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**Law 28/2005, of December 26, regarding health measures against tobacco addiction and regulating sales, supplies, consumption and advertising of tobacco products.**

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**Juan Carlos I,  
King of Spain**

To all those witnessing and understanding.

Be it known: That the General Courts have approved and I hereby enact the following law:

### **Legislative History**

I

In Spain, same as in other developed countries, tobacco use is the top isolated avoidable cause of mortality and morbidity. There is conclusive scientific evidence of the risks implied by tobacco consumption for people's health.

According to data from the World Health Organization (WHO), it is estimated that tobacco consumption accounts for 90 % of all lung cancer deaths, 95 % of chronic obstructive pulmonary disease, 50 % of cardiovascular deaths and 30 % of the deaths produced by cancer overall. In Spain, every year, the number of people dying as a result of tobacco consumption represents 16 % of all deaths occurring in people over thirty-five years of age. There is also scientific evidence that second-hand tobacco smoke (passive or involuntary consumption of

tobacco) is a cause of death, disease and disability. The WHO International Cancer Investigation Agency has determined that exposure to air contaminated with tobacco smoke causes cancer in human beings.

Tobacco consumption, as a determining factor of several pathologies, and a known cause of death and important social-health problems, is one of the main threats to public health. Thus the need to implement measures directed for its prevention, to limiting its supply and demand, and to regulating its advertising, promotion and sponsorship.

These measures must be completely in line with the actions established in the 2002 European Strategy for Tobacco Control of the European Region and the [WHO Framework Convention for Tobacco Control, made in Geneva on May 21, 2003, and ratified by Spain on December 30, 2004.](#)

The European Union has also been concerned with tobacco use, and has sought to fight it using several regulatory measures, among the most noteworthy of which is the approval of Directive 2003/33/CE by the European Parliament and Council, dated May 26, 2003, regarding the approaching of the legal, regulatory and administrative provisions of the member States with respect to the advertising and sponsorship of tobacco products, which Directive is hereby incorporated into our legal framework.

[Article 43](#) of the [Spanish Constitution](#) recognizes the right to health protection, and under its subsection 2 it commissions the public powers to organize and protect public health through the use of preventive measures. To contribute to the effectiveness of this right, [Law 14/1986, of April 25, General Health](#), established the obligation of the public health Administrations to give priority in their actions to the promotion of health and the prevention of diseases, avoiding activities and products that, directly or indirectly, may have negative consequences for health and regulating their commercial advertising and publicity.

Existing legislation on general tobacco-related matters is disperse and asystematic. In this sense, we can cite several non-exhaustive examples, such as [Royal Decree 192/1988, of March 4](#), and its subsequent amendment, implemented through [Royal Decree 1293/1999, of July 23](#), regarding limitations in the sale and use of tobacco for the protection of the health of the people; [Royal Decree 510/1992, dated May 14, regulating the labeling of tobacco products and establishing certain limitations for commercial aircraft](#); [Royal Decree 1185/1994, of June 3, regarding the labeling of tobacco products other than cigarettes and banning certain tobacco of oral use, and updating the penalty system for tobacco matters](#); [Royal Decree 1079/2002, of October 18, regulating the maximum content of nicotine, tar and carbon monoxide in cigarettes, the labeling of tobacco products, and the measures relating to ingredients and names of tobacco products](#), and [Royal Decree 2198/2004, of November 25, determining the groups to which the cohesion policies are directed for the purposes of their funding by the Health Cohesion Fund during 2004](#). Current legislation also approaches the regulation of the aspects of advertising tobacco, only prohibiting advertising by television. Current regulations are basically contained in [Law 34/1988, of November 11, General Advertising](#), and [Law](#)

[25/1994, of July 12, incorporating into the Spanish legal framework Directive 89/552/CEE, regarding the coordination of legal, regulatory and administrative provisions of the member States for the exercise of television broadcasting activities](#), and [Law 22/1999, of June 7](#), amending its predecessor.

At the regional level, based on statutory powers in matters of public health, the need was soon felt to approach the regulation of these matters; as an example we may cite, the [Law of the Autonomous Community of Catalonia 20/1985, of July 25, for prevention and assistance in matters of substances that can cause dependency](#). At present it can be said that virtually all of the Regional Governments have legislated, either by approving specific norms regarding tobacco, as in the case of Galicia with Decree 75/2001, of March 22, regarding health control over the advertising, promotion, supply, sale and consumption of tobacco products, and of the Regional Government of Navarre, with the approval of [Regional Law 6/2003, of February 14, for the prevention of tobacco consumption, the protection of breathable air and the promotion of health as regards tobacco](#), or under the framework of broader regulations, generally tied to drug dependency or other addictive diseases, in the case of the other Regional Governments: Andalusia, Aragon, Canarias, Cantabria, Castilla-La Mancha, Castilla y Leon, Catalonia, Extremadura, Madrid, Murcia Region, La Rioja, Valencian Community and Basque Country.

The expressed considerations necessitate the adoption of new measures that are twofold. On the one hand, those affecting consumption and sale, with an increase in smoke-free spaces, the limitation to the availability and accessibility of tobacco products, especially by minors, and the guarantee that the right of the nonsmoking population to breathe uncontaminated air prevails over that of smokers. It is timely and necessary to implement new measures for tobacco sales and consumption to correct the limitations and deficiencies of existing legislation, made evident by the passing of time, progressive scientific evidence, greater sensibility and social awareness and the proliferation and diversification of the strategies of sale and promotion of tobacco products.

Additionally, measures relating to the advertising and promotion of tobacco products, both direct and indirect, and the sponsorship of various activities, have a proven influence on personal behavior and social habits, and thus become a clear element inducing and favoring their consumption, especially among children and teens. It is therefore necessary to limit all sorts and means of advertising, whether printed, by radio or television broadcast, electronic or cinematographic.

The adoption of the proposed measures is also necessary to offer regulatory support and coverage for educational, preventive and assistance interventions developed in the State. Furthermore, from this viewpoint, the need is seen to rely on a legal base that may facilitate the existence and effectiveness of such interventions, especially among the children and teenage population, the main sector of the population targeted by the regulation of tobacco products.

Although the establishment of smoke-free spaces is a priority action, to protect the health of the people in general, it is mostly directed to minors. The role of educational and health professionals in their tasks of education, increasing sensitivity and awareness and prevention, fostering tobacco-free lifestyles, must necessarily be highlighted.

To this same end, the prohibition of direct and indirect advertising and sponsorship of tobacco products is one of the main measures of protection, directed to children and teens, and stresses the responsibility of the public authorities by limiting access and availability of a product that causes addiction, disability, disease and death.

It is also clear that tobacco addiction does not affect men and women in the same way. There are clear differences both in the causes leading them to consume, in their consumption habits, in the continuation of the addiction, in their response to treatment, and in the difficulties in quitting and relapsing rates. It is evident that women suffer worst health implications.

It is therefore necessary to take gender into consideration in all strategies developed to approach tobacco use, so as to eliminate factors fostering differences in health enjoyment opportunities, suffering disablement or dying due to preventable causes.

On the other hand, interaction with the special physiology of women and reproductive processes adds specific risks. For several decades it has been known that nicotine and carbon monoxide during pregnancy are responsible for a greater proneness to spontaneous abortions and perinatal mortality, and weight loss in newborns. Exposure of a pregnant woman to second-hand smoke present in the environment is harmful to the fetus.

For all these reasons, and considering the regulation and regulatory status of the provisions in question, it is advisable to enact a general norm to systematize regulation. And the status of such norm must suit the purpose sought, which leads to the decision to enact a law.

## II

The Law is set out in five Chapters which respectively address the regulation of the general provisions, sales limitations, the supply and use of tobacco products, the regulation of their advertising, promotion and sponsorship, measures for the prevention of tobacco use, promoting health and assisting in overcoming tobacco addiction, and the system of violations and penalties.

[Chapter I](#) establishes the general provisions, defines the purpose of the Law and clarifies, by way of definitions, the main concepts contained therein.

[Chapter II](#) regulates limitations on the sale, supply and use of tobacco products. Regarding limitations on sale and supply, in perfect harmony with the regulations governing the tobacco market, the Law provides that retail sales and the supply of tobacco products may solely be made through tobacco and stamps outlet networks, or through vending machines that have

received the relevant administrative authorizations. All other places or means are expressly banned.

It is further prohibited to sell or deliver tobacco products to persons under eighteen years of age, same as any other product simulating them and leading them smoke. Sales of tobacco by people under eighteen are also prohibited. In any case, sales and supply are prohibited in certain places, such as centers and offices of the Public Administrations and public entities, health or social service centers and their offices, educational centers, sports centers and facilities, youth health and recreation centers, and any other place, center or establishment where tobacco use is prohibited.

Regarding the limitations on tobacco use, the Law provides a distinction between places where smoking is banned altogether, and places where smoking is banned, but certain areas may be equipped for smoking, provided they meet certain requirements, such as proper signage, physical isolation from the other offices and independent ventilation systems.

[Chapter III](#) incorporates into our framework Directive 2003/33/CE by the European Parliament and Council, dated May 26, 2003, regarding the approach of the legal, regulatory and administrative provisions of the Member States in terms of advertising and sponsorship of tobacco products.

The Law is not limited to merely transposing the community regulations, but also regulates the prohibition of free or promotional distribution of products, goods or services, or any other action which has the direct or indirect, principal or secondary purpose or effect of promoting a tobacco product, and any form of advertising, promotion and sponsorship of tobacco products in all media, including the services of the information society, although subject to certain exceptions.

[The Chapter](#) is completed with certain norms regarding common denominations, a term used to identify the names, brands, symbols or any other distinguishing marks used for tobacco products and, at the same time, for other goods or services that have been sold or offered by the same company or group of companies before the Law enters into effect.

[Chapter IV](#) incorporates measures for the prevention of tobacco use, fostering actions for health education and information.

It also addresses the promotion of programs for overcoming tobacco addiction in the assistance network of the National Health System.

The Watch Group for the Prevention of Tobacco Use is created, along with the necessary measures of coordination at the seat of the Inter-Territorial Council of the National Health System, for better compliance with the Law.

The Law is completed with a precise system of violations and penalties in [Chapter V](#), which, aside from specifying the behaviors that are contrary to the norm and assigning the respective penalty for engaging therein, also identifies those responsible, including cases of infractions committed by minors, and clearly defines the punishing authorities.

All these measures, framed within the context of the public health policies that the public Administrations must promote, may be complemented with tobacco prevention and control programs.

## **CHAPTER I. GENERAL PROVISIONS.**

### **Article 1.** Purpose.

The purpose of this Law is to:

- a. Establish the basic limitations, provided retail operations are involved, for sales, supplies and use of tobacco products, and to regulate the advertising, promotion and sponsorship of such products, in order to protect the health of the people.
- b. Promote the mechanisms necessary for the prevention and control of tobacco addiction.

### **Article 2.** Definitions.

The following definitions are provided for the purposes of this Law:

- a. Tobacco products: those destined for smoking, inhalation, dipping or chewing, made up, even in part, by tobacco.
- b. Advertising: any form of communication, recommendation or commercial action having the direct or indirect purpose or effect of promoting a tobacco product or the use of tobacco, including advertising that, without mentioning a tobacco product directly, seeks to avoid the ban against advertising by using names, brands, marks or other elements distinguishing tobacco products.
- c. Sponsorship: any form of public or private contribution to an event, an activity or an individual having the direct or indirect purpose or effect of promoting a tobacco product or the use of tobacco.
- d. Promotion: any incentive to the demand for tobacco products, such as announcements, advertising and special events, including those seeking to attract the attention and pique the interest of consumers.
- e.  Public spaces: places accessible by the general public or places for collective use, regardless of whether publicly or privately owned. In any case, public spaces include public or collective transportation vehicles.

2. For the purposes of this Law, in the hotel business, open spaces are any open areas, or spaces that, in spite of being covered, have at most two walls, sides or faces surrounding them.

## CHAPTER II.

### LIMITATIONS ON THE SALE, SUPPLY AND CONSUMPTION OF TOBACCO PRODUCTS.

**Article 3.** Sale and supply of tobacco products.

1. Retail sales and supply of tobacco products may solely be performed through tobacco and stamps outlet networks or through vending machines located in establishments with the relevant administrative authorizations for selling through machines, and sales at any other locations or by any other means are expressly prohibited.

2. The sale or delivery of tobacco products, and of any other product simulating them and encouraging smoking, to individuals under eighteen years of age is prohibited. In particular, the sale of sweets, snacks, toys or other objects with the form of tobacco products and that could be attractive to minors is prohibited. Sales of tobacco by individuals under eighteen years of age are also prohibited.

The labeling of the tobacco products must include an express reference to the ban against their sales to anyone under eighteen years of age.

3. Signs shall be posted conspicuously at all establishments where the sale and supply of tobacco products is authorized, in accordance with the characteristics indicated by the regional norms in their respective territorial area, informing, in Spanish and other co-official languages, of the prohibition to sell tobacco to minors under eighteen of age, and warning of the health hazards derived from tobacco use. Such establishments must require all buyers to provide an official document to credit their age, unless it were evident that they are over such age limit.

4. The marketing, sale and supply of cigarettes and cigarillos without natural wrappers, in loose units or packages containing less than 20 units is strictly prohibited.

5. The delivery, supply or distribution of samples of any tobacco product, whether or not free of cost, and the sale of tobacco products at a discount in the exercise of a commercial or business activity, is strictly prohibited.

The delivery, supply or distribution of samples is presumed to take place in the exercise of a commercial or business activity when performed directly by the manufacturer, producer, distributor, importer or seller.

6. The sale and supply of tobacco products by any other means than by direct personal sale or through vending machines meeting the conditions set out in the [following Article](#) are strictly prohibited. The indirect or impersonal retail sale or supply of tobacco products, through distance sales or similar methods, is strictly prohibited.

7. 🗨️ The Government, by Royal Decree, shall determine the content and components of tobacco products, especially addictive elements, and labeling conditions that they must meet.

**Article 4.** Sale and supply by vending machines.

Sales and supplies by vending machines shall be made following these conditions:

- a. Use: individuals of less than eighteen years of age are banned from using tobacco-product vending machines.
- b. 🗨️🗨️🗨️ Location: Tobacco-product vending machines may solely be located within newspaper stands located on public roads, and at establishments whose main activity is to sell newspapers, with direct access to public roads, at the convenience stores referenced in [Article 5.4 of Law 1/2004, of December 21, on Business Hours](#), located at service stations, and at the establishments indicated in letters k, t and u of [Article 7](#) at a location allowing for the direct and permanent oversight of their use by the owner of the establishment or the workers.

In parallel with the sale through vending machines, manual sales of cigarettes and cigarillos in natural wrappers shall be permitted at establishments that have obtained administrative authorization from the Commissioner for the Tobacco Market.

The machines cannot be located in areas adjoining or at the entrance to establishments, such as fenced areas, porches, gateways, shopping center halls, dressing rooms, outlets, stairways, arcades or similar places forming part of a building but that are not inside it per se.

- c. Health warning: a clear and visible health warning, in Spanish and the other co-official languages of the Regional Governments, regarding the hazards derived from tobacco use, especially for minors, shall be posted on the front surface of the machines, in accordance with the characteristics indicated by the regional norms in their respective territorial realm.
- d. Characteristics: to guarantee the proper use of these machines, they must incorporate adequate technical mechanisms that could be used to prevent access by minors.
- e. Incompatibility: these machines cannot supply products other than tobacco.
- f. Registry: tobacco-product vending machines shall be registered with a special registry kept by the Commissioner for the Tobacco Market.

**Article 5.** Prohibition to sale and supply at certain places.

Notwithstanding the provisions of the preceding Articles, the sale and supply of tobacco products is prohibited at the following places:

- a. Centers and offices of the public Administrations and public entities.
- b. Health or social services centers and their offices.

- c. Teaching centers, regardless of the age of the students and the type of learning.
- d. Cultural centers.
- e. Sports centers and facilities.
- f. Youth care, recreation and entertainment centers.
- g.  At any other place, center or establishment where their use is prohibited, and the open spaces indicated in [Article 7](#), except as provided by letter b of [Article 4](#).
- h. 

**Article 6.** Limitations to the use of tobacco products.

 Tobacco products may solely be used in places or spaces where they are not banned.

**Article 7.** Ban against smoking. 

Smoking is banned, in addition to at the places or spaces defined in the regulations of the Regional Governments, at:

- a. Public and private work centers, except for open spaces.
- b. Centers and offices of the public Administrations and public law entities.
- c. Health centers, services or establishments, and at open and enclosed spaces on their premises.
- d. Teaching and formational center, except at the open spaces of the college centers and those exclusively dedicated to the formation of adults, provided they are not immediate accesses to the neighboring buildings or sidewalks.
- e. Sports facilities and places where public events are held, provided they are not open spaces.
- f. Areas destined for direct attention to the public.
- g. Shopping centers, including large surfaces and galleries, except in open spaces.
- h. Social attention centers.
- i. Recreation or entertainment centers, except those in open spaces.
- j. Cultural centers, reading rooms, exhibits, libraries, conferences and museums.
- k. Dance halls, gaming or public establishments, except those in open spaces.
- l. Areas or establishments where food is made, transformed, prepared, tasted or sold.
- m. Elevators and freight elevators.

- n. Phone booths, ATM centers and other small public enclosed spaces. Small public enclosed spaces are those with a surface area of no more than five square meters.
- ñ. Bus stations, except for those in open spaces, vehicles or means of collective urban and interurban transportation, company transportation vehicles, taxis, ambulances, funiculars and cable cars.
- o. All suburban transportation spaces (railroad cars, platforms, stairways, stations, etc.), except spaces that are completely open.
- p. Stations, ports and railroad and maritime transportation means, except for open spaces.
- q. Airports, except for open spaces, aircraft whose origin and destination are located in national territory and on all flights of Spanish airlines, including those sharing flights with foreign companies.
- r. Service stations and similar establishments.
- s. Any other place where smoking is banned, by order of this Law or any other norm, or by decision of its owner.
- t. Hotels, inns and analogous establishments, except for open spaces. Rooms may nonetheless be set up exclusively for smokers, provided they meet the requirements established in Article 8.
- u. Bars, restaurants and other enclosed restaurant establishments.
- v. Theater halls, movie halls and other public shows performed in enclosed areas.
- w. Playgrounds and children playing areas or places, which are to be considered such confined open spaces containing equipment or conditioning specifically destined for games and recreation by minors.
- x. All other enclosed spaces for public or collective use.

**Article 8.** Conditioning of smoking areas. 

At the places designated in letter t. of the preceding Article, up to 30% of the rooms may be set aside exclusively for smoking guests, provided the following requirements are met:

- a. Being in areas that are separate from the rest of the rooms and with independent ventilation or with other smoke-elimination devices.
- b. Being marked off with permanent signage.
- c. That the client be informed in advance of the type of room made available to them.

- d. That workers cannot access them while there is a client inside, except in case of emergency.

### **CHAPTER III.**

#### **REGULATION OF ADVERTISING, PROMOTION AND SPONSORSHIP OF TOBACCO PRODUCTS.**

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

1. Sponsorship and all sorts of advertising of tobacco products and the promotion of the referred products in all media and forms, including the vending machines and the services of the information society, are strictly prohibited, with the following exceptions:

- a. Publications destined exclusively for professionals engaged in tobacco trade.
- b. The presentations of tobacco products to professionals of the sector under the framework of [Law 13/1998, of May 4, Ordering of the Tobacco Market and Tax Regulation](#), and the promotion of such products at State tobacco and stamp outlet networks, provided they are not addressed to minors or imply a free distribution of tobacco or of goods and services exclusively related to tobacco products or the habit of smoking or including names, brands, symbols or any other distinguishing marks used by tobacco products. In any case, the value or price of the goods or services in question cannot exceed five percent of the price of the tobacco products sought to be promoted.

Such activities may by no means be implemented on the shelves or outside of such establishments, or be directed outward.

- c. Publications containing advertising for tobacco products that are published or printed in countries that do not form part of the European Union, provided such publications are not destined mainly to the community market, unless they are mainly directed to minors.

2. The free or promotional distribution of products, goods or services, outside of the State tobacco and stamps outlet networks, for the direct or indirect, main or secondary purpose or effect of promoting a tobacco product is strictly prohibited.

3.  The broadcasting of programs or images on any media, including the services of the information society, is prohibited when the presenters, collaborators or guests:

- a. Are seen smoking.
- b. Mention or show, directly or indirectly, brands, trade names, logos or other symbols identifying or associated with tobacco products.

**Article 10.** Rules applicable to common denominations.

The use of names, brands, symbols or any other distinguishing marks that serve to identify tobacco products in their traffic while, at the same time, the same company or group of companies trades in or offers other goods or services, is strictly prohibited.

Along these lines, companies forming part of a decision unit are considered to belong to the same group of companies if one exercises or may exercise control, directly or indirectly, over the others, or if such control is vested in one or more individuals acting systematically in concert. A decision unit shall be presumed to exist in any case when any of the elements established in section 1 of [Article 42 of the Commercial Code](#) and in [Article 4 of Law 24/1988, of July 28, on the Capital Markets](#) are present.

#### **CHAPTER IV.**

### **MEASURES FOR THE PREVENTION OF TOBACCO ADDICTION, FOR FOSTERING HEALTH AND ASSISTING WITH OVERCOMING TOBACCO ADDICTION.**

**Article 11.** Actions and programs.

The public Administrations of competent jurisdiction shall promote directly and in collaboration with scientific societies, social agents and nongovernmental organizations, actions and programs for health education, health information and for the prevention of tobacco use.

**Article 12.** Programs for overcoming tobacco addiction. 

The public Administrations of competent jurisdiction shall promote the development of health programs for overcoming tobacco addiction in the healthcare network, especially in primary care. Programs promoting the stop to tobacco consumption shall also be offered at teaching institutions, health centers, work centers and sports and entertainment environments. The creation of units for overcoming tobacco addiction shall be encouraged and promoted at the seat of the Inter-Territorial Council of the National Health System, which shall also define the priority groups proving most vulnerable.

Access to tobacco addiction overcoming treatments, the effectiveness and cost-efficiency of which are backed by scientific evidence, shall be encouraged and promoted at the seat of the Inter-Territorial Council of the National Health System, assessing, where applicable, their incorporation in the portfolio of services of the National Health System.

**Article 13.** Adoption of measures. 

In the adoption of the measures referenced in this Chapter, special care shall be paid to the perspective of gender and social inequalities. The public Administrations of competent jurisdiction shall promote the necessary measures to protect the health and education of minors to prevent and avoid the commencement of consumption and help them in overcoming their dependency. Content shall be introduced that is directed to the prevention and awareness of tobacco addiction in the plans for forming the teaching staff. The implementation of

programs for actions for infantile pediatric care shall be encouraged, providing specific information for smoking parents and campaigns on the damages caused to minors by exposure to smoke.

**Article 14.** Criteria and protocols of the units of prevention and control of tobacco addiction.

The Ministry of Health and Consumption shall establish, in coordination with the Regional Governments and the relevant scientific societies, the criteria and protocols defining the units for the prevention and control of tobacco addiction.

**Article 15.** Collaboration from public powers.

In accordance with the objectives of this Law, the Government, in collaboration with the Regional Governments, and at the seat of the Inter-Territorial Council of the National Health System, shall propose the initiatives, programs and activities to be developed for the best performance of this Law and shall coordinate inter-sectoral and inter-territorial actions.

**Article 16.** Watch Group for the Prevention of Tobacco Addiction.

The Watch Group for the Prevention of Tobacco Addiction shall be created at the seat of the Ministry of Health and Consumer Affairs, and in collaboration with the Regional Governments, scientific societies, consumer associations and nongovernmental organizations. It shall have the following functions among others:

1. To propose the initiatives, programs and activities to be performed to accomplish the objectives of the Law.
2. To establish the objectives of reduction of the prevalence of tobacco use.
3. To prepare an annual report on the status, application, results and compliance with this Law.

**Article 17.** Use of penalties imposed.

The Administrations of competent jurisdiction may allocate all or part of the amounts derived from the collection of penalties, established as provided by this Law, toward the development of programs for research, education, prevention, control of tobacco use and facilitating overcoming tobacco addiction.

## **CHAPTER V. SYSTEM OF INFRACTIONS AND PENALTIES.**

**Article 18.** General provisions.

1. The powers of penalization regulated in this Law shall be exercised, in all matters not provided thereunder, in accordance with the provisions of [Law 30/1992, of November 26, the](#)

[Legal System of Public Administrations and the Common Administrative Procedure](#), and in [Law 14/1986, of April 25, General Health](#), all this notwithstanding the civil, criminal or other liabilities that may apply.

2. In penalization procedures for serious or very serious offenses, provisional measures may be adopted, in accordance with [Law 30/1992, of November 26, the Legal System of Public Administrations and the Common Administrative Procedure](#), and its development norms, and notwithstanding those that could be established by the norms of the Regional Governments, the provisional measures established in such norms deemed necessary to ensure the efficiency of the resolution ultimately issued, the good end to the procedure, avoiding the continuation of the effects of the violation and the requirements of the general interests. Specifically, the following may be agreed:

- a. In case of very serious infractions, the temporary suspension of the activity of the offender and, where applicable, the provisional closing of its establishments.
- b. To seal, deposit or seize the tobacco products.
- c. To seal, deposit or seize the records, supporting information and computer files, and documents in general, along with any computer devices and hardware of any type.
- d. Warning the public of the existence of possible offensive behavior and the opening of the relevant penalization file, and the measures adopted to stop such behaviors.

In the adoption and compliance with such measures, it shall in any case be necessary to respect the guarantees, standards and procedures established in the legal framework to protect the rights to personal and family intimacy, the protection of personal data, the freedom of expression or the freedom of information, where they could be affected.

In emergency situations and for the immediate protection of the interests involved, the provisional measures set out in this Article may be agreed before opening the penalization file. The measures must be confirmed, modified or lifted at the agreement for commencing the procedure, which must be held within the 15 days following its adoption and may be subject to the relevant appeal. In any case, such measures shall be void if the penalization procedure is not opened during such term or if the initiation agreement does not contain an express decision in that regard. The administrative body competent to resolve the penalization procedure may impose coercive fines in amounts not to exceed 6,000 euros for each day that the provisional measures accorded are not honored.

3. Very serious infractions shall prescribe after three years; serious infractions, after two years, and mild infractions, after six months. Fines imposed for very serious infractions shall prescribe after three years; for serious infractions, after two years, and for mild infractions, after one year.

**Article 19.** Infractions.

1. Infractions for breach of the provisions of this Law are classified in mild, serious and very serious.

2. Mild infractions are:

- a. Smoking in places where banned or outside of the areas conditioned for such purpose.
- b. Not having or not displaying signs in a visible place at the establishments where sales of tobacco products are authorized, informing of the ban against sales of tobacco to minors and warning of the health hazards derived from the use of tobacco.
- c. That the vending machines not have the mandatory health warning or not meet the characteristics required by law.
- d. Not informing at the entrance to the establishments of the ban against smoking or not meeting the remaining formal obligations referred to in this Law.
- e.
- f. The sale or marketing of tobacco products by minors.

3. Serious infractions are:

- a. Conditioning smoking areas in establishments and places where such conditioning is not permitted.
- b. Allowing smoking at places where doing so is prohibited.
- c. The accumulation of three infractions of those established in section 2.a of this Article.
- d. The marketing, sale and supply of cigarettes and cigarillos without natural wrappers in packages containing less than 20 units for sale, or individuals.
- e. The sale and supply of cigarettes and cigarillos with natural wrappers by units at places where doing so is not permitted.
- f. The delivery or distribution of samples of any tobacco product, whether free or otherwise.
- g. The installation or placement of tobacco-product vending machines at places where expressly prohibited.
- h. The supply or distribution of tobacco products other than tobacco through vending machines.
- i. The sale and supply of tobacco products through distance sales or similar procedures, except for sales through vending machines.

j. The free or promotional distribution, outside of the State tobacco and stamps outlet networks, of products, goods or services having the direct or indirect purpose or effect of promoting a tobacco product.

k. Sales of tobacco products at a discount.

l. The sale or delivery to persons under eighteen years of age of tobacco products or products simulating tobacco products and encouraging smoking, and sweets, snacks, toys or other items in the form of tobacco products and that could prove attractive to minors.

m. Allowing those under eighteen years of age to use the tobacco-products vending machines.

n. That vending machines not have the appropriate mechanism for activation or implementation by the owner of the establishment.

ñ. The free or promotional distribution of products, goods or services having the direct or indirect purpose or effect of promoting a tobacco product among minors.

o. The marketing of goods or services using names, brands, symbols or other distinguishing marks already used for a tobacco product, in conditions other than those permitted by [Article 10](#) and in [transitory provision two](#).

p. The marketing of goods or services using names, brands, symbols or other distinguishing marks of any other good or service, in conditions other than those permitted hereunder.

q. The sale, assignment or supply of tobacco products in breach of other prohibitions or limitations established herein.

r. The free distribution at State tobacco and stamps outlet networks of goods and services exclusively relating to tobacco products or the habit of smoking, or that carry names, brands, symbols or other distinguishing marks used for tobacco products.

4. The advertising, promotion and sponsorship of tobacco products in any media, including the services of the information society, with the exception of the scenarios set out in [Article 9.1](#) are very serious infractions.

## **Article 20. Penalties.**

1.  Mild infractions shall be punishable with fines of between 30 and 600 euros, except for smoking in places where banned, as per [Article 19.2.a](#), which shall be punishable with a fine of up to 30 euros if the offensive behavior is performed in isolation; serious offenses shall be

subject to fines of between 601 euros and 10,000 euros, and those most serious from between 10,001 euros and 600,000 euros.

2. The amount of the penalty imposed, within the set limits, shall be scaled in accordance with the health hazard implied, the economic capacity of the offender, the social repercussion of the infraction, the benefit obtained by the offender as a result of the punishable behavior and the prior commission of one or more violations of this Law. The penalties shall be divided, within each category, into three degrees: minimum, medium and maximum. Penalties shall be assessed in their maximum extent for events affecting a minor and in cases in which the offensive behavior is performed regularly or continuously, unless the regularity or continuity forms part of the type of infraction. The penalties shall be assessed in their minimum extent when committed by a minor, notwithstanding the provisions of [Article 21.8](#).

3. In any case, when the amount of the fine were to be less than the benefit obtained from the commission of the infraction, the penalty shall be increased to twice the amount of the benefit obtained by the offender.

4. If a single event or omission were to represent two or more infractions set out in this or other Laws, solely the one implying the highest penalty shall be taken into consideration.

5. When, in the opinion of the Administration, the infraction could constitute a crime or offense, the administrative body shall submit the matter to the Public Prosecutor and refrain from following the penalization procedure until the judicial authority has issued a finding. The criminal penalty shall exclude the imposing of an administrative penalty.

6. The requirement of administrative responsibilities shall be compatible with the civil or other responsibilities that may concur.

7. The amounts of the fines shall be reviewed and updated periodically by the Government by Royal Decree.

#### **Article 21. Persons responsible.**

1. Responsibility for the various infractions shall be invested in their author, who is understood to be the individual or legal entity committing the events specified as such.

2.  In the case of the infractions specified in [Article 19.2.b, d and f and Article 19.3.a](#), the responsibility shall be invested in those owning the establishments in which the infraction is committed.

3. Joint responsibility for the infractions specified in [Article 19.2.c and Article 19.3.n](#) shall be invested in the manufacturer, importer, where applicable, distributor and operator of the machine.

4. The responsibility for the infractions specified in [Article 19.3.g and h](#) shall be invested in the machine operator.

5. In the case of [Article 19](#), in sections 3.b and 3.l, in the case of sales of tobacco products to minors and [Article 19.3.m](#), the responsibility shall be invested in the owner of the premises, center or establishment where the infraction takes place or, failing which, the employee in charge of the establishment or center at the time the infraction is committed. Should the owner of the premises, center or establishment be a public Administration, the responsibility shall be of such Administration, notwithstanding its requiring the authorities and other personnel at its service to honor the responsibility that they have incurred.

6. In the case of the infraction specified in [Article 19.3.l](#) of delivering tobacco products to minors, the responsibility shall be invested in the person delivering them to the minor.

7. In the case of infractions in advertising, the joint liability shall be invested, in addition to in the advertising company, in the beneficiary of the advertising, understood to be the owner of the trademark or product advertised, and the owner of the establishment or space in which the ad is issued.

8. When a minor is found responsible for the acts committed, a joint responsibility shall be invested in the parents or legal or de facto guardians, caregivers or custodians thereof, in that order, for the breach of the obligation imposed thereupon, implying a duty to prevent the administrative infraction charged to the minor. The joint liability shall refer to the pecuniary liability derived from the fine imposed. With the prior consent of the persons in question and upon hearing from the minor, the economic penalty of a fine may be replaced with the re-educational measures determined by the regional norms.

**Article 22. Powers of inspection and penalization.**

1. The General Administration of the State shall exercise the functions of inspection and control, ex officio or at the request of a party, and the preliminary investigation of penalization files, and the imposing of penalties, in matters of aerial, maritime or ground transportation, when developed at the supra-regional or international level, and in all premises, dependencies or media that, due to their characteristics, are beyond the jurisdiction of the Regional Governments and Cities with Statutes of Autonomy.

2. The competent bodies of the Regional Governments and Cities with Statutes of Autonomy, as the case may be, shall exercise the functions of control and inspection, ex officio or at the request of a party, and the preliminary investigation of penalization files, and the imposing of penalties.

3. The penalization powers of the bodies referenced in this Article shall be deemed notwithstanding those corresponding to the Commissioner for the Tobacco Market pursuant to [Law 13/1998, of May 4, Ordering of the Tobacco Market and Tax Regulation](#).

4. Regarding infractions committed on radio or television, the Regional Governments shall exercise the control and inspection to guarantee compliance with the provisions of this Law and, where applicable, shall negotiate the respective penalization procedures and impose the appropriate penalties in relation to the services of television and radio broadcasting whose coverage areas, regardless of the means of broadcasting used, do not exceed their respective territorial limitations. They shall also have competent jurisdiction with regard to the services of television and radio broadcasting performed directly inside their territory or by entities that they have granted an operating permit within the relevant regional realm.

The State, through the Ministry of Industry, Tourism and Commerce, shall have the power to guarantee compliance with the provisions of this Law in other television and radio services. In such cases, the provisions contained in [Chapter V of Law 25/1994, of July 12, incorporating into the Spanish legal framework Directive 85/552/CEE, regarding the coordination of the legal, regulatory and administrative provisions of the Member States pertaining to the exercise of activities of television broadcasting](#) shall not apply.

5. Infractions committed through information society services or devices shall be punishable by the authorities referenced in [Article 43 of Law 34/2002, of July 11, services of the information society and electronic commerce](#).

**Article 23.** Exercise of individual and collective actions.

1. The owner of a right or legitimate interest affected may require of the administrative and jurisdictional bodies of any nature the observance and compliance with the provisions of this Law.

2. Regarding advertising, any individual or legal entity affected and, in general, those owning a subjective right or legitimate interest, may request the discontinuation of any advertising contrary to this Law, in the terms established, as applicable, by [Laws 34/1988, of November 11, General Advertising, 25/1994, of July 12, incorporating into the Spanish legal framework Directive 85/552/CEE, regarding the coordination of the legal, regulatory and administrative provisions of the Member States pertaining to the exercise of activities of television broadcasting](#), and [34/2002, of July 11, services of the information society and electronic commerce](#).

3. When the illegal advertising affects the collective or diffuse interests of consumers and users, the collective action for cessation based on the provisions referenced in section 2 may be exercised.

**ADDITIONAL PROVISION ONE.** Manual sale of cigarettes and cigarillos with natural wrappers.



Notwithstanding the provisions of [Articles 3.1](#) and [5.g](#), regarding sales through the tobacco and stamps outlet networks, and vending machines, the manual sale of cigarettes and cigarillos with

natural wrappers shall be permitted at the establishments referenced in letter u of [Article 7](#), which have the administrative authorization granted by the Commissioner for the Tobacco Market.

**ADDITIONAL PROVISION TWO.** Special system for small hotel and restaurant establishments where smoking is permitted. 🗨️

**ADDITIONAL PROVISION THREE.** Signage at centers or offices where smoking is banned and conditioned smoking areas. 🗨️

Signs must be posted conspicuously at the entrance to centers or offices where there is a legal ban against smoking, stating that tobacco consumption is banned and the location of the area conditioned for smoking, if any. Such signs must be written in Spanish and the co-official language, and meet the requirements established by the relevant regional standards.

**ADDITIONAL PROVISION FOUR.** Special system of the Canarias Regional Government.

The provisions of this Law are deemed notwithstanding the particulars of the Economic and Fiscal System of Canarias with respect to the commercial freedom of tobacco products at commercial establishments located in the Canary archipelago, without this exemption implying a limitation in the application of the other prescriptions contained in this Law, especially the matters provided in letters a, b, c, d, e and f of [Article 5](#), and, in any case, those destined for the protection of minors.

**ADDITIONAL PROVISION FIVE.** Duty-free stores.

The authorized *duty-free stores* at ports and airports referenced in section 1 of [additional provision seven of Law 13/1998, of May 4, Ordering of the Tobacco Market and Tax Regulations](#), may continue to develop their tobacco sales activity in accordance with the [provision cited](#).

**ADDITIONAL PROVISION SIX.** Special system of penitentiary establishments.

An exception from the provisions of [Article 5.a](#) is established for the tobacco and stamps outlet networks referenced in [additional provision seven.2 of Law 13/1998, of May 4, Ordering of the Tobacco Market and Tax Regulations](#).

🗨️ Inmates are allowed to smoke at penitentiary establishments in the open outdoor areas of their buildings, or in the enclosed rooms conditioned for such purposes, which must have appropriate visible signage and be equipped with independent ventilation or other devices for the elimination of smoke.

**ADDITIONAL PROVISION SEVEN.** Regulations for the prevention of work risks. 🗨️

The provisions of this Law are deemed notwithstanding any other limitations and prohibitions of tobacco consumption contained in the Regulations for the prevention of work risks, the oversight and control of which is invested in the Labor and Social Security Inspectorate.

**ADDITIONAL PROVISION EIGHT.** Psychiatric centers or establishments. 🗨️

At mid and long-stay psychiatric establishments, patients are allowed to smoke in the open outdoor areas of their buildings, or in the enclosed rooms conditioned for such purposes, which must have appropriate visible signage and be equipped with independent ventilation or other devices for the elimination of smoke.

**ADDITIONAL PROVISION NINE.** Private clubs for smokers. 🗨️

Legally established private clubs shall not be subject to the provisions of this Law pertaining to the ban against smoking, advertising, promotion and sponsorship, provided these take place within their business and insofar as there are solely and exclusively members inside.

For the purposes of this Provision, to be considered a private club for smokers, the entity must be incorporated, be nonprofit and its activities or corporate purpose must not include the commercialization or purchase of any consumable goods or products.

Minors shall by no means allowed entrance to private clubs for smokers.

**ADDITIONAL PROVISION TEN.** Residential centers for the elderly or disabled. 🗨️

At residential centers for the elderly or disabled, a specific area may be conditioned for smokers, to be used exclusively by residents, which must have appropriate visible signage and be equipped with independent ventilation or other devices for the elimination of smoke. Such smoking authorization cannot be extended to the rooms or other common areas at such centers.

**ADDITIONAL PROVISION ELEVEN.** Report to General Courts. 🗨️

Every two years over the four years following the entering into effect of the Law, the Ministry of Health and Social Policy must forward to the General Courts a report evaluating the impact of this reform on public health.

**TRANSITORY PROVISION ONE.** Transitory system of certain outlet networks and vending machines.

1. The State tobacco and stamps outlet networks existing at the effective date of this Law that are affected by the limitation established in [Article 5.g](#) may continue to sell tobacco products until their respective concession is extinguished. The owners of the remaining outlet networks referred to in [Article 5](#) shall have a term of one year, as of the effective date hereof, to request

the change of location pursuant to the provisions of [Article 39 of Royal Decree 1199/1999, of July 9, developing Law 13/1998, of May 4, Ordering of the Tobacco Market and Tax Regulations, and regulating the concession statute of the tobacco and stamps outlets network](#). Upon the lapsing of such term, no tobacco products may be sold at such places.

2. Manufacturers, owners and assignees of tobacco-product vending machines shall have a term of one year as of the effective date of this Law to adapt the machines to the technological demands and requirements referenced in [Article 4.d](#). Newly manufactured machines must incorporate such requirements as of the effective date of this Law.

**TRANSITORY PROVISION TWO.** Transitory system for common denominations.

The common denominations referred to in [Article 10](#) that have been traded prior to the effectiveness of this Law may continue to be used, yet the names, brands, symbols and distinguishing marks must show an aspect that is clearly different from that used in the tobacco product and not include any other distinguishing mark that has already been used for such product.

As of the effective date of this Law, no goods or services introduced on the market may use names, brands, symbols or other distinguishing marks that are already used for a tobacco product.

**TRANSITORY PROVISION THREE.** Transitory system for conditioning smoking areas.

The requirements for conditioning the smoking areas referred to in section 2 of [Article 8](#), shall be enforceable upon the lapsing of eight months as of the effective date of this Law. During that period, smoking and nonsmoking areas must at least be marked off and separated.

**TRANSITORY PROVISION FOUR.**

Cigarette packaging units not conforming to the provisions of this Law may continue to be marketed for up to three months after the effective date of this Law and units packaging other tobacco products for up to six months after the effective date.

**TRANSITORY PROVISION FIVE.** 

**SOLE ABROGATING PROVISION.** Abrogations.

In addition to any provisions of equal or lesser status conflicting with the provisions with this law, the following are hereby abrogated:

- a. Section 9 of [Article 4 of Law 13/1998, of May 4, Ordering of the Tobacco Market and Tax Regulations](#).

- b. [Article 8.5 of Law 34/1988, of November 11, General Advertising](#), regarding tobacco advertising.
- c. [Royal Decree 709/1982, of March 5, regulating the advertising and consumption of tobacco](#).
- d. [Royal Decree 192/1988, of March 4, regarding limitations in the sale and use of tobacco for the protection of the health of the people, in the wording used by Royal Decree 1293/1999, of July 23](#).
- e. Article 32 of [Royal Decree 1199/1999, of July 9, developing Law 13/1998, of May 4, Ordering of the Tobacco Market and Tax Regulations and regulating the concession statute of the tobacco and stamps outlets](#).

**FINAL PROVISION ONE.** Constitutional Grounds.

1. This is a fundamental Law issued under the provisions of [Article 149.1.1, 16, 18 and 27 of the Constitution](#).

An exception from the foregoing applies to [Article 10](#), issued under the coverage of [Article 149.1.9 of the Constitution](#).

2.  The Regional Governments shall be responsible, within their respective territories, for the approval of the norms for the development and enforcement of this Law, including the relevant health characteristics and warnings.

**FINAL PROVISION TWO.** Government Authorization.

The Government shall issue, within the scope of its authorities, the provisions necessary for the development and application of this Law.

**FINAL PROVISION THREE.** Effectiveness.

This Law shall enter into force on January 1, 2006, with the exception of the norms contained in [Chapter III](#), and those of [Chapter V](#), where regarding issuing penalties for offenses committed as per [Chapter III](#), which shall be effective as of the very day of their publication in the *Official State Bulletin*.

I therefore order all Spaniards, private persons and authorities to observe and enforce this Law.

Madrid, December 26, 2005.

- Juan Carlos R. -

Prime Minister,  
José Luis Rodríguez Zapatero.

**Notes:**

🗨 **Article 4 (letter b):**

Wording as per [Royal Decree-Law 2/2006, of February 10, modifying the tax rates of the Tax on Tobacco Products, establishing a transitory complementary margin for tobacco and stamps sellers and modifying Law 28/2005, of December 26, regarding health measures against tobacco addiction and regulating sales, supplies, consumption and advertising of tobacco products.](#)

🗨 **Provision [transitory five](#):**

Abrogated by [Royal Decree-Law 1/2007, of January 12, abrogating transitory provision five of Law 28/2005, of December 26, regarding health measures against tobacco addiction and regulating sales, supplies, consumption and advertising of tobacco products.](#)

🗨 **Article 4 (letter b):**

Wording as per [Law 25/2009, of December 22, modifying various Laws to adapt them to the Law for free access to service activities and their exercise.](#)

🗨 **Article 4 (letter b):**

Wording as per [Law 1/2010, of March 1, amending Law 7/1996, of January 15, regarding the Ordering of Retail Commerce.](#)

🗨 **Articles 4 (first paragraph of section b ), 5 (section g), 6, 7, 8, 12, 13, 19 (sections 2.a, 2.d, 3.a and 3.b), 20 (section 1) and 21 (section 2 "suppressing the reference to letter e of Article 19.2"); Provisions [additional one](#), [additional three](#), [additional six](#) (second paragraph), [additional seven](#), [additional eight](#), [additional nine](#) and [final one](#) (section 2):**

Wording as per [Law 42/2010, of December 30, modifying Law 28/2005, of December 26, regarding health measures against tobacco addiction and regulating sales, supplies, consumption and advertising of tobacco products.](#) (Including the correction of errors published in Official State Bulletin No. 10, of January 12, 2011)

🗨 **Articles 2 (sections 1.e and 2), 3 (section 7) and 9 (section 3); Provisions [additional ten](#) and [additional eleven](#);**

Complemented by [Ley 42/2010, of December 30, amending Law 28/2005, of December 26, regarding health measures against tobacco addiction and regulating sales, supplies, consumption and advertising of tobacco products.](#)

🗨 **Articles 5 (section h) and 19 (section 2.e); Provision [additional two](#);**

Suppressed by [Law 42/2010, of December 30, modifying Law 28/2005, of December 26, regarding health measures against tobacco addiction and regulating sales, supplies, consumption and advertising of tobacco products.](#)