsection 2 *b*). If it is initiated by the employer, the rules on the right of initiative apply to the agreement of the employees. The employer must take into consideration the initiative of employees. In this case, the workplace or the site must be converted into a non-smoking workplace within 30 days.

(4)<sup>41</sup> In case of workplaces, where based on subsections 2 (2) and (4), a smoking area may not be designated, or where based on subsection 2 (3), designation of a smoking area is not mandatory, subsections (1) – (3) do not apply. In workplaces declared to be non-smoking workplaces, the designation of a smoking area may be initiated by appropriately applying the provisions under subsections (2) – (3).

### ***Certain restrictions on the distribution of tobacco products***

**5.**<sup>42</sup> (1) Retail activity in relation to tobacco products, electronic cigarettes, refill containers and electronic devices for the imitation of smoking may not be conducted in public education institutions, social institutions providing personal care, child welfare and child protection institutions and healthcare institutions.

(2) Tobacco products, electronic cigarettes, refill containers and electronic devices for the imitation of smoking may not be distributed as product samples.

(3) Tobacco products, electronic cigarettes, refill containers and electronic devices for the imitation of smoking may not be distributed from vending machines.

(4) For the purposes of this section, retail of tobacco products means the term defined in the Act on the reduction of smoking of minors and on the retail of tobacco products.

**6.**<sup>43</sup> (1) Tobacco products may be distributed only if all its unit packets and outside packaging comply with the provisions specified in the government regulations issued for the enforcement of this Act.

(2) Health warnings must be used in accordance with the provisions of the government regulations issued for the enforcement of this Act. Health warning means text warnings, combined health warnings, general warnings and information messages.

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<sup>41</sup> Amended by: subsection 13 c) of Act XLI of 2011.

<sup>42</sup> Established by: section 33 of Act CCXXIV of 2015. Effective from: 20 May 2016.

<sup>43</sup> Established by: section 46 of Act LXXVII of 2015. Effective from: 20 May 2016.



(3) The general warning specified in the government regulation issued under the power delegated by this Act must also be used in case of the service areas of shops and mobile shops selling tobacco products.

(4) The detailed rules applicable on the labels and packaging of tobacco products are in the government regulations issued for the enforcement of this Act.

**6/A.**<sup>44</sup> (1) The labelling of unit packets and any outside packaging and the tobacco product itself shall not include any element or feature that:

*a)* promotes a tobacco product or encourages its consumption by creating an erroneous impression about its characteristics, health effects, risks or emissions; labels shall not include any information about the nicotine, tar or carbon-monoxide content of the tobacco product;

*b)* suggests that a particular tobacco product is less harmful than others or aims to reduce the effect of some harmful components of smoke or has vitalizing, energetic, healing, rejuvenating, natural, organic properties or it has other health or lifestyle benefits;

*c)* refers to taste, smell, any flavorings or other additives or their absence in a way that is suitable to mislead consumers;

*d)* resembles a food or a cosmetic product;

*e)* suggests that a certain tobacco product has improved biodegradability or other environmental advantages.

(2) The unit packets and any outside packaging shall not suggest economic advantages by including printed vouchers, offering discounts, free distribution, “two-for-one” or other similar offers.

(3) The elements and features that are prohibited pursuant to subsections (1) and (2) may include but are not limited to texts, symbols, names, trademarks, figurative or other signs, or any other signs similar to these.

**6/B.**<sup>45</sup> Cross-border distance sales of tobacco products to consumers is prohibited.

### ***Breaches of prohibitions or obligations in relation to consumption or distribution of tobacco products***

**7.** (1)<sup>46</sup> The administrative healthcare authority verifies compliance with the provisions specified in sections 2 – 4/A, 7/H and 9 of this Act and section 38 of Act XCIII of 1993 on occupational safety, and it imposes a health protection fine to natural persons, legal entities and organizations without legal personality that breach these provisions. The administrative healthcare authority may forego imposing the fine to the person specified in subsection 4 (9), if it can be proven that the authorized person discharged its duty prescribed by subsection 3 (1) regarding the person in breach of the restrictions on smoking or on the use of electronic cigarettes or

<sup>44</sup> Inserted by: section 47 of Act LXXVII of 2015. Effective from: 20 May 2016.

<sup>45</sup> Inserted by: section 47 of Act LXXVII of 2015. Effective from: 20 May 2016.

<sup>46</sup> Established by: subsection 34 (1) of Act CCXXIV of 2015. Effective from: 20 May 2016.

electronic devices for the imitation of smoking.

(2)<sup>47</sup> A person specified in subsection 4 (9) must also pay a health protection fine if he does not enforce compliance with the prohibitions and restrictions prescribed by this Act within his duties.

(3)<sup>48</sup> A health protection fine may only be imposed on a person, who was over 14 years old at the time he committed the offence.

(4) The amount of the health protection fine shall be

a)<sup>49</sup> at least HUF 20,000, but not more than HUF 50,000 in case of breaches of prohibitions or restrictions in relation to smoking;

b)<sup>50</sup> in case of non-performance or inappropriate performance of duties regarding the designation of smoking areas, non-performance of control obligations regarding the prohibitions and restrictions involving smoking, or if the label or other clear sign is not indicated in the smoking areas or rooms or other public areas affected by the smoking restriction, or if these labels are not appropriate or are not displayed in a conspicuous way,

ba) at least HUF 100,000, but not more than HUF 250,000 Ft for the person responsible for compliance with these requirements; or

bb) at least HUF 1,000,000, but not more than HUF 2,500,000 Ft for the institution, organization, operator or economic entity.

(5)<sup>51</sup> The amount of the health protection fine must be specified in a way that it corresponds to the seriousness of the offence and the personal circumstances of the offender. In the case specified by subsection (4) a), the acting authority may impose a health protection fine of up to HUF 30,000 on the spot (notwithstanding to the maximum amount specified therein). If the fine imposed on the spot is not paid within 30 days, subsection (4) applies.

(6)<sup>52</sup>

(7) The procedure for health protection fine may be used by the authority with jurisdiction and competence within 6 months from the date it became aware of the act specified by subsections (1) – (2). A health protection fine may not be imposed after 1 year from the commission of the offence, except if the offence is committed by maintaining a condition in breach of the law. In this case, the limitation period starts on the day the condition breaching the law ceases.

(8)<sup>53</sup>

(9)<sup>54</sup> The health protection fine imposed by an effective decision, and the consumer protection fine levied on a person breaching a prohibition or restriction regarding the

47 Amended by: subsection 44 (3) f) of Act CLXXXI of 2005, subsection 18 (1) b) of Act XLI of 2011.

48 Established by: section 57 of Act CCXII of 2012. Effective from: 1 January 2013.

49 Established by: subsection 40 (1) of Act CLXXXI of 2005. Effective from: 1 September 2006. In case of offences committed in the preceding time period, the imposed fine may not exceed the maximum amount prescribed by provisions that were effective at time the offence was committed.

50 Established by: subsection 34 (2) of Act CCXXIV of 2015. Effective from: 23 January 2016

51 Established by: subsection 40 (2) of Act CLXXXI of 2005. Amended by: subsection 13 e) of Act XLI of 2011.

52 Repealed by: subsection 18 (1) d) of Act XLI of 2011. Ineffective from: 1 January 2012.

53 Repealed by: subsection 18 (1) d) of Act XLI of 2011. Ineffective from: 1 January 2012.

54 Established by: subsection 10 (2) of Act CLXVI of 2011. Effective from: 1 January 2012.

distribution of tobacco products contained in this Act as well as the fines imposed on the spot must be paid into the account of the administrative health protection authority.

(10)<sup>55</sup>

(11)<sup>56</sup>

(12) Imposing the health protection fine does not affect the applicability of legal sanctions corresponding to the breach of law, as specified by a separate piece of legislation.

(13)<sup>57</sup> Within the area of the public education institution or another institution performing the same duties arising from the student relationship or any other relevant duties, the person specified in subsection 3 (1) must commence disciplinary procedure detailed in a separate piece of legislation against the student of the public education institution, who breached the smoking prohibition prescribed by this Act.

**7/A.**<sup>58</sup> (1)<sup>59</sup> The consumer protection authority verifies compliance with the provisions specified in sections 5, 6 and 6/A, and commences a procedure against the persons breaching them in accordance with Act CLV of 1997 on consumer protection (hereinafter: Consumer Protection Act).

(2) The provisions specified in subsection (1) are consumer protection provisions for the purposes of the Consumer Protection Act.

**7/B.**<sup>60</sup> (1)<sup>61</sup> For the protection of the wide scope of the population or in order to resolve the significant conflict with the public health interests, the administrative healthcare authority, a non-governmental organization representing health protection interests or a prosecutor may initiate a claim against a person, whose activity in breach of this Act affects a wide scope of the population or significantly conflicts with the interests of public health. Such a claim may be initiated even if the person of the victims cannot be established.

(2) The claim specified in subsection (1) may be submitted within one year from the offence.

(3) The court may authorize the person enforcing the claim to publish the judgment in a national newspaper on the costs of the offender.

(4)<sup>62</sup> The non-governmental organization may exercise the rights of the customer in proceedings commenced

a) due to the breach of the provisions specified by sections 2 – 4/A of this Act or section 38 of Act XCIII of 1993 on occupational safety by the administrative healthcare authority; or

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<sup>55</sup> Repealed by: subsection 84 (25) of Act CLXVI of 2011. Ineffective from: 1 January 2012.

<sup>56</sup> Repealed by: subsection 202 (2) of Act LVI of 2009. Ineffective from: 1 October 2009.

<sup>57</sup> Amended by: subsection 38 c) of Act CCXXIV of 2015.

<sup>58</sup> Inserted by: section 8 of Act XLI of 2011. Effective from: 1 January 2012.

<sup>59</sup> Amended by: subsection 49 a) of Act LXXVII of 2015.

<sup>60</sup> Inserted by: section 9 of Act XLI of 2011. Effective from: 1 January 2012.

<sup>61</sup> Comes into effect with the text amended by the subsection 186 b) of Act CLXXV of 2011.

<sup>62</sup> Comes into effect with the text amended by the subsection 186 c) of Act CLXXV of 2011.

b) <sup>63</sup> due to the breach of the provisions specified by sections 5, 6 and 6/A of this Act by the consumer protection authority.

### *Rules applicable to electronic cigarettes<sup>64</sup>*

**7/C.** <sup>65</sup> Notwithstanding the regulation concerning medicinal products and medical devices, electronic cigarettes may be placed on the market and distributed if they comply with the requirements specified in the government regulations issued under the power delegated by this Act.

**7/D.** <sup>66</sup> (1) Within six months before the products are placed on the market, the manufacturers and importers of electronic cigarettes and refill containers shall notify the administrative healthcare authority about every product they intend to distribute.

(2) The notification under subsection (1) must be submitted electronically, with the content specified in the government regulations issued under the power delegated by this Act.

(3) A notification must be submitted in accordance with subsection (1) about every change concerning the electronic cigarette or refill container that affects the technical properties specified in this Act or in the government regulations issued under the power delegated by this Act.

(4) In case a notification is made under subsections (1) and (3), the person required to make the notification must pay an administrative service fee to the administrative healthcare authority.

**7/E.** <sup>67</sup> (1) All commercial communications falling under Act CLXXXV of 2010 on media services and mass communication (hereinafter: Media and Mass Communication Act) are prohibited in the Information Society services, in the press and other printed publications if they have the aim or direct or indirect effect of promoting electronic cigarettes and refill containers. This prohibition does not apply to publications that are intended exclusively for professionals in the trade of electronic cigarettes or refill containers and for publications which are printed and published in third countries, where those publications are not intended for the Union market.

(2) Commercial communications on the radio, falling under the Media and Mass Communication Act are prohibited if they have the aim or direct or indirect effect of promoting electronic cigarettes and refill containers.

(3) Any form of sponsorship to radio programs falling under Act XLVIII of 2008 on the main conditions and certain restrictions concerning economic advertising activity (hereinafter: Advertising Act) is prohibited if it has the aim or direct or indirect effect of promoting electronic cigarettes and refill containers.

(4) <sup>68</sup> Any form of public or private sponsorship for any event, activity or

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<sup>63</sup> Amended by: subsection 49 b) of Act LXXVII of 2015.

<sup>64</sup> Inserted by: section 35 of Act CCXXIV of 2015. Effective from: 20 May 2016.

<sup>65</sup> Inserted by: section 35 of Act CCXXIV of 2015. Effective from: 20 May 2016.

<sup>66</sup> Inserted by: section 35 of Act CCXXIV of 2015. Effective from: 20 May 2016.

<sup>67</sup> Inserted by: section 35 of Act CCXXIV of 2015. Effective from: 20 May 2016.

<sup>68</sup> Amended by: section 33 of Act XXXIV of 2016.

individual person falling under the Advertising Act is prohibited if it has the aim or direct or indirect effect of promoting electronic cigarettes and refill containers.

(5) Publication of audiovisual commercial communications falling under the Media and Mass Communication Act is prohibited in relation to electronic cigarettes and refill containers.

(6) Advertising other products under the same brand or referring to the brand of the electronic cigarette or refill container is prohibited if it may have a direct or indirect effect on the distribution of these.

(7) In case of a breach of the provisions specified in subsections (1) – (6), the consumer protection authority shall proceed in accordance with the rules detailed in the Advertising Act.

**7/F.**<sup>69</sup> Distance selling of electronic cigarettes and refill containers is prohibited.

**7/G.**<sup>70</sup> (1) If the administrative healthcare authority becomes aware or ascertains that a certain piece of electronic cigarette or refill container, or a certain type of electronic cigarette or refill container does not satisfy the conditions detailed in the government regulation applicable to distribution and thereby poses a significant risk to human health, it may take the following measures depending on the seriousness of the case:

*a)* it shall suspend the distribution of the product involved and order the manufacturer or importer to submit the information supporting the safety of the product by a specific deadline; or

*b)* if the disclosure of information under point *a)* is not expected to prove the safety of the product, or if the deadline specified under point *a)* expires without satisfactory results, it shall prohibit the distribution of the product.

(2) If the manufacturer or the importer of the electronic cigarette or the refill container does not comply with its duty of notification prescribed by this Act or by the government regulation issued under the power delegated by this Act, or if it distributes the electronic cigarette or the refill container in breach of this Act, the administrative health authority may impose a fine not exceeding 50 million Hungarian forints, taking into consideration the seriousness of the breach, the length of the breach and whether the breach is repeated.

(3) The administrative healthcare authority informs the European Commission on any measures taken under subsection (1) *b)*.

**7/H.**<sup>71</sup> The provisions specified in sections 2 – 4/A also apply to electronic cigarettes and electronic devices for the imitation of smoking.

**7/I.**<sup>72</sup> The provisions specified in this part also apply to electronic devices for the imitation of smoking.

<sup>69</sup> Inserted by: section 35 of Act CCXXIV of 2015. Effective from: 20 May 2016.

<sup>70</sup> Inserted by: section 35 of Act CCXXIV of 2015. Effective from: 20 May 2016.

<sup>71</sup> Inserted by: section 35 of Act CCXXIV of 2015. Effective from: 20 May 2016.

<sup>72</sup> Inserted by: section 31 of Act XXXIV of 2016. Effective from: 21 May 2016.

### *Final provisions*

8. (1) This Act comes into force on the first day of the seventh month after it is published, however, in case of public institutions providing entertainment or catering services operating under a valid operation license on the day of the Act coming into effect or those commencing their operation subsequently, based on an operation authorization procedure in progress on the day of the Act coming into effect, the duty in relation to the designation of the smoking area applies from 1 January 2001.

(2)<sup>73</sup> The prohibitions and restrictions specified in this Act in relation to smoking and the distribution of tobacco products, electronic cigarettes and refill containers do not affect smoking prohibitions or restrictions ordered for interests, objectives and methods prescribed by another piece of legislation.<sup>74</sup>

(3)<sup>75</sup> Cigarette tobacco products not complying with the provisions specified in subsection 6 (1) – (2) of this Act and in another piece of legislation, may not be produced, and they cannot be placed on the market according to the provisions of Act CIII of 1997 on excise duty and on the specific rules distribution of products subject to excise duty, and they may not be distributed after one year from the date that this provision comes into effect.

(4)<sup>76</sup> Power is delegated to the relevant ministers to prescribe the detailed rules in regulations in accordance with this Act in relation to smoking, designation of smoking areas and distribution of tobacco products concerning the law enforcement bodies under their management and control that perform law enforcement duties for the purposes the Act on the service relationship of the professional staff of bodies performing law enforcement duties.<sup>77</sup>

(4a)<sup>78</sup> Power is delegated to the minister responsible for agriculture and the minister responsible for the monitoring of the food chain to make regulations with the agreement of the minister responsible for healthcare and the minister responsible for tax affairs, and regulate

a) the fees regarding the receipt, storage, management, analysis and publication of information in relation to ingredients and emissions;

b) the fees regarding the test to establish whether the relevant tobacco product contains any specific flavoring, whether prohibited additives or flavoring was used and whether it contains additives in a quantity that significantly and measurably increases the toxic or addictive effects or the CMR characteristics of the relevant tobacco product.

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<sup>73</sup> Amended by: subsection 38 d) of Act CCXXIV of 2015.

<sup>74</sup> See: Regulation 36/1999 (22 October) of the Minister for Interior

<sup>75</sup> Established by: subsection 47 (1) of Act LVIII of 2002. Effective from: 1 January 2004.

<sup>76</sup> Established by: subsection 42 (1) of Act XIX of 2004. Amended by: subsection 170 (5) b) of Act CIX of 2006, subsection 366 (15) of Act XLII of 2015, subsection 38 3) of Act CCXXIV of 2015.

<sup>77</sup> See: Regulation 36/1999 (22 October) of the Minister for Interior, Regulation 14/1999 (27 October) of the Minister for Defence, Regulation 7/1999 (10 November) of the minister without portfolio, Regulation 17/1999 (18 November) of the Minister of Justice,

Regulation 60/2009 (19 November) of the Minister of Justice and Law Enforcement, Regulation 48/2013 (21 August) of the Minister for Interior.

<sup>78</sup> Inserted by: subsection 48 (1) of Act LXXVII of 2015. Effective from: 20 May 2016.

(4b)<sup>79</sup> Power is delegated to the minister responsible for consumer protection to make regulations with the agreement of the minister responsible for tax affairs in order to regulate the fees and the rules of measurement regarding the tests for tar emission, nicotine emission and carbon-monoxide emission of cigarettes.<sup>80</sup>

(4c)<sup>81</sup> Power is delegated to the minister responsible for healthcare to make regulations with the agreement of the minister responsible for tax affairs in order to regulate the amount of the administrative service fee for the notification submitted for the distribution and changes of electronic cigarettes, refill containers and electronic devices for the imitation of smoking, and the detailed rules for the collection, management, administration and refund of the fees.

(5)<sup>82</sup> Power is delegated to the Government to make regulation in order to regulate

a)<sup>83</sup> the combined warnings and health warnings and the detailed rules of their use; the detailed rules applicable to the sales unit packets of tobacco products and the unit packets of electronic cigarettes, refill containers and electronic devices for the imitation of smoking; the content and format of labels and signs regarding the smoking restrictions and the designation of areas for smoking and for the use of electronic cigarettes and electronic devices for the imitation of smoking; moreover, the other conditions for the manufacture, distribution and control of tobacco products, electronic cigarettes, refill containers and electronic devices for the imitation of smoking that are not under the scope of the Act on excise duty and on the specific rules of distribution of products subject to excise duty;

b) the detailed rules concerning the payment and administration of health protection fines;<sup>84</sup>

c)<sup>85</sup> the detailed rules concerning the ingredients of tobacco products;

d)<sup>86</sup> the detailed rules concerning the emission levels of tobacco products and their measurement methods;

e)<sup>87</sup> the detailed rules concerning notification regarding the ingredients and emission levels of tobacco products;

f)<sup>88</sup> the detailed rules concerning the duty of reporting on the additives in tobacco products;

g)<sup>89</sup> the detailed rules concerning the packaging and labelling of tobacco products;

h) the rules concerning the distribution of new tobacco products;

i)<sup>90</sup> the detailed rules concerning the herbal products for smoking.

<sup>79</sup> Inserted by: subsection 48 (1) of Act LXXVII of 2015. Effective from: 20 May 2016.

<sup>80</sup> See: Regulation 11/2016 (20 May) of the Minister for National Development.

<sup>81</sup> Inserted by: subsection 36 (1) of Act CCXXIV of 2015. Effective from: 20 May 2016. Amended by: section 32 of Act XXXIV of 2016.

<sup>82</sup> Established by: section 162 of Act CLXXVI of 2011. Effective from: 2 January 2012.

<sup>83</sup> Established by: subsection 36 (2) of Act CCXXIV of 2015. Effective from: 20 May 2016.

<sup>84</sup> See: section 9 of government regulation 291/2011 (22 December), sections 12 and 24 (2) d) of government regulation 39/2013 (14 February)

<sup>85</sup> Inserted by: subsection 48 (3) of Act LXXVII of 2015. Effective from: 20 May 2016.

<sup>86</sup> Inserted by: subsection 48 (3) of Act LXXVII of 2015. Effective from: 20 May 2016.

<sup>87</sup> Inserted by: subsection 48 (3) of Act LXXVII of 2015. Effective from: 20 May 2016.

<sup>88</sup> Inserted by: subsection 48 (3) of Act LXXVII of 2015. Effective from: 20 May 2016.

<sup>89</sup> Inserted by: subsection 48 (3) of Act LXXVII of 2015. Effective from: 20 May 2016.

<sup>90</sup> Inserted by: subsection 48 (3) of Act LXXVII of 2015. Effective from: 20 May 2016.

(6) <sup>91</sup> This Act serves the purpose to comply with the following Community legal instruments:

a) <sup>92</sup>

b) Article 5 (2) of directive 2003/33/EC of the European Parliament and 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 [subsection 5 (4) of the Act];

c) <sup>93</sup> Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC.

**8/A.** <sup>94</sup> (1) The administrative healthcare authority foregoes imposing a health protection fine between 1 January 2012 and 31 March 2012 if the breach of this Act established during the authority review would not have given rise to a fine under the provisions of this Act that were effective on 31 December 2011.

(2) <sup>95</sup> The provisions of section 94 (1) a) of the Administrative Procedure Act apply to the procedure of the administrative healthcare authority conducted under subsection (1), however,

a) the offender must be ordered to cease the breach within a time limit of at least 20 days, but the earliest expiry of the time limit may be 1 April 2012; and

b) During the time period specified in subsection (2), subsection 94 (2) d) of the Administrative Procedure Act may not be relied on in relation to breaches of this Act.

**8/B.** <sup>96</sup> Cigarette tobacco products that comply with the provisions of section 6 as in effect on 31 December 2011, but do not comply with the provisions of section 6 as established by Act XLI of 2011 on the amendment of Act XLII of 1999 on the protection of non-smokers and on certain rules of consuming and distributing tobacco products

a) may not be manufactured and may not be placed on the market according to the provisions of Act CXXVII of 2003 on excise duty and on the specific rules distribution of products subject to excise duty from the first day of the eighth month; and

b) may not be distributed and may not be provided to final consumers from the first day of the twelfth month

with reference to the date the legislation issued under subsection 8 (5) a) comes into effect (hereinafter: Amending Act)

**9.** <sup>97</sup> (1) <sup>98</sup> In public institutions constituting accommodation for the purposes of

*91 Established by: section 10 of Act LXXVII of 2005. Effective from: 1 August 2005.*

*92 Repealed by: section 50 of Act LXXVII of 2015. Ineffective from: 20 May 2016.*

*93 Inserted by: subsection 48 (4) of Act LXXVII of 2015. Effective from: 20 May 2016.*

*94 Inserted by: section 11 of Act XLI of 2011. Effective from: 1 January 2012.*

*95 Amended by: section 59 of Act CCXII of 2012.*

*96 Inserted by: section 11 of Act XLI of 2011. Effective from: 1 January 2012.*

*97 Inserted by: section 12 of Act XLI of 2011. Effective from: 9 May 2011.*

*98 Amended by: subsection 13 f) of Act XLI of 2011.*



the Act on trade, which are operated as a hotel for the purposes of the legislation, designated smoking areas authorized under subsection (3) and (4) that already operating at the time the Amending Act comes into force may continue to be operated as a smoking lounge. The administrative healthcare authority authorizes the continuing operation.

(2) After 1 January 2012, no other services may be provided in smoking lounges falling under subsection (1), especially, no food or drink may be served. An employee may not be required to perform duties that requires being present in the smoking lounge while there are smoking guests using these services.

(3) If the operator of the hotel specified in subsection (1) intends to operate the smoking lounge after 31 December 2011, it may ask for authorization within 60 days after the Amending Act comes into force.

(4) In its procedure commenced on an application, also including an on-site survey, the administrative healthcare authority must verify that the smoking lounge forming the subject of the notification complies with the requirements prescribed by subsections (5) and (6). If, in relation to the smoking lounge forming the subject of the notification, these requirements

a) are not satisfied, the administrative healthcare authority prohibits the smoking lounge to be designated as a smoking area after 1 January 2012; or

b) are satisfied, the administrative healthcare authority authorizes the continuing operation of the smoking lounge.

(5) – (6)<sup>99</sup>

**10.**<sup>100</sup> (1) If the employer submitted an application to the administrative healthcare authority for the authorization of the designated smoking area under section 2 (5) d) – e) established by Act XXVI of 2012 on the amendment of Act XLII of 1999 on the protection of non-smokers and on certain rules of consuming and distributing tobacco products (hereinafter: Amendment Act) within 30 days of the Amendment Act coming into force, health protection fines may not be imposed in relation to the designation of the relevant smoking area from 1 April 2012 until the procedure is effectively closed.<sup>101</sup>

(2)<sup>102</sup> Electronic cigarettes and refill containers manufactured before 20 November 2016 may be distributed until 20 May 2017.

(3)<sup>103</sup> In case electronic cigarettes already on the market on 19 May 2016, the notification prescribed by subsection 7/D (1) established by Act CCXXIV of 2015 on the amendment of certain Acts in the subject of healthcare and health insurance must be made by 20 December 2016.

### Schedule to Act XLII of 1999<sup>104</sup>

<sup>99</sup> Repealed by: subsection 18 (1) e) of Act XLI of 2011. Ineffective from: 1 January 2012.

<sup>100</sup> Inserted by: section 2 of Act XXVI of 2012. Effective from: 9 April 2012

<sup>101</sup> Inserted by: section 11 of Act XLI of 2011. Effective from: 1 January 2012.

<sup>102</sup> Inserted by: section 37 of Act CCXXIV of 2015. Effective from: 20 May 2016.

<sup>103</sup> Inserted by: section 37 of Act CCXXIV of 2015. Effective from: 20 May 2016.

<sup>104</sup> Repealed by: subsection 18 (1) f) of Act XLI of 2011. Ineffective from: 1 January 2012.

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