

“SESQUICENTENNIAL OF THE NATIONAL EPIC: 1864–1870”

[emblem:] REPUBLIC OF PARAGUAY

PRESIDENT’S OFFICE OF THE REPUBLIC OF PARAGUAY
MINISTRY OF INDUSTRY AND TRADE

DECREE No. 8780

WHICH REGULATES ARTICLES 5, 7, 8, 25, AND 27 OF LAW No. 5538, DATED DECEMBER 23, 2015, “WHICH AMENDS LAW No. 4045/2010, ‘WHICH AMENDS LAW No. 125/1991, AMENDED BY LAW No. 2421/2004, ON ITS TAX SYSTEM, WHICH REGULATES ACTIVITIES RELATED TO TOBACCO AND ESTABLISHES HEALTH MEASURES TO PROTECT THE POPULATION.’”

Asunción, April 11, 2018

HAVING REGARD TO: *The submission by the Ministry of Industry and Trade according to Note S. No. 54, dated February 23, 2018, which refers to the regulation of Law No. 5538/2015, “Which amends Law No. 4045/2010, ‘Which amends Law No. 125/1991, amended by Law No. 2421/2014, on its tax system, which regulates activities related to tobacco and establishes health measures to protect the population.’”*

WHEREAS: *Article 238, Section 3), of the Constitution authorizes the President of the Republic to participate in the creation of laws, promulgate and publish them, and regulate and monitor compliance thereof.*

Article 34 of Law No. 5538/2015 establishes that the Executive Branch will regulate it through the Ministry of Industry and Trade.

Article 2 of the same body of laws, by designating the Enforcement Authority and the sphere of jurisdiction thereof, establishes the involvement of the different Government Institutions, including the Ministry of Industry and Trade, in regards to distribution, marketing, and consumer protection, in coordination with local governments. Likewise, the Government Organizations and Entities are authorized to establish mechanisms for interinstitutional coordination to better meet the law’s objectives, and Municipalities must be in charge of coordinating actions and measures to achieve that which is governed by the Law.

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Law No. 904/1963, “Which establishes the functions of the Ministry of Industry and Trade,” amended by Laws No. 2961/2006 and No. 5289/2014; Article 1 establishes that this Ministry is tasked with “[...] promoting industrial production by installing new establishments and improving existing ones; regulating, facilitating, and promoting distribution, circulation, and consumption of domestic and foreign goods and services that are not regulated by special laws, and promoting the increase of domestic and international trade.”

Law No. 4974/2013, “The Secretariat of Consumer and User Protection,” provides for the creation of this entity to act in the domestic sphere as enforcement authority of the Consumer and User Protection Act and other laws and regulations that govern the matter; and to interact with institutions, public or private, departmental or municipal, so that they may act locally as collaborators of this Institution to protect the rights of the Paraguayan consumer.

THEREFORE, in exercise of his constitutional powers,

THE PRESIDENT OF THE REPUBLIC OF PARAGUAY

DECREES THAT:

Art. 1. *Articles 5, 7, 8, 25, and 27 of Law No. 5538/2015, “Which amends Law No. 4045/2010, ‘Which amends Law No. 125/1991, amended by Law No. 2421/2014, on its tax system, which regulates activities related to tobacco and establishes health measures to protect the population,’” are hereby regulated in compliance with what is established in this decree.*

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Art. 2. *Regulation of Article 5 of Law No. 5538/2015. For the purposes of the provisions in Article 5, Subsection f) of Law No. 5538/2015, educational establishments will be understood as primary, basic, and intermediate educational establishments, public and private, duly authorized by the Ministry of Education and Sciences.*

Sporting establishments are those duly authorized by the Office of Health, Health-Related, and Health Technology [Establishments], an office of the Ministry of Public Health and Social Welfare. And public and private health establishments will be understood as those public and private health establishments that are duly authorized by the Office of Health, Health-Related, and Health Technology Establishments, an office of the Ministry of Public Health and Social Welfare.

Prohibition of sale to the end user of the products under the law will be determined by the hours of operation of said establishments. Distance will be measured from the main entrance door of the respective establishment, via the pedestrian walkways of sidewalks, streets, and public spaces, to the point of sale, as defined in Law No. 5538/2015.

Art. 3. *Regulation of Article 7 of Law No. 5538/2015. Wholesalers and retailers of tobacco products will be required to post visible, clear, and prominent signs inside the places of sale indicating the cost of the product and precise information that the sale of tobacco products to people under 18 years of age is prohibited. The signs must be clearly visible and have a white background with black block capital letters, and they must be at least 40 cm long and 20 cm wide and must be visible at all times.*

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The Secretariat of Consumer and User Protection is hereby authorized to amend the specifications of the signs or advertisements that must be displayed by wholesalers and retailers of tobacco products through a resolution, which must be reported to the Ministry of Industry and Trade for control and auditing.

Art. 4. *Regulation of Article 8 of Law No. 5538/2015. It is hereby ordered that for the purposes of enforcing Article 8 of Law No. 5538/2015, auxiliary objects related to the use of tobacco products will not be considered prohibited under the law.*

Art. 5. *Regulation of Articles 25 and 27 of Law No. 5538/2015. The sanctions under Law No. 5538/2015 will be established following Administrative Investigation to be conducted with the Ministry of Industry and Trade, when the suspected breach of Subsections a), b), c), d), e), g), h), and k) of Article 27 of the Law is verified, following the procedure approved by Resolution No. 48/2015 and its respective amendments and superseding resolution.*

The sanctioning authority of the Ministry of Industry and Trade is circumscribed in the aforementioned subsections, and the sanctioning authority cannot be delegated to other institutions, public or private, departmental or municipal. These institutions are required to report suspected breaches to the Ministry of Industry and Trade, to start the respective investigative procedures.

Art. 6. *The Ministry of Industry and Trade by virtue of its powers granted by the Law, regarding distribution and marketing, will monitor compliance according to its own decision or because of a complaint pursuant to the provisions in Law No. 5538/2015 and this regulation.*

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Art. 7. *The expenses required to comply with the Law will be paid with resources coming from:*
a) *Fines applied by the Ministry of Industry and Trade*
b) *The amounts allocated for these purposes in the Paraguayan General Budget.*
c) *Gifts and legacies that are made with that specific intention.*
d) *The funds allocated for compliance with Law No. 5538/2015 indicated in Article 21 thereof.*

Art. 8. *It is hereby established that for the purposes of enforcing Article 4, Subsection s), of Law No. 5538/2015, the generic name will be used when a brand name, emblem, trademark, logo, commercial insignia, or any other distinctive feature (including distinctive color combinations) of a non-tobacco product or service is linked to a tobacco product or tobacco company such that the non-tobacco product or service is usually associated with the tobacco product or tobacco company.*

Art. 9. *This Decree will be endorsed by the Ministry of Industry and Trade.*

Art. 10. *Be it hereby communicated, published, and entered into the Official Record.*

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REPUBLIC OF
PARAGUAY

PRESIDENT’S OFFICE OF THE
REPUBLIC OF PARAGUAY
OFFICE OF DECREES AND LAWS