

**SPACE WITHOUT SMOKE**

**SMOKING FORBIDDEN**

**Law 28/2005, from 26 December  
(B.O.E. from 27 December)**

**LAW 28/2005 on the selling, distributing, consumption and publicity on Tobacco**  
*Summary –BOE 27-12-2005*

THE LAW COMES INTO EFFECT ON: 01-01-2006

LIMITATIONS TO THE COSUMPTION of tobacco *-Chapter II*

It will be forbidden to smoke in:

- Public and private workplaces, **except** in spaces **outdoors**;
- Government buildings and offices, as well as public buildings;
- Health centres and establishments;
- Schooling and training centres;
- Indoor sports centres.
- Indoor public entertainment areas;
- Areas with direct **customer services**;
- **Shopping centres**, including department stores, except in outdoor spaces. In hotels and restaurants located inside these premises, smoking will be forbidden, no matter what their size is, except for in zones that have been designated as smoking areas.
- Centres offering social services for people under 18, or leisure centres allowing the entrance of minors.
- Cultural centres, libraries, museums, etc.
- Nightclubs and night time entertainment centres, during the hours when minors are allowed in.
- Areas where **food is processed, handled, eaten or sold**;
- Lifts;
- Telephone booths, money dispensers and other public spaces of less than 5 m<sup>2</sup>;
- Public transports, taxis and funiculars;
- All subway transport areas, railway transports and maritime transports except for outdoor areas; domestic flights, in all flights operated by Spanish companies; and service areas.
- In all spaces designated by autonomous regions of Spain.

**Spaces where smoking areas may be established:**

- Centres offering social services;
- Hotels, hostels and similar establishments;
- Bars, restaurants and other similar indoor establishments, with a total surface for the use of clients equal or more that 100m<sup>2</sup>, except if they are located within buildings where smoking is totally forbidden.
- Nightclubs and leisure centres for the general public, at times when minors are not allowed in, except in outdoor spaces.
- Theatres, cinemas and other leisure activities centres in closed spaces.
- Train and bus stations; ports and airports.
- In any other location where, without smoking being forbidden, the proprietor decides so.

NOTE: IN DESIGNATED AREAS FOR SMOKERS, PEOPLE UNDER 16 WILL NOT BE ALLOWED

The **requirements to establish areas for smokers** are:

- It must be **clearly indicated** in Spanish and any other co-official language, according to different autonomous regions.
- It must be **separated** from the rest of the areas, divided into sections, and must not be an obligatory way through for non-smokers, unless the employees are over 16.
- They must have **independent ventilation** systems with mechanisms that evacuate smoke.
- **Surface limitations** for smokers areas:
  - **Less than 10%** of the area designated for clients.
  - **A maximum of 30%** of **common areas** in the case of indoor restaurants with => 100 m<sup>2</sup> that are not located in shopping centres, clubbing establishments, leisure activities centres, or spaces for public use at times when minors are allowed in. Hotels and hostels can have up to 30% of their rooms for smokers.
  - In establishments where **two different activities** from those mentioned in this article are carried out, the surface used for each of the activities shall be measured separately and the common areas and areas for the transit of people shall not be included. Furthermore, in these areas the consumption of tobacco will be strictly forbidden.

Whenever these areas don't fulfil the requirements above mentioned, smoking will be forbidden in the whole premises.

NOTE: THESE REQUIREMENTS WILL BE APPLICABLE AFTER 3 MONTHS HAVE PASSED since 01-01-2006. During this period, areas designated for smokers shall have to be clearly indicated and separated from non-smoking areas – DT 3<sup>a</sup> -

#### **LIMITATION TO THE SELLING AND DISTRIBUTION OF PRODUCTS , GOODS OR SERVICES DERIVING FROM TOBACCO – *chapter II-***

- Retail selling and distribution of tobacco **can only be carried out** through the network of authorized tobacco and stamps **Distributors** and **tobacco dispensers** located in establishments in possession of the necessary permits for the selling through dispensing machines, which are totally forbidden in any other location.
- **Inside** establishments that are authorised to sell tobacco, there shall be clearly visible **information signs**, with the features established by the regulations of each autonomous region, that clearly express the prohibition of selling tobacco to people under 18 and that warn of the harmfulness produced by tobacco.

- The **legal age to sell and buy tobacco** shall be of **18 years**, as it already is in some autonomous regions.
- It is forbidden, while undertaking a commercial activity, to hand out, distribute or provide **sample** of any kind of tobacco, whether they are free or not. It is also forbidden to sell tobacco at a reduced price.
- **Retail selling** of tobacco in an indirect way, such as distance selling or similar procedures, is also **forbidden**.

*Manufacturers, owners and assignees of tobacco distributing machines that are already on the market will have **1 year** as of 01-01-2006 to make the necessary modifications for them to **adapt to technological requirements** to avoid people under 18 having access to them. New machines shall have to include these requirements as of 01-01-2006 –DT1°-*

- **Places** where it is **forbidden to sell** tobacco: public and government offices and building, health centres and centres offering social services, teaching institutions, cultural or sports centres, and centres offering services and leisure activities for minors.

It is also forbidden to sell tobacco in any place, centre or establishment where consuming tobacco is forbidden, including open air spaces.

## OFFENCES AND SANCTIONS – Chapter V –

- **KINDS of offences / fines:**
  - minor offences (with fines ranging between 30 and 600€)
  - serious offences (with fines ranging between 601 and 10,000€)
  - major offences (with fines ranging between 10,001 and 600,000€)
- **The proprietor of the establishment,** or the person in charge of it when the offence is committed, shall be held **responsible** for the following **serious offences** with fines ranging between 601 and 10,000€
  - For **allowing smoking** in areas where it is forbidden or outside smoking areas.
  - For **selling or handing out tobacco**, or imitations that entice **people under 18** to smoke.
  - For allowing people under 18 to use **tobacco distributing machines**.

### 2. The following offences are considered minor offences:

- a) Smoking in strictly forbidden areas and outside smoking areas.
- b) In establishments authorised to sell tobacco goods, not having or not displaying signs that warn of the prohibition of selling tobacco goods to people under 18, and not warning of the harmful effects of tobacco.
- c) For tobacco distributing machines not to display the required warning signs or that don't comply with regulations in force.

- d) Not informing of the prohibition or permission to smoke, as well as of the existence of areas for smokers and non-smokers or not complying with the rest of regulations applicable by this law.
- e) Not clearly identifying smoking areas
- f) Allowing people under 18 to sell or distribute tobacco.

**3. The following offences are considered serious offences:**

- a) Establishing smoking areas in places where it is forbidden or where regulations on the separation of smoking areas, ventilation and minimum surface requirements are not followed.
  - b) Allowing smoking in places where it is totally forbidden or outside smoking areas.
  - d) Commercialising, selling or distributing cigarettes without a case, in packets of less than 20 units, or as individual units.
  - e) Selling or distributing cigarettes in a case in unauthorized places and establishments.
  - f) Handing out or distributing any kind of sample of any tobacco goods, whether they are free or not.
  - j) Distributing free products, goods or services related to tobacco or that are on offer in places other than the network of authorized tobacco products distributors, with a promotional aim.
  - k) Selling tobacco goods with any kind of discount.
  - ñ) Distributing of tobacco products, goods or services that are free or promotional and that aim at promoting a tobacco good to people under 18.
  - q) Selling, distributing or dealing with tobacco goods in any way that goes against any other regulation in this law.
- 4) Promoting, advertising and sponsoring tobacco goods in any mass media, including public information media, is considered a major offences, except in those cases foreseen in Article 9.1

Article 20. *Sanctions.*

- 1) Minor offences included in article 19.2 a) shall be sanctioned with fines of up to 30€ if the offence is an isolated case, and with a fine from 30 to 600€ in all other cases.
- 2) The amount due for offences will be established, within the specified limits, shall be regulated taking into account the risk they represent for health, the economical situation of the offender, the effect this offence may have on society, the benefits obtained by the offender, the sanctioned behaviour and having previously committed an offence regarding this law. Sanctions, within each category, will be classified in three degrees: minimal, medium and maximal. They will be classified as maximal when the person that is harmed or the passive party is a minor, when the offence is committed continuously or repeatedly, except for when the offence involves a continuous or repeated offence. Offences will be classified as minimal when the offender is a minor, independently from what is established in article 21.8
- 4) If one act or omission constitutes two or more offences, specified in this law or in any other, only the one that implies a higher sanction will be taken into account.

- 5) When the administration considers the offence could constitute a criminal offence, the case will be referred to the law courts and the administration shall refrain from continuing legal proceedings until the court has made a decision. If the offence is sanctioned by the law court, the administration shall refrain from any further action.