

Act XLII of 1999

on the Protection of Non-Smokers and Certain Regulations on the Consumption and Distribution of Tobacco Products

The Parliament,

- considering the adverse general health indicators of the Hungarian population,
 - in order to reduce the accessibility of tobacco products for minors through a partial restriction of the distribution of such products,
 - expressing its intent to afford protection to non-smokers as well as to people otherwise in need of increased protection on account of their age or health status, against the negative impacts of passive smoking by regulating the consumption of tobacco products primarily in public places,
 - moreover, recognising that the regulation on the protection of non-smokers has to be reviewed from time to time - in parallel with the spreading of attitudes of health awareness
 - in order for the state to provide protection in additional areas of the private sphere against the adverse impacts of passive smoking,
 - laying particular emphasis - while respecting the rights relating to private life - on the need for avoiding smoking in particular in the presence of minors, pregnant women, people of ill health or persons of restricted mobility for any reason, in the venues of private life as well, particularly in rooms of closed air space or in the closed passenger compartments of motor vehicles since tobacco smoke is always poisonous and it has no safe health limit value,
 - contribution thereby to the enforcement and exercising and protection of the constitutional rights to health and a healthy environment,
 - in view of the need for improving the culture of the consumption of tobacco products and recognising the appreciable consumption habits, through adequate reconciliation of conflicting interests
- adopts the following Act:

Interpretative provisions

Section 1

For the purposes of this Act:

- a)* "tobacco product" means cigarettes, cigars, cigarillos, pipe tobacco and tobacco in other processed forms or any other tobacco-based product intended for smoking in accordance with a separate legal regulation;
- b)* "smoking" means the burning of tobacco products causing smoke;
- c)* *public institution*: facilities/premises or other means of a natural person or a legal person or an organisation without legal personality performing or delivering public duties or public or other services (hereinafter collectively: service) for those concerned, in place for the purpose of the performance of the service or activities relating to the provision of the service, regardless of whether entering such premises is completely free for the public or it is subject to meeting certain conditions or criteria;
- d)* "event" means a gathering or program created through the congregation of at least three persons as set forth in Subsection (1) of Section 2 of Act III of 1989 on the Right of Assembly, and organized for business, cultural, sport - other than recreational - or church purposes or for interest representation purposes;
- e)* "confined area" means any structure or medium physically separated from its environment by some technical solution, whose continual ventilation from the external

environment is not guaranteed or is guaranteed exclusively by means of doors and windows or other technical equipment.

f) combined warning: a warning comprising of a photo or other illustration and the relevant text of supplementary warning as prescribed in the government decree issued on the basis of the authorisation granted in this act;

g) civil society organisation representing the interests of health protection: a civil society organisation established on the basis of Act II of 1989 on the right to associate, if its goal specified in its charter is to repress smoking and has been operating for at least two years to this end, along with federations of such civil society organisations

Fundamental Provisions on the Consumption of Tobacco Products

Section 2

(1) Apart for areas designated for smoking - and with the exceptions specified in subsection (3) - no smoking is permitted

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

b) on means of public transport,

c) at work places,

d) in the following areas qualifying as public area

da) underpasses open to passenger traffic and in other connection spaces of public passageways with closed air spaces, in playgrounds in public places and within 5 metres of the external borderlines of playgrounds,

db) in the areas of railway operation facilities in place for the provision of public railway services and in the accessories of the railway track that are open to the public, in the stops and stations constructed or designed to passengers boarding or alighting from the means of public transport, in waiting areas or rooms, and within a distance of 5 metres of the external borderlines of outdoor stops or waiting areas, providing, that if the external borderline of the area under smoking restriction cannot be unambiguously determined, then smoking is prohibited within a 5 meter range of the board or other sign designating the stop or waiting area.

(2) With the exception referred to in subsection (5) no smoking area may be designated

a) in public institutions, in rooms of closed air spaces,

b) in work places, in rooms of closed air spaces,

c) in means of public transport in local public transport services, on trains in local railway services, on buses/coaches in domestic intercity public transport services based on service schedules as well as on passenger trains in scheduled railway services.

(3) By way of derogation from the provisions laid out in subsection (1) *a)* smoking is permitted even without the designation of a smoking area

a) in organised events for commercial display of tobacco products,

b) in rooms of closed air spaces let and designated as expressly smokers' rooms in institutions providing accommodation services,

providing that smoking is not prohibited by other provisions in this act or by other fire protection regulation.

(4) In addition to as specified in subsection (2) *a)* and *b)* no smoking area may be designated even in open air spaces

a) in public education institutions,

b) in child welfare and child protection institutions,

c) with the exception referred to in subsection (5) in the premises of health service providers specified in Article 3 *f)* of Act CLIV of 1997 on health (hereinafter: Health Act), including multifunctional institutions providing health services as well.

(5) In accordance with the provisions laid out in subsections (7) and (8) smoking area may also be designated in a closed air space

a) in the cases referred to in Section 9,

b) for detainees held in penitentiary institutions and prisons (including those with mental disorders),

c) for psychiatric patients in psychiatric institutions as specified in Article 188 *a)* of the Health Act.

d) for employees in workplaces where the corrected effective temperature is over 24^oC

(6) The meeting of the provisions laid out in this Act by the designated smoking areas is verified by the health authority while their meeting of the fire protection requirements is verified by the fire protection authority.

(7) Areas under smoking restriction and the areas, rooms and public areas designated for smoking must be prominently marked by an inscription or by some other suitable unambiguous indication - in the case of prohibition for the purpose of fire protection, with the standard board of prohibition and pictogram.

(8) If a smoking area of a closed air space is designated pursuant to this Act the smoking area cannot be designated in a room shared with a non-smoking area. In the case of a smoking area in a closed air space the conditions for adequate air exchange must be provided for with the aid of doors/windows or by installing other technical equipment in a way as will ensure that smoke cannot infiltrate the non-smoking rooms. For the purpose of this subsection air exchange is adequate if in the given room at least

a) mechanical aeration equipment providing for fresh air supply and for the extraction of the stale air and

b) the non-smoking areas have been designated and the air-flush of the room has been designed in a way as will make sure that tobacco smoke enters directly the air extraction channel right from the area of its generation without non-smoking areas being in the way of the air flow.

Section 2/A

Local governments may adopt decrees designating public areas as non-smoking public areas in addition to those specified in Section 2 (1) *d)*. In the local government's decree the scope of the smoking restriction must be regulated in detail in a way will ensure that those under obligation can fulfil their obligation to designate smoking areas. The provisions set out in Section 2 (7) must be applied to the designation of non-smoking public areas. In addition to as provided in Section 7, compliance with the smoking restrictions applying to public areas may also be controlled by the supervision of public areas - in view of the provisions laid out in the local government's decree - and such supervisors may impose an on-site fine on those caught breaching the smoking restriction, as specified in Section 7 (5). Fines so collected shall be part of the local government's revenue.

Section 3

(1) Persons acting within the scope of duties of the public institution as well as persons professionally involved in the operation of means of public transport (hereinafter jointly referred to as „authorized persons”) are obliged to request anyone violating the smoking restriction to immediately cease such infringement. In the event that the request is unsuccessful, the authorized person shall demand that the person concerned leave the public

institution or the means of public transport or shall initiate the proceedings described in Subsections (1), (2) and (13) of Section 7.

(2) At the request of the person defined in Subsection (1)- upon presenting proof of authority for the measures being taken - the person concerned is obliged to prove his identity.

Section 4

(1) In cases specified in Section 2 (1) *a*) and *c*) - with the exceptions specified in subsection (6) and in Section 2 (3)-(5) - areas of open air spaces, meeting the requirements specified in this Act and in the applicable fire protection rules, shall be designated and maintained for smoking, by applying the provisions specified in Section 2 (7). No smoking area shall be designated within a 5 metres distance from the entrances of public institutions except for public institutions providing entertainment or catering services. In the case of public institutions providing entertainment or catering services the smoking area may be designated within 5 metres of the entrance if the conditions for the designation of a smoking area in an open space are not met in the area of the institution within 5 metres of its entrance.

(2)

(3) In means of public transport in service in the public transport system or in private transport services not referred to in Section 2 (2) *c*), decision on the designation of smoking areas shall be made by the operator of the service. Such designation must not breach rules of fire protection or the interests of safe transport.

(4)-(5)

(6) An operator of a public institution providing entertainment or hospitality services may declare the institution a non-smoking establishment. In this case there is no need to designate a smoking area in the institution. The non-smoking status of the institution must be displayed in an easily visible manner using unambiguous wording or signs at the entrance to the institution open to the general public, as well as in all places used by guests.

(7)

(8) Where Paragraph *a*) of Subsection (2) of Section 2 applies, the provisions contained in Subsection (1) shall be observed, with the exception that non-enclosed smoking areas may be designated outdoors only if properly separated from the areas attended by persons seeking medical services out of habit or necessity.

(9) The requirements set out in Subsections (1)-(8) of this Section and in Section 4/A shall be enforced by the person defined in the internal regulations of the public institution, or if no such person is in place, the head or operator of the institution, by the organizer of the event or by the operator of the means of public transport, or the principal of the institution of public education or the employer.

Section 4/A

(1) Employers may prohibit smoking at any workplace - or any business establishment where applicable - in accordance with the provisions laid down in Subsections (2)-(3). In this case, in the facilities and areas of which the employer has exclusive control smoking areas may not be designated. The designation that a workplace has been declared smoke-free must be displayed in an easily visible manner using unambiguous wording or signs at the entrance to the premises open for pedestrian traffic, as well as in all places used also by persons other than the employees and in the corridors leading to these areas at places where it can be seen by all persons admitted.

(2) The decision to declare an employer a smoke-free workplace in accordance with Subsection (1) may be adopted:

- a) in the collective agreement where applicable;
- b) at the request of or in agreement with the employees of employers to whom Paragraph a) does not apply.

(3) The initiative referred to in Paragraph b) of Subsection (2) may be presented by a trade union vested with powers to conclude the collective agreement, or failing this by at least fifty per cent of all workers employed at the particular workplace, or at the business establishment where applicable, at the time the agreement is concluded. If initiated by the employer the agreement of employees shall be governed by the same rules that govern the launching of the initiative. The employer must comply with the initiative presented by the employees and shall declare the workplace or establishment smoke-free within thirty days.

(4) In connection with any workplace where a smoking area cannot be designated in accordance with Section 2 (2) and (4), or where designating smoking areas is not obligatory under Subsection (3) of Section 2, Subsections (1)-(3) may not be applied. Where a workplace has been declared smoke-free according to Subsection (1), Subsections (2)-(3) shall apply *mutatis mutandis* to requests for the designation of smoking areas.

Restrictions on the Marketing and Distribution of Tobacco Products

Section 5

(1) Tobacco products may not be sold in public education institutions, social institutions providing personal care, in child welfare and child protection institutions as well as in health care institutions.

(2)

(3)

(4) Tobacco products may not be placed on the market as representative samples.

(5) In consideration of the nature and design of the shop, tobacco products must be placed on the retail market isolated from other products on separate shelves or in the part of the shop premises separated for this purpose, or in separate shop premises exclusively serving the distribution of tobacco products and paraphernalia connected with the consumption thereof.

(6) Adherence to the provisions contained in Subsection (5) shall be inspected regularly by the competent county (Budapest) consumer protection inspectorate.

Section 6

(1) Cigarettes may only be marketed - in consideration of Subsection (3) of Section 8 - if the wording on the consumer packaging units of the product being placed on the market - which shall be visible with a contrasting background, easily readable, and durable - contains the following in the Hungarian language:

a) on one of the main sides covering at least 30 per cent of the surface

aa) the warning 'Smoking seriously harms you and others around you!', or

ab) 'Smoking can kill!'

b) on the other main side covering at least 40 per cent of the surface, the wording of a freely selectable health warning in accordance with the Schedule to this Act,

c) on one of the narrow sides covering at least 10 per cent of the surface, the numerical values of the tar, nicotine and carbon-monoxide content present in the primary smoke of each cigarette.

(2) The general health protection warnings referred to in subsection (1) a) aa) and ab) and the combined warning that can be optionally chosen by the manufacturer must be used in

alternation in a way that ensures that their regular appearance on every main side is guaranteed.

(3) The provisions contained in Subsection (1) shall apply *mutatis mutandis* to the conditions for marketing the tobacco products that were not mentioned in Subsection (1) with the understanding that the provision pertaining to the minimum size of health warnings and Paragraph *c*) of Subsection (1) need not be applied.

(4) The health warning defined in Paragraph *a*) of Subsection (1) must also be posted on the premises of shops selling tobacco products and in the serving area of mobile vendors. The provisions contained in Subsection (1) shall apply *mutatis mutandis* to the display method of the warning with the understanding that the provision regarding the minimum size of the warning need not be applied.

(5) The detailed regulations governing the labelling and packaging of tobacco products are laid down in specific other legislation.

(6) Tobacco products may not be sold by vending machines.

Violation of Prohibitions and Obligations Regarding the Consumption and Distribution of Tobacco Products

Section 7

(1) Compliance with the provisions set out in Sections 2-4/A, and in Section 9 of this Act and in Section 38 of Act XCIII of 1993 on labour safety shall be controlled by the health authority which shall impose a health protection fine in the case of violations of those provisions, on the infringing natural or legal person or organisation without legal personality. The health authority may decline to impose a fine on the person specified in Section 4 (9) if the person entitled to issue instructions is proven to have fulfilled its obligation specified in Section 3 (1) against the person breaching the restriction on smoking.

(2) A person (specified in Section 4 (9), who fails to ensure observance of the prohibitions and restrictions on smoking laid out in this act in the scope of his or her duties shall also be obliged to pay a health protection fine.

(3) A health care penalty may only be imposed on natural persons who at the time of the act were over the age of 14 and who have an independent income.

(4) The amount of the health care penalty

a) in the event of any breach of the prohibitions or restrictions with regard to smoking is between 20,000 and 50,000 forints;

b) in the event of failure to fulfil or to properly fulfil the obligation regarding designation of smoking areas and prohibitions on smoking, or any infringement of the supervisory obligation with regard to the enforcement of prohibitions and restrictions concerning smoking and the distribution of tobacco products:

ba) is between 100,000 and 250,000 forints if imposed upon the person held liable to fulfill these obligation, or

bb) between 1,000,000 and 2,500,000 forints if imposed upon an institution, organization, operator or business association.

(5) The health care penalty shall be determined in such a way that it conforms to the gravity of the act and the circumstances of the person concerned. In the case of Paragraph *a*) of Subsection (4) - by way of derogation from the amount limit specified therein - the competent authority may impose an instant health care penalty upon the perpetrator of up to HUF 30 000. In the event of non-payment of the instant penalty within thirty days the provisions of Subsection (4) shall apply.

(6)

(7) The health care penalty must be imposed by the authority vested with powers and jurisdiction for conducting the procedure within 6 months of acquiring knowledge of the conduct in accordance with Subsections (1)-(2). The health care penalty may not be imposed if one year has passed from confirmation of the unlawful conduct, unless such unlawful conduct continues. In this case the term of limitation begins the day the violation ceases.

(8)

(9) The health protection fine imposed by a final and definitive resolution and the on-site fine shall be paid to the account of the health authority. The health authority shall, once a month, transfer the following proportions of the amount so collected, to the following organisations

a) 50 % to the account opened for the budget chapter of the ministry headed by the minister in charge of health,

b) 25 % to the account of the health authority imposing the fine.

(9a) 50 % of the consumer protection fine charged owing to breaches of the provisions set out in Sections 5 and 6, by a final and definitive resolution, that has been credited to the relevant account, must be transferred on a monthly basis, to the account opened for the budget chapter of the ministry headed by the minister in charge of health.

(9b) The amount collected pursuant to subsection (9) *a)* and subsection (9a) shall be used for purposes of health protection - with a view to the priorities of the national health programme as well - in particular for the prevention of smoking, programmes assisting people give up smoking, health preserving goals as well as for supporting technical/professional programmes improving the standards of health services. The fine collected pursuant to subsection (9) *b)* shall be used for the development of the health authority (supervision) and for supporting the health protection authorities' work. Registry of the imposing, collection and utilisation of the fines shall be kept by the health authority, which shall report on the summary of the key data contained in the registry once a year in writing, to the health minister.

(9c) Not more than 10 % of the central budgetary revenue specified in subsection (9) *a)* received in the second budget year preceding the year concerned must be used for sponsoring civil society organisations engaged in representing health protection interests. Such amounts shall be allocated through application schemes organised for purposes specified in subsection (9b), in accordance with the provisions set out in the decree issued by the Government for the implementation of this Act.

(10) Health care penalties levied but unpaid shall be collected in the manner of taxes, and carry equal importance.

(11)

(12) The imposition of the health care penalty shall not affect the applicability of any other legal ramifications of the violation, as set forth in other legal regulations.

(13) The person described in Subsection (1) of Section 3 shall initiate the execution of the disciplinary procedures against a violator of the smoking prohibition in public education institutions as provided for by this Act, in the course of fulfilling the obligation arising from the student relationship, or in the course of any other connected activity in the public education institution or in any other institution operating in this line of activity, with regard to students over the age of 14.

Section 7/A

(1) Compliance with the provisions set out in Sections 5 and 6 shall be controlled by the consumer protection authority and it shall proceed in the case of violations of those

provisions, applying the provisions set out in Act CLV of 1997 on consumer protection (hereinafter: Consumer Protection Act).

(2) The provisions referred to in subsection (1) shall qualify as consumer protection regulations for the purposes of the Consumer Protection Act.

Section 7/B

(1) The health authority, a civil society organisation representing health protection interests or the prosecutor may institute action against a person whose activities in breach of this Act affect a wide range of people or cause major violations of the public health interests in order to protect the large number of people concerned or to eliminate the significant violation of public health interests. Such action may also be instituted if the identity of those who have suffered as a consequence of such activities cannot be established.

(2) The action referred to in subsection (1) may be filed within one year of the occurrence of the infringement.

(3) The court may, in its verdict, authorise the claimant to publish the verdict in a daily paper of nationwide circulation, at the infringing party's expense.

(4) The civil society organisation representing health protection interests shall be entitled to the rights of the customer in the proceedings of the

a) the health authority instituted for violations of the provisions laid down in Sections 2-4/A hereof or those in Article 38 of Act XCIII of 1993 on labour protection,

b) consumer protection authority instituted owing to violations of the provisions laid out in Sections 5 and 6 hereof.

Closing Provisions

Section 8

(1) This Act shall enter into force on the first day of the seventh month following its promulgation, whereby in respect of institutions open to the public providing entertainment and hospitality services operating with a valid business license on the day the law enters into force, or which start operation after the law enters into force based on an application which has been filed and is in progress for a business license, the smoking restriction and the obligation regarding the designation of smoking areas shall be applied as of 1 January 2001.

(2) The prohibitions and restrictions set forth in this Act with regard to smoking and the distribution of tobacco products shall not affect the smoking prohibitions and restrictions provided for in other legal regulations for other interests or objectives.

(3) Cigarette tobacco products that do not conform to the provisions of Subsections (1) and (2) of Section 6 of this Act or the regulations laid down in specific other legislation cannot be manufactured and cannot be released for free circulation according to the provisions of Act CIII of 1997 on Excise Taxes and Special Regulations on the Marketing of Excise Goods; nor can they be marketed for more than one year from the date on which this provision enters into force.

(4) The Minister of the Interior, the Minister of National Defense, the Minister of Justice, the Minister of Finance and the Minister without portfolio responsible for civilian national security services are hereby authorized to decree detailed regulations on smoking, the designation of smoking areas and the distribution of tobacco products with regard to the armed services operating under their control and supervision in harmony with the provisions of this Act.

(5) The Government is hereby authorised to adopt decrees determining

a) the combined warnings and the detailed rules of their application and other conditions applying to the production, distribution and controlling of tobacco products outside the scope regulated by the Act on Excise Duties,

b) the detailed rules on the payment and utilisation of the health protection fine, along with those on the sponsoring of civil society organisations representing health protection interests in specific proportions of the health protection fine.

(6) This Act contains regulations that may be approximated with the following legal regulations of the European Communities:

a) Directive 2001/37/EC of the European Parliament and of the Council of 5 June 2001 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products;

b) Directive 2003/33/EC of the European Parliament and of 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, Article 5(2) [Subsection (4) of Section 5 of this Act].

Section 8/A

(1) The provisions on the payment, transfer and utilisation of health protection and consumer protection fines of Act XLI of 2011 amending Act XLII of 1999 on the protection of non-smokers and on certain rules on the consumption of tobacco products (hereinafter: Amending Act) shall be applied to the fines finally and definitively imposed after the date on which the Amending Act enters into force.

(2) Between 1 January 2012 and 31 March 2012 the health authority will decline to impose the health protection fine in cases where no fine would have had to be imposed pursuant to the provisions of this act in force on 31 December 2011 owing to any act breaching this act established in the course of an inspection by the authority.

(3) The proceedings of the health authority as specified in subsection (2) shall be governed by the provisions laid down in Section 94 (1) *a)* of Act CXL of 2004 on the general rules of public administration regulatory proceedings and services (hereinafter: Public Administration Proceedings Act), providing that

a) the person infringing the provisions must be obliged to terminate the infringing practices within a time frame of at least 20 days but not earlier than by 1 April 2012, and

b) Section 94 (2) *d)* of the Public Administration Proceedings Act shall not be applied in relation to acts infringing this act during the period referred to in subsection (2).

Section 8/B

Cigarette products that meet the provisions of Section 6 that are in force on 31 December 2011 but that do not meet the requirements laid down in Article 6 of the Modifying Act shall

a) from the first day of the 8th month following the entry into force of the legislation adopted on the basis of the authorisation specified in Section 8 (5) *a)*, not be manufactured and they shall not be put into free circulation pursuant to the provisions of Act CXXVII of 2003 on the excise tax and on the special rules of the distribution of excise goods and

b) from the first day of the twelfth month after the same date they shall not be put into circulation or handed over to end consumers.

Section 9

(1) Smoking areas of closed air spaces operated in public institutions qualifying as accommodation according to the act on commerce, operated as hotels pursuant to the applicable legislation already operated at the time of the entry into force of the Amending Act and licensed pursuant to subsections (3) and (4) may - as a cigar room - continue to be operated. Continued operation shall be licensed by the health authority.

(2) No other service may be provided - in particular, no food or drinks may be served - from 1 January 2012 in a cigar room specified in subsection (1) and no employee may be obliged to carry out tasks of his or her job necessitating his stay in the cigar room during the stay in that room of smoking guests using that service.

(3) The operator of a hotel referred to in subsection (1) may, if he intends to continue to operate his cigar room from after 31 December 2011, apply for a licence to do so, within 60 days from the entry into force of the Amending Act.

(4) The health authority shall investigate in the course of an official procedure including an on-site inspection as well, whether the notified cigar room meets the conditions specified in Sections (5) and (6). If the notified cigar room

a) does not meet these conditions, the health authority shall prohibit the designation of the cigar room as a smoking area with effect from 1 January 2012,

b) meets these conditions, the health authority shall authorise the continued operation of the cigar room.

(5)-(6)